

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 09.07.2026

Pronounced on: 07.08.2026

Uploaded on: 07.08.2026

*Whether the operative part
or full judgment is
pronounced: **Full***

WP(C) No.1087/2025

BADAVATH KISHAN

...PETITIONERS/APPELLANT(S)

Through: - Mr. Tapas Das, Advocate, with
Mr. Syed Faheem Indrabi, Advocate.

Vs.

UNION OF INDIA & ORS.

...RESPONDENT(S)

Through: - Mr. Hakim Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) Through the medium of present writ petition, the petitioner has challenged order dated 2nd August, 2024, issued by respondent No. 2, whereby disciplinary action, inter-alia, against the petitioner under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, 'the Rules of 1965'), has been set into motion. Challenge has also been thrown to order dated 7th February 2025, issued by respondent No. 2, whereby the Disciplinary Authority has, in exercise of its powers under sub-Rule (5) of Rule 15 of the Rules of 1965, imposed the

penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years against the petitioner and it has been further provided that he will earn increments of pay during the period of such reduction and, on expiry of the said period, the reduction will not have the effect of postponing the future increments of his pay.

2) According to the petitioner, he is serving in the rank of Major of 81 RCC. He was served with a Memorandum of Charges dated 2nd August, 2024 in terms of Rule 16 of the Rules of 1965, alleging non-compliance of guidelines issued by the Office of the Director General Border Roads Organization vide letter dated 10th May 2005. It has been submitted that reply to the Memorandum of Charges was submitted by the petitioner but without considering the said reply, the impugned penalty order dated 7th February 2025 has been issued against him.

3) According to the petitioner, he had denied the Memorandum of Charges and stated that all payments made to Casual Pay Laborers (CPLs) during the COVID-19 pandemic period were approved by the of the Audit Authority. It was also submitted by the petitioner that all payments were made through bank accounts only. It was further submitted in the reply that preventive checks were carried out by Higher Headquarter from time to time in the case of release of

payments to casual labourers. It was also projected by the petitioner that, as per established practice and procedure, CPLs were having their respective valid Identity Cards and Aadhaar cards and the payments were deposited into their bank accounts, which were drawn by them through debit cards. Therefore, the petitioner had no role in the matter of payment to casual paid labourers.

4) It has been contended by the petitioner that the respondents have not adhered to the requirements of Rule 180 of the Army Rules, which is mandatory in nature, inasmuch as the petitioner has not been associated with the Court of Inquiry proceedings and he has not been given the opportunity to cross-examine the witnesses. It has been further contended that the Memorandum of Charges was based on illegality and perversity, and the Commander of the 16 Task Force, who was responsible for payments, has been left out. It has also been submitted that there were no specific violations of any established policy guideline and that no evidence was cited in the Memorandum of Charges.

5) According to the petitioner, he has no role in the matter and that the respondents have not applied their mind while considering his reply to the charges. It has also been contended that the Memorandum of Charges has been served upon the petitioner belatedly.

6) The writ petition has been contested by the respondents by filing their reply. In the reply, it has been submitted that the petitioner was posted as Commanding Officer of HQ 81 RCC (GREF) from 28th November 2019 to 14.03.2022. It has been further submitted that during his tenure as Commanding Officer, certain anomalies were found by higher authorities regarding opening of bank accounts for CPLs in nationalized banks and issuance of identity cards to CPLs as per guidelines issued by HQ DGBR. It has been submitted that the Board of Directors framed the Memorandum of Charges against the petitioner and asked him to file his reply, pursuant to which the petitioner submitted his reply dated 4th September 2024.

7) According to the respondents, the petitioner was responsible for recruitment of CPLs and disbursement of wages deployed at 81 RCC, including its platoons but the petitioner failed to follow departmental guideline/instructions of HQ DGBR issued vide letters dated 10th May 2005 and 11th October 2018.

