

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No. 235 of 2025**

Swapan Malakar,
S/O Lt. Sudhan Malakar,
R/o-East Narayanpur, P.O.-Airport,
District-West Tripura, Pin-799009,
Age-55 years.

----- Petitioner(s)

Versus

- 1. The State of Tripura,**
To be represented by its Secretary,
Department of Revenue,
Government of Tripura, Agartala,
New Secretariat Building, Kunjaban,
New Capital Complex, West Tripura, Pin-799010.
- 2. The District Magistrate & Collector,**
West Tripura District, Govt. of Tripura,
O/o the DM & Collector, West Tripura,
Office Lane, Agartala, Tripura, Pin-799001.
- 3. The Addl. District Magistrate & Collector,**
West Tripura District, Govt. of Tripura,
O/o the DM & Collector, West Tripura,
Office Lane, Agartala, Tripura, Pin-799001.
- 4. The Sub Divisional Magistrate,**
Jirania Sub Division, West Tripura District,
Govt. of Tripura, O./o the SDM, Jirania,
West Tripura.
- 5. Dr. Vishal Kumar, IAS,**
The District Magistrate & Collector,
West Tripura District, O/o the DM & Collector,
West Tripura, Office lane, Agartala,
West Tripura, Pin-799001.

----- Respondent(s)

For Petitioner(s)	: Mr. Purusuttam Roy Barman, Sr. Adv. Mr. Samarjit Bhattacharjee, Adv.
For Respondent(s)	: Mr. Mangal Debbarma, Addl. GA.
Date of hearing	: 20.02.2026
Date of delivery of judgment	: 17.03.2026
Whether fit for reporting	: Yes

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order

Heard Learned Sr. counsel Mr. Purusuttam Roy Barman, assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing on behalf of the petitioner and also heard learned Addl. GA Mr. Mangal Debbarma, appearing on behalf of the State-respondents.

2. The petitioner has filed this present writ petition seeking the following reliefs:-

"(i) Issue Rule NISI upon the Respondents to show cause why a writ of mandamus or in the nature thereof shall not be issued directing the Respondents to send the disciplinary proceedings initiated against the Petitioner bearing No. departmental proceedings case No. 02/DP/2024 to the Commissioner of Departmental Inquiries, Govt. of Tripura for inquiry and after hearing this petition issue writ of mandamus or in the nature thereof commanding upon the Respondents to send the Disciplinary Proceedings initiated against the Petitioner bearing No. 02/DP/2024 to the Commissioner of Departmental Inquiries, Govt. of Tripura.

(ii) Issue Writ in the light of the prayers made above and make the rule absolute.

(iv) Stay the further proceedings of departmental proceeding case No. 02/DP/2024, till disposal of the writ petition.

(v) Any other order or direction, as this Hon'ble Court considers appropriate may kindly be passed.

(vi) Cost of the petition may be allowed to the petitioner."

3. Learned Sr. counsel Mr. Roy Barman, at the time of hearing drawn the attention of this court that by a Memorandum dated 23.08.2024 (Annexure-1) the District Magistrate & Collector, West Tripura initiated an enquiry against the

petitioner under Rule 14 of the CCS (CCA) Rules, 1965 with the following article of charges:-

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SRI SWAPAN MALAKAR. ASO ATTACHED TO THE OFFICE OF THE SDM, JIRANIA.

ARTICLE OF CHARGE NO.I

It is reported from Director, Land Records & Settlement, Tripura, Agartala vide letter No.F.4 (16)-RCC/2020 (P) dated 12.06.2024 that RS plot No.6819, 6820, 6848, 6856, 6841, 6842, 6843, 6845, 6859, 6870, 6858 in Mouja Singerbil of Lankamura TK under Barjala Revenue Circle bearing Khatian No.894/1, 894/2, 894/3, 894/4 & 894/5 belong to Enemy Property and locked after publication of the Notification No.F.4(16)-RCC/2020(P)/4958-5022 dated 12 June, 2023. As outlined in the Notification, approval of the State Government through Directorate of Land Records & Settlement (Revenue Department) is mandatory in case of any transaction, sanction of building plans or unlocking of Khatian (RoR) to be initiated against the Enemy Properties.