8) The respondents in their reply have given complete details of the lapses which were observed during the tenure of the petitioner, which are reproduced as under:

(a) Non-opening of bank account in nationalized banks in respect of CPLs who were having no bank

accounts and were deployed within the area of his responsibility. Lapses on this account are explained as under:-

- (i) The petitioner did not make any efforts to open saving bank accounts of the CPLs who did not have a bank account rather used the ICICI Bank pay direct cards liberally , thereby violating the procedure laid down by HQ DGBR.
 - (ii) As observed in departmental inquiry approximately 60 persons of CPLs of 81 RCC were paid through ICICI Bank pay direct cards and not through their Bank account in violation of existing guidelines as prescribed in HQ DGBR letter No. 18197/CPL/WAGES /DGBR/50/E2A (T&C) dated 4-01-2012. No KYC was got checked from the Bank authorities for these cards and cards were fraudulently got issued in bulk to the RCC. No Bank reconciliation statement was prepared for these accounts nor was cash book maintained for the accounts with ICICI Bank. The locations where cash was withdrawn from these ICICI Bank pay direct cards was also not ascertained thereby misusing the ICICI Bank pay direct cards.
- (b) Not maintaining proper documents during the recruitment of CPLs at 81 RCC level. Documents were forged for recruitment of CPLs . A large number of recruitment documents in 81 RCC were copies of Aadhar Cards. Which were forged due to similar photograph as Aadhar Copy as well as medical documents. Also a significant No. of the CPLs were having same name and fathers name enrolled in master rolls.
- (c) Non-issuance of identity cards to CPLs immediately after recruitment. As per procedure in vogue the petitioner did not issue any instruction towards early issuance of identity cards to CPLs so as casual manner identity card have not been issued to CPLs thus violating the policy stipulated by HQ DGBR letter No. 18324/DGBR/E2A (R&C) dated 10th May, 2005 which was again circulated vide HQ DGBR letter No. 18324/T&C/CPLs/DGBR/72 (TC3) dated 11th October, 2018.

As such petitioner was failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a govt. servant.

Consequently the petitioner failed to maintain higher ethical standards and honesty . In doing so the petitioner failed to maintain discipline in discharging his duties thereby violated sub rule (i) , (ii), (iii), (vi) & (XIX) of Rule 3 of the CCS (conduct) rules 1964.

9) It has been submitted that in view of the aforesaid lapses, the disciplinary proceedings were initiated against the petitioner in terms of Rule 16 of the Rules of 1965 and after finalization of departmental proceedings, the Disciplinary Authority came to the conclusion that the petitioner is guilty for non-opening of bank accounts in nationalized banks in respect of CPLs and irregularities/corruption in recruitment and payment of wages and, accordingly, the competent authority imposed minor penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years and it was further provided that the petitioner would earn increments of pay during the period of reduction and, on expiry of such period, the reduction will not have the effect of postponing his future increments of pay. It has been further submitted that the disciplinary proceedings were initiated under Rule 16 of the Rules of 1965 against the petitioner with the approval of the Disciplinary Authority and the petitioner was called upon to submit his reply, which he did. It has been submitted that the charges against the petitioner were framed on the basis of the findings and opinion of the Board of Officers in the Court of Inquiry.

10) The petitioner has filed rejoinder to the reply filed by the respondents, in which he has reiterated the contentions raised by him in the writ petition.

11) I have heard learned counsel for the parties and perused record of the case, including the record produced by learned counsel appearing for the respondents.

12) The first contention that has been urged by learned counsel for the petitioner for assailing the impugned Memorandum of Charges is that, while holding the Court of Inquiry against the petitioner, the respondents have not adhered to the procedure prescribed under Rule 180 of the Army Rules, inasmuch as the petitioner has not been heard and he was not allowed to participate in the said proceedings. In order to support his contention that adherence to Rule 180 of the Army Rules is mandatory, learned counsel for the petitioner has placed reliance on the judgments delivered by the Supreme Court in the following cases:

1. **Maharana Pratap Singh vs. State of Bihar & ors.**
2025 SCC OnLine SC 890;
2. **State of Punjab vs. V. K. Khanna & Ors.**
(2021) 2 SCC 330;
3. **Sawai Singh vs. State of Rajasthan**
(1986) 3 SCC 454;
4. **Govt. of A. P. & ors. vs. A. Venkata Raidu**
(2007) 1 SCC 338;
5. **Roop Singh Negi vs. Punjab National Bank & ors.**
(2009) 2 SCC 570;
6. **B. S. Chaturvedi vs. Union of India & ors.**
(1995) 6 SCC 749;

13) According to the petitioner, once it is found that the respondents have not followed the mandatory provisions of Rule 180 of the Army Rules while holding the Court of Inquiry, the Memorandum of Charges framed on the basis of the report of that Court of Inquiry is illegal and hence liable to be quashed.