Surprisingly, Sri Swapan Malakar, ASO while posted at Mohanpur Sub-Division allowed the following MR cases violating the provisions of the Enemy Property Act, 1968 on the basis of forged Deeds.

SI No.	MR Case No.	Date of accepted the mutation	Mutation accepted in favour of	Mutation accepted for the area measuring	Mutation allowed on the basis of forged Regd. Sale deed number produced by applicants	Land transferred from (owner detail)
1	MR-202106836	10.03.2021	Sri Haripada Das, S/o Prafulla Das of Chinaihani	2.520 acres.	1-179 dated 16.02.2009	Fathe Ali (100000) S/o Yaadh Ali of Bagladesh
2	MR-202105726	01.03.2021	Sri Krishnananda Debnath S/o Pandab Debnath (2) Nibedita Debnath W/o Krishnananda Debnath of Dhaleswar	0.20 acres	1-2870 dated 16.08.1990	-do-
3	MR-202110764	26.04.2021	Sri Makhan Das, S/o Mahesh Das of Ananga Nagar	0.960 acres	1-1019 dated 01.03.2007	-do-

Therefore, it can be said without any doubt that the above named persons have illegally got mutation of land measuring 2.520 acres, 0.20 acres & 0.960 acres respectively of Mouja Singerbil by producing fake deeds bearing No as mentioned against them.

From the above, it is evident that Shri Swapan Malakar, ASO has shown gross misconduct by allowing the mutation cases based on fake Regd. Sale deeds. This act has been carried out without proper verification of the authenticity of the documents and field verification, Indicating involvement in corrupt practices.

ARTICLE OF CHARGE NO.II

Sri Swapan Malakar, ASO now attached to O/o the SDM, Jirania while functioning as Mutation officer has not followed the right and necessary steps before passing mutation cases as mentioned in Article of charge-I. He failed to verify the authenticity of the documents and the legitimacy of the mutation applications, has also ignored several warnings and guidelines issued by higher authorities regarding the handling of Enemy Property. Despite clear instructions, he processed and approved the aforementioned mutation cases, which directly contravenes the directives aimed at protecting Enemy Property.

The above act as committed by Sri Swapan Malakar, ASO shows that he had willfully done this with ulterior motives, which is unbecoming of a Government employee. This act of Sri Swapan Malakar, ASO constitutes a serious failure to maintain absolute integrity and devotion to Govt, duty which tantamount to gross misconduct as laid down under Rule 3 of the Tripura Civil Service Conduct Rules, 1988.

Signed by

Vishal Kumar

Date: 23-08-2024 14:59:43

District Magistrate & Collector
West Tripura District"

4. Against the said Memorandum the petitioner submitted his written statement of defense on 05.09.2024 (Annexure-2) denying and disputing the article of charges pleading not guilty and also prayed for exonerating him from the said article of charges (Annexure-2).

5. Learned Sr. counsel Mr. Roy Barman, thereafter submitted that the petitioner on 29.10.2024 submitted one prayer to the DM & Collector for sending the enquiry before the Commissioner of Departmental Enquiries (Annexure-5).

6. Prior to that, personal hearing was held by DM & Collector on 25.10.2024 and in course of personal hearing, according to learned Sr. counsel, the petitioner was compelled to put his signature on blank order sheets and in course of personal hearing DM & Collector told the petitioner that the petitioner will be dismissed from service. So, considering this threat and under compelling circumstances the petitioner had no other option but to put his signature in blank order sheets, and the same has been specifically mentioned in the writ petition.

7. Learned Sr. counsel Mr. Roy Barman, thereafter submitted that although in the writ petition the DM & Collector was made party by name but he did not appear in this case nor did he file any counter affidavit as respondent No.5. Rather the counter affidavit has been sworn by one Chandra Krishna Malsom, Joint Secretary to the Government of Tripura, Revenue Department who had no personal knowledge as to what happened in course of personal hearing.

8. After that the petitioner filed one writ petition before the court challenging the departmental proceeding initiated against him and this High Court by order dated 24.01.2025 in WP(C) No.716/2024 disposed of the same with the following observations:-

"8. In my opinion, in this situation, following the doctrine of fairness and fairplay, the Disciplinary Authority should not be the Inquiry Officer and the inquire may be conducted by a person other than the Disciplinary Authority in terms of Rule 14 of Rules, 1965. The Disciplinary

Authority shall appoint the Inquiry Officer before the next date of recording evidence positively.

The petitioner has prayed for referring the matter to the Commission of Departmental Inquires. In my opinion, it is absolutely within the domain or discretion of the appointing authority either to appoint Inquiring Authority or to send the matter to the Commissioner of Departmental Inquiries.

With the aforesaid observations and directions, the instant writ petition stands disposed."

9. Learned Sr. counsel Mr. Roy Barman, further submitted that in pursuance of the direction of this High Court, ADM & Collector, West Tripura, Agartala was appointed as Inquiring Authority on 10.02.2025 by the Disciplinary Authority. The Inquiring Authority issued notice and accordingly, the petitioner made a prayer to the Disciplinary Authority to change the Inquiring Authority by submitting one representation dated 19.03.2025 (Annexure-11). Not only that, the petitioner also made separate prayer to the Inquiring Authority to stop further proceedings of the enquiry initiated against him by another representation on 19.03.2025 (Annexure-12). But that was not considered. However, the proceeding continued and the DM & Collector, being the Disciplinary Authority, by order dated 07.04.2025 (Annexure-14) dismissed the petitioner from service under Rule 11 of CCS (CCA) Rules, 1965 with the further observation that the dismissal of service shall ordinarily disqualify him from future employment, but according to learned Sr. counsel Mr. Roy Barman, although the present petitioner approached the Inquiring Authority to stop further proceeding and also urged to the Disciplinary Authority to refer the matter to the Commissioner of Departmental Enquiries

but his representations were not considered by the authority. Even before imposition of punishment the copy of the enquiry report was not furnished to the petitioner either by the Inquiring Authority or by the Disciplinary Authority. Even the Disciplinary Authority also did not mention in the order that the enquiry report was supplied to the petitioner.

10. Thus, according to learned Sr. counsel Mr. Roy Barman, the principles of natural justice were violated in respect of the present petitioner. Even his signatures were forcefully obtained by the authority. Learned Sr. counsel Mr. Roy Barman, referring the order of proceeding (Annexure-R/9) and the Enquiry Report (Annexure-R/10) drawn the attention of the court that it was specifically observed by the Inquiring Authority that the Articles of Charges had been denied by the Accused Officer and the enquiry proceeded in respect of the charges.

11. But, surprisingly, the same Inquiring Authority observed that on 28.03.2025 (Annexure-R/10) the present petitioner, as accused officer, admitted to "approving mutation based on forged deeds" which are contrary to the facts of the proceeding. Thus, the findings of Inquiring Authority were perverse and finally, learned Sr. counsel Mr. Roy Barman, submitted that since the principles of natural justice have been violated in this case, so, under compelling circumstances the petitioner has filed the writ petition seeking the reliefs as mentioned above.

12. Learned Sr. counsel Mr. Roy Barman, finally submitted that admittedly in this case challenging the order of the

Disciplinary Authority i.e. Annexure-14 dated 07.04.2025 wherein the DM & Collector imposed major penalty upon the petitioner, the present petitioner considering the facts and circumstances of the case did not approach to the Appellate Authority, rather directly filed this writ petition before this Court under Article 226 of Constitution of India and in this regard according to learned Sr. counsel Mr. Roy Barman, there are series of judgments of the Supreme Court which supports the case of the petitioner.

13. Reliance was placed upon the judgment of the Hon'ble Supreme Court of India reported in ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority & Ors.,*** reported in **2023 SCC OnLine SC 95**, wherein in para Nos.2, 4 and 6, Hon'ble the Apex Court observed as under:

"2. Two questions emerge for decision on this appeal. First, whether the High Court was justified in declining interference on the ground of availability of an alternative remedy of appeal to the appellant under section 33 of the VAT Act, which it had not pursued. Should the answer to the first question be in the negative, we would next be required to decide whether to remit the writ petition to the High Court for hearing it on merits or to examine the correctness or otherwise of the orders impugned before the High Court.