14) Rule 180 of the Army Rules deals with the procedure to be followed when the character of a person subject to the Army Act is involved. As per this provision, whenever an inquiry affects the character or military reputation of a person subject to the Army Act, full opportunity has to be afforded to such person of being present throughout the inquiry and of making any statement and giving any evidence he may wish to make or give, cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witness in defence of his character or military reputation. It is further mandated in the provision that the Presiding Officer of the Court of Inquiry has to take necessary steps to ensure that any person so affected receives notice and fully understands his rights under the said Rule.

15) As is clear from the ratio laid down by the Supreme Court in the aforesaid judgments, the provisions contained in Rule 180 are mandatory in nature. However, the question that arises for determination is as to whether in the facts and

circumstances of the present case, the provisions contained in Rule 180 of the Army Rules are attracted.

16) In the above context, it is to be noticed that the petitioner is a member of GREF/Border Roads Organisation (BRO). The said organization, even though is under the control of the Army authorities, yet the petitioner is not a regular Army Personnel. The BRO comes under the Ministry of Defence, Government of India and the works entrusted to the said organization are required to be carried out under the supervision of the Army authorities. The personnel of GREF are partly drawn from the Army and partly appointed by direct recruitment. The Supreme Court has in the case of **R. Viswan vs. Union of India and others**, (1983) 3 SCC 401, while discussing the nature of service of personnel of GREF, observed as under:

“5. So far as the personnel of GREF are concerned, they are partly drawn from the Army and partly by direct recruitment. Army personnel are posted in GREF according to a deliberate and carefully planned manning policy evolved with a view to ensuring the special character of GREF as a force intended to support the Army in its operational requirements. The posting of Army personnel in GREF units is in fact regarded as normal regimental posting and does not entitle the Army personnel so posted to any deputation or other allowance and it is equated with similar posting in the Army for the purpose of promotion, career planning, etc. The tenure of Army personnel posted in GREF units is treated as normal Regimental Duty and such Army personnel continue to be subject to the provisions of the Army Act 1950 and the Army Rules 1954 whilst in

GREF. But quite apart from the Army personnel who form an important segment of GREF, even the directly recruited personnel who do not come from the Army are subjected to strict Army discipline having regard to the special character of GREF and the highly important role it is called upon to play in support of the Army in its operational requirements. Since the capacity and efficiency of GREF units in the event of outbreak of hostilities depends on their all time capacity and efficiency they are subjected to rigorous discipline even during peace time, because it is elementary that they cannot be expected suddenly to rise to the occasion and provide necessary support to the Army during military operations unless they are properly disciplined and in fit condition at all times so as to be prepared for any eventuality. The Government of India has in exercise of the power conferred upon it by sub-sections (1) and (4) of Section 4 of Army Act 1950 issued a Notification bearing SRO 329 dated 23rd September 1960 applying to GREF all the provisions of that Act with the exception of those shown in Schedule A, subject to the modifications set forth in Schedule B and directing that the officers mentioned in the first column of Schedule C shall exercise or perform, in respect of members of the said Force under their command, the jurisdiction, powers and duties incident to the operation of that Act specified in the second column of Schedule C. This Notification makes various provisions of Army Act 1950 applicable to GREF and amongst them is Section 21 which provides:

21. Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act:-

- (a) to be a member of, or to be associated in any way with, any trade union or labour union or any class of trade of labour unions, or and society, institution or association or any class of institution or associations;
- (b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

- (c) to communicate with the press or to publish or cause to be published any book, letter or other documents.