4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been

invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

6. At the end of the last century, this court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a writ court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under :

(i) where the writ petition seeks enforcement of any of the fundamental rights ;

(ii) where there is violation of principles of natural justice ;

(iii) where the order or the proceedings are wholly without jurisdiction ; or

(iv) where the vires of an Act is challenged.”

14. Referring the same learned Sr. counsel Mr. Roy Barman, submitted that although the petitioner has not challenged the order of the Disciplinary Authority before the Appellate Authority and has directly approached to this High Court, but there is no legal bar to seek appropriate remedy before this court. Reliance was further placed upon another judgment in **B.C. Chaturvedi v. Union of India & Ors.**, reported in **(1995) 6 SCC 749**, wherein in para Nos.12, 18, 24 and 25, Hon’ble the Apex Court observed as under:

“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 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 reappreciate 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 conclusion 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.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

24. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case [Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 : (1970) 3 SCR 530] , which thinking was extended to cases attracting Article 21 in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] , the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram v. State of H.P. [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454] also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.

25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of the High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law-makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert Section 11-A in it to confer this power even on a labour court/industrial tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under Section 11-A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to government

employees or employees of public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate.”

15. Referring the same, learned Sr. counsel Mr. Roy Barman, submitted that in this case the copy of the report of Inquiry Officer was not furnished to the petitioner before imposition of punishment which was in gross violation of principles of natural justice and asked for setting aside the order passed by the Disciplinary Authority.

16. Further, reference was made upon another citation of Hon'ble Supreme Court of India in **State of Uttar Pradesh & Ors. v. Saroj Kumar Sinha**, reported in **(2010) 2 SCC 772**, wherein in para Nos.29 and 39, Hon'ble the Apex Court observed as under:

“29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of

Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18] : (SCC p. 156, paras 6-8)

"6.The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7.The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

17. Learned Sr. counsel Mr. Roy Barman, again referred another judgment in ***Yoginath D. Bagde v. State of Maharashtra & Anr.***, reported in **(1999) 7 SCC 739**, wherein in para No.31, Hon'ble the Apex Court observed as under:

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry

officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

18. Referring those judgments learned Sr. counsel Mr. Roy Barman, again submitted that since the copy of enquiry report was not furnished to the present petitioner by the authority, as such, the petitioner has been prejudiced and principles of natural justice have been violated against him.

19. Finally, learned Sr. counsel Mr. Roy Barman, referred another citation in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.***, reported in ***(1998) 8 SCC 1***, wherein in para No.14, Hon'ble the Apex Court observed as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of

the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

20. Referring the same, learned Sr. counsel Mr. Roy Barman, submitted that the power to issue prerogative writs under Article 226 is plenary in nature and is not limited to any other provisions of the Constitution. The High Court not only can exercise the power for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of the fundamental rights contained in Part III of the Constitution of India but also for "any other purpose".

21. He also submitted that the respondent authority was all along hostile to the interest of the present petitioner and in spite of his repeated representations his appeal was not considered by them. Thus, from the act and conduct of the respondent authority it transpires that the respondent authority before imposition of punishment had already decided to punish the petitioner. So, under imperative circumstances the petitioner has been compelled to file this writ petition before this court seeking redress and as such, the present case is very much maintainable for issuing prerogative writs.

22. Learned Sr. counsel Mr. Roy Barman, thereafter referred another judgment of the Supreme Court of India in **Radha Krishan Industries v. State of Himachal Pradesh & Ors.**, reported in **(2021) 6 SCC 771**, wherein in para Nos.25, 27, 27.1, 27.2, 27.3 and 27.4, Hon'ble the Apex Court observed as under:

"25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] , a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(emphasis supplied)

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law."

23. Referring the same learned Sr. counsel Mr. Roy Barman, submitted that the present case is squarely covered by the principle of the said judgments. Finally learned Sr. counsel, has prayed for dismissal of this writ petition.

24. On the other hand learned Addl. GA Mr. Debbarma, appearing on behalf of the State respondents submitted that in this case the respondent authorities have submitted their counter affidavit denying the assertions of the petitioner. Learned Addl. GA Mr. Debbarma, further submitted that this present petition is not maintainable as because the petitioner without approaching the Appellate forum has directly approached this High Court seeking redress which is not permissible in the eye of law and as such, the present writ petition is liable to be dismissed/rejected forthwith.

25. Learned Addl. GA Mr. Debbarma, further submitted that in this case, all opportunities were given to the present petitioner during departmental proceeding. Rather the petitioner had admitted his guilt before the Inquiring Authority as well as Departmental Authority. So there was no infirmity in the order passed by the Disciplinary Authority and as such, there is no scope to entertain the writ petition filed by the present petitioner.

26. In support of his contention, learned Addl. GA Mr. Debbarma, relied upon one judgment of the Hon'ble Supreme Court of India in ***Union of India & Ors. v. P. Gunasekaran***, reported in **(2015) 2 SCC 610**, wherein in the relevant portion of para No.15, Hon'ble the Apex Court observed as under:

"15. ***

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See *Syed Yakoob v. K.S. Radhakrishnan* [AIR 1964 SC 477] .)

27. Referring the same, learned Addl. GA Mr. Debbarma, submitted that admittedly in this case the petitioner did not approach the Appellate Authority and has directly approached this High Court seeking redress under Article 226 of the Constitution of India and after considering the materials on record the authority has passed the order and there was no infirmity in the order passed by the Disciplinary Authority (Annexure-14) and as such,

the present writ petition is not maintainable and there is also no scope on the part of the High Court to entertain the same and furthermore, the principles of the aforesaid judgment of the Hon'ble Supreme Court is very much relevant for decision of this petition.

28. Reliance was further placed upon another citation of the Hon'ble Supreme Court of India in ***Union of India v. T. R. Varma***, reported in **1957 SCC OnLine SC 30**, wherein in para Nos.5 and 6, Hon'ble the Apex Court observed as under:

"5. The respondent then filed the application out of which the present appeal arises, in the High Court of Punjab for an appropriate writ to quash the order of dismissal dated September 16, 1954, for the reason that there was no proper enquiry. As many as seven grounds were set forth in support of the petition, and of these, the learned Judges held that three had been established. They held that the respondent had been denied an opportunity to cross-examine witnesses, who gave evidence in support of the charge, that further he was not allowed to make his own statement, but was merely cross-examined by the Enquiring Officer, and that likewise, his witnesses were merely cross-examined by the Officer without the respondent himself being allowed to examine them. These defects, they observed, amounted to a denial of reasonable opportunity to the respondent to show cause against his dismissal, and that the order dated September 16, 1954, which followed on such enquiry, was bad as being in contravention of Article 311(2). In the result, they set aside the order, and directed him to be reinstated. The correctness of this order is challenged by the Solicitor- General on two grounds : (1) that the finding that the respondent had no reasonable opportunity afforded to him at the enquiry is not supported by the evidence; and (2) that even if there was a defect in the enquiry, that was a matter that could be set right in the stage following the show-cause notice, and as the respondent did not ask for an opportunity to cross-examine the witnesses, he could not be heard to urge that the order dated September 16, 1954, was bad as contravening Article 311(2).

6. At the very outset, we have to observe that a writ petition under Article 226 is not the appropriate proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to

award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in *Rashid Ahmed v. Municipal Board, Kairana*:(1950) SCR 566 "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs". Vide also *K.S. Rashid and Son v. Income Tax Investigation Commission*:(1954) SCR 738. And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds therefor. None such appears in the present case. On the other hand, the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross-examining the witnesses, who gave evidence in support of the charge. That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit. In this appeal, we should have ourselves adopted that course, and passed the order which the learned Judges should have passed. But we feel pressed by the fact that the order dismissing the respondent having been made on September 16, 1954, an action to set it aside would now be time-barred. As the High Court has gone into the matter on the merits, we propose to dispose of this appeal on a consideration of the merits."