The other sections which are made applicable deal with special privileges, offences, punishments, penal deductions, arrest and proceedings before trial, Court-Martial and other incidental matters. These section which are made applicable are primarily intended to impose strict discipline on the members of GREF— the same kind of discipline which is required to be observed by the regular Army personnel. The Government of India has also in exercise of the powers of conferred by Section 21, sub-section (4) of Section 102 and section 191 of the Army Act 1950 issued another Notification bearing SRO 330 on the same day, namely, 23rd September 1960, directing that the Army Rules 1954 as amended from time to time shall, with the exception of Rules 7 to 18, 168, 172 to 176, 190 and 191, be deemed to be Rules made under the Army Act 1950 as applied to GREF. Rules 19, 20 and 21 of the Army Rules 1954 are material for the purpose of the present writ petitions and they provide inter alia as follows

19. Unauthorised organisations-No person subject to the Act shall, without the express sanction of the Central Government:-

- (i) take official cognizance of, or assist or take any active part in, any society, institution or organisation not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;
- (ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

20. Political and non-military activities-(1) No person subject to the Act shall attend, address, or take part in any meeting or demonstration held for a party or any political purposes, or belong to join or subscribe in the aid of, any political association or movement.

(2) No person subject to the Act shall issue an address to electors or in any

other manner publicly announce himself of allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, the legislature of a State, or a local authority, or any other public body or act as a member of a candidate's election committee or in any way actively promote or prosecute a candidate's interests.

21. Communications to the Press, Lectures, etc-No person subject to the Act shall :-

- (i) publish in any form whatever or communicate directly or indirectly to the Press any matter in relation to a political question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or*
- (ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf.*

These rules obviously owe their genesis to Section 21 and they impose restrictions on the fundamental rights of members of GREF. Since the Army Act 1950 and Army Rules 1954 are made applicable by virtue of SRO Nos. 329 and 330 dated 23rd September, 1960, GREF personnel when recruited, are required to accept certain terms and conditions of appointment which include inter alia the following:

"5 (iv): You will be governed by the provisions of Central

Civil Service (Classification, Control and Appeal) Rules, 1965, as amended from time to time. Notwithstanding the above, you will be further subject to certain provisions of the Army Act, 1950, and Rules made thereunder, as laid down in SROs. 329 and 330 of 1960, for purposes of discipline. It will be open to the appropriate disciplinary authority under the Army Act 1950 to proceed under its provisions wherever it considers it expedient or necessary to do so."

5 (v): You will be required to serve anywhere in India or outside India and when so called upon by the Government or the appointing authority or your superior officer, you shall proceed on field service.

5 (vi): You shall, if required, be liable to serve in any Defence Service or post connected with the defence of India.

5 (xi): On your appointment, you will be required to wear the prescribed uniform while on duty, abide by such rules and instructions issued by your superior authority regarding discipline, turnout, undergo such training and take such departmental test as the Government may prescribe."

The result is that the directly recruited GREF personnel are governed by the provisions of Central Civil Service (Classification, Control and Appeal) Rules 1965 as amended from time to time but for purposes of discipline, they are subject to certain provisions of the Army Act 1950 and the Army Rules 1954 as laid down in SROs 329 and 330 dated 23rd September 1960."

17) In the same judgment, the Supreme Court has held that members of GREF, in the matters of discipline, are governed by both Rules of 1965 as well as the provisions of the Army Act, 1950 and the Army Rules, 1954. While discussing as to

in what matters the members of GREF are to be governed by the Rules of 1965 and in what manner they are to be governed by the Army Act and the Rules framed thereunder, the Supreme Court has, in para (13) of the aforesaid judgment observed as under:

“13. There was also one other contention advanced on behalf of the petitioners and it raised a question of violation of Article 14 of the Constitution. The contention was that the members of GREF were governed both by the Central Civil Services (Classification, Control and Appeal) Rules 1965 and the provisions of the Army Act 1950 and the Army Rules 1954 in matters of discipline and therefore whenever a member of GREF was charged with misconduct amounting to an offence under the Army Act 1950, it was left to the unguided and unfettered discretion of the authorities whether to proceed against the employee under the Central Civil Services (Classification, Control and Appeal) Rules 1965 or under the Army Act 1950 and the Army Rules 1954 and SROs. 329 and 330 applying the provisions of the Army Act, 1950 and the Army Rules 1954 to members of GREF for purposes of discipline were therefore discriminatory and violative of Article 14. We do not think there is any substance in this contention. In the first place, the nature of the proceedings which may be taken under the Central Civil Services (Classification, Control and Appeal) Rules 1965 against an erring employee is different from the nature of the proceedings which may be taken against him under the provisions of the Army Act 1950 read with the Army Rules 1954, the former being disciplinary in character while the latter being clearly penal. It is significant to note that Section 20 of the Army Act 1950 which deals with dismissal, removal or reduction of any person subject to that Act and clauses (d), (e), (f), (g) and (k) of Section 71 which provide for punishment of cashiering, dismissal, reduction in rank forfeiture of seniority and forfeiture of pay and allowances, have not been made applicable to the members of GREF by SRO No. 329 with the result that, so far