29. Referring the same, learned Addl. GA Mr. Debbarma, submitted that since without seeking alternative remedy to the Appellate Authority the petitioner has approached this Court. So there is no scope to entertain the writ petition filed by the present petitioner.

30. Finally, learned Addl. GA Mr. Debbarma, referred another citation of the Hon'ble Supreme Court of India in ***Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.***, reported in **(1993) 4 SCC 727**, wherein in para Nos.25 and 26, Hon'ble the Apex Court observed as under:

"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.

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the

disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

31. Referring the same, learned Addl. GA Mr. Debbarma, submitted that since in the proceeding drawn up against the petitioner all the opportunities were given to the petitioner during the course of enquiry and the order the Disciplinary Authority is based upon the evidence on record and the present petitioner in course of hearing could not project any ground to this Court for interference, so the present writ petition is liable to dismissed.

32. I have heard both the sides at length and perused the writ petition and the connected documents submitted as annexures as well as counter affidavit filed by the State respondents along with the annexures.

33. Admittedly, in this case, the petitioner without challenging the order of the Disciplinary Authority (Annexure-14) has directly approached this High Court under Article 226 of Constitution of India seeking redress without approaching to the appellate forum.

34. From the judgments referred by the parties it appears to this Court that from the citations referred by learned Sr. counsel for the petitioner it appears to this Court that if the principle of natural justice are violated in that case there will be no bar for the petitioner to straightway approach this High Court for seeking redress under Article 226 of Constitution of India.

35. The citations referred by the learned Sr. counsel Mr. Roy Barman, for the petitioner in this case are very much relevant for

decision of this case and it also appears to this Court that the High Court even apart from exercising powers under Article 226 of Constitution of India for enforcement of writs can also entertain the petition for enforcement of the fundamental rights under part III of Constitution of India and also where there has been a violation of the principles of natural justice and the Constitution itself empowers the Court to exercise the power.

36. The power to issue prerogative writs under Article 226 of Constitution of India is plenary in nature and is not limited by any other provision of Constitution. These powers can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo warranto and certiorari for the enforcement of any of the fundamental rights contained in part III of the Constitution but also "for any other purpose" (emphasis added). So it appears to this Court that this Court can also entertain a writ petition in such a matter when challenging the order of the Disciplinary Authority any person fails to approach to the Appellate forum like the present petitioner herein for gross violation of the principles of natural justice. Thus, the objection raised by the learned Addl. GA Mr. Debbarma, for the State respondents cannot be accepted in this regard.

37. Now regarding non-supply of enquiry report learned Sr. counsel for the petitioner at the time of hearing drawn the attention of the Court that before imposition of punishment by the Disciplinary Authority by issuing order on 07.04.2025 (Annexure-14) the copy of the enquiry report conducted by the Inquiring

Authority was not furnished to the present petitioner to enable him to submit his proper defence.

38. In this regard, at the time of hearing, learned Addl. GA Mr. Debbarma, could not explain anything before this court as to why the same was not supplied to the petitioner before imposition of punishment by the Disciplinary Authority (Annexure-14). In this regard, to countenance the same the respondent authority could not place any materials before this Court to substantiate that the copy of the enquiry report was supplied.

39. Hon'ble Supreme Court of India in a very recent judgment reported in State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, ***Lucknow v. Ram Prakash Singh***, reported in ***2025 SCC OnLine SC 891*** has dealt with the issue wherein in para Nos.38, 39, 52 and 55, Hon'ble the Apex Court observed as under:

"38. Thus, the right to receive the enquiry report as a fundamental safeguard in disciplinary proceedings, where such report holds the charges against the delinquent employee to be established, was firmly entrenched by the Constitution Bench in the jurisprudence relating to proceedings initiated for disciplinary action for misconduct. This valuable right applies uniformly, regardless of who the employer is (Government, public or private) and regardless of what the rules governing the service ordain. Even if the rules are silent or do not require furnishing of the enquiry report, the same has to be furnished. Additionally, the report must be furnished to the employee even without a request, as it forms an integral part of ensuring a fair and reasonable opportunity to defend against the charges. By not furnishing the report, an employer cannot scuttle the rights of the delinquent employee.

39. Reading the passage from S.K. Sharma (supra) highlighted above bearing in mind the guidance received from the dicta in B. Karunakar (supra), one can safely conclude that furnishing of a report of enquiry though is a procedural step, it is of a mandatory character. However, such a requirement can be waived by the delinquent

employee, expressly or by conduct, but if on facts he is found not to have waived his right to receive the report, the theory of substantial compliance or the test of 'prejudice' would not be applicable.

52. We now sum up our understanding of the law declared in B. Karunakar (supra) and answer the four questions delineated in paragraph 26 (supra) compositely. Reading the declaration of law by the Constitution Bench regarding the imperative need to furnish the report of enquiry to the delinquent employee even when : (i) the relevant statutory rules are silent or against it, (ii) the punishment to be imposed is other than the punishment referred to in clause (2) of Article 311 of the Constitution, (iii) the employee does not ask for it, and (iv) the burden is cast on a private employer too, and the law requiring furnishing of the report being made to operate prospectively from the date the decision in Mohd. Ramzan Khan (supra) was rendered, thereby reinforcing the legal position that prevailed after the GoI Act was enacted but became unsettled later, there can be no two opinions that on and from 20th November, 1990 [i.e., when Mohd. Ramzan Khan (supra) was decided] it is the mandatory requirement of law that the report of enquiry has to be furnished to the delinquent employee. Taking a cue from S.K. Sharma (supra), we are inclined to the view that the requirement of furnishing the report of enquiry, though procedural, is of a mandatory character and the bogey argument of the employer to apply the test of 'prejudice' when the report of enquiry is not furnished cannot be of any avail to thwart the challenge of the delinquent employee. Such test could call for application, if from the facts and circumstances, it can be established that the delinquent employee waived his right to have the report furnished. Should satisfactory explanation be not proffered by the employer for its failure/omission/neglect to furnish the enquiry report, that ought to be sufficient for invalidating the proceedings and directing resumption from the stage of furnishing the report. No proof of prejudice for breach of a statutory rule or the principles of natural justice and fair play need be proved, unless there is a waiver, either express or by conduct, to of the right to receive the report. And, it is only in specific and not in all circumstances that proof of 'prejudice' ought to be insisted upon.

55. Relying on the law declared in S.K. Sharma (supra) which, in turn, relied on B. Karunakar (supra), we hold that prejudice is self-evident and no proof of prejudice as such is called for in this case."

40. From the aforesaid judgment of Hon'ble Apex Court it appears that even if the rules are silent or do not require furnishing of the enquiry report the same has to be furnished. The report must be furnished to an employee even without a request

as it forms an essential part of ensuring a fair and reasonable opportunity to defend against the charges. By not furnishing the report(s) an employer cannot curtail the rights of the delinquent employee.

41. Here in the case at hand, from the order of the Disciplinary Authority (Annexure-14) nowhere I find that the same was supplied to the present petitioner. Furthermore, in course of hearing learned Addl. GA Mr. Debbarma, appearing on behalf of the State respondents also could not submit anything in this regard, save and except referring the citations.

42. Situated thus, it appears to this Court that by not supplying the copy of the report of Enquiry Officer the principles of natural justice have been violated and as such, in my considered view, without ensuring compliance of the same there was no scope on the part of the Disciplinary Authority to pass the impugned final order dated 07.04.2025 (Annexure-14) although in the top of the first page of the order it was written as 07.04.2024.

43. Thus, the action of the respondents was not proper. Even respondent No.5 did not consider it necessary to defend the personal allegation leveled against him by the present petitioner by filing of counter affidavit.

44. In the result the writ petition filed by the petitioner is hereby allowed.

45. The order dated 07.04.2025 (Annexure-14) issued by respondent DM & Collector thus stands set aside and quashed. The matter is remanded back to the authority to ensure supply copy of

the enquiry report to the petitioner and after affording opportunity to the petitioner to defend the enquiry report the Disciplinary Authority shall pass a fresh order in accordance with law within a period of 4(four) months from the date of passing of this judgment.

With these observations, the present writ petition disposed of.

Pending applications, if any, stands also disposed of.

JUDGE