*as disciplinary proceeding are concerned, there is no overlapping between the provisions of the Central Civil Services (Classification, Control and Appeal) Rules 1965 and the provisions of the Army Act 1950 and the Army Rules 1954 as applied to the members of GREF. Secondly, it is not possible to say that the discretion vested in the authorities whether to take action against an erring member of GREF under Central Civil Services (Classification Control and Appeal) Rules 1965 or under the Army Act 1950 and the Army Rules 1954 is unguided or uncanalised. It has been denied in the affidavit of Lt. Col. Shergill that unguided discretion any power is vested in the disciplinary authority to proceed against an employee of GREF either under the Central Civil Services (Classification, Control and Appeal) Rules 1965 or the Army Act 1950 and the Army Rules 1954 or to switch over from one proceeding to the other at the any stage. Lt. Col. Shergill has stated positively in his affidavit that clear and detailed administrative guidelines have been laid down for the purpose of guiding the disciplinary authority in exercising its discretion whether to take action against an employee of GREF under the Central Civil Services (Classification, Control and appeal) Rules 1965 of the Army Act 1950 and the Army Rules 1954 and these guidelines have been set out in full in Annexure R-5 to his affidavit. Thirdly, the decision in Northern India Caterers Ltd. v. Punjab(1) on which the contention of the petitioners is based has been over-ruled by this Court in **Maganlal Chhaganla (P) Ltd v. Municipal Corporation, Greater Bombay(2)** where it has been held that (SCC p.422, para 14) "the contention that the mere availability of two procedures will vitiate one of them, that is, the special procedure is not supported by reason or authority." And lastly, it may be noted that in any event the provisions of the Army Act 1950 and the Army Rules 1954 as applied to the members of GREF are protected by Article 33 against invalidation on the ground of violation of Article 14. The present contention urged on behalf of the petitioners must also therefore be rejected."*

18) Relying upon the aforesaid judgment, the Supreme Court in the case of **Mohammad Ansari vs. Union of India**

and others, (2017) 3 SCC 740, illustrated the cases in which a member of GREF may be proceeded against under the Army Act and the Rules and those in which resort can be taken to the provisions of the Rules of 1965. Paras (30) and (31) of the said judgment are relevant to the context and the same are reproduced as under:

“30. At this juncture, it is appropriate to refer to SRO 329. Schedule A thereof, as stated earlier, carves out certain exceptions. Certain provisions of the 1950 Act i.e. Sections 10, 11, 13 to 17, 20, 22 to 24 [falling under Chapter III of the 1950 Act dealing with commission, appointment and enrolment], Section 43, 44 [falling under Chapter VI – offences’ viz. fraudulent enrolment and false answers on enrolment respectively and clauses (d), (e), (f), (g) and (k) of Sections 71, 74 to 78, clauses 9e), (f) and (j) of Section 80 and clause (a) of Section 84, falling under Chapter VII – punishment] have been exempted in their application to the civilian members of the GREF, for the civilian personnel of GREF are not commissioned or enrolled or appointed under the 1950 Act and they are not, therefore, members of the ‘regular Army’ as defined in Section 3(xxi) of the 1950 Act. It is for this reason that certain provisions of the 1950 Act as set out in Schedule B of the SRO 329 have been modified in their application to the members of the GREF. This is fortified by the fact that the GREF personnel are appointed as civilian component of the force in various appointment(s)/ designation in GREF and notified with equivalent ranks in the regular army for the purpose of the 1950 Act vide SRO 1001 dated 20, May, 1961.

31. In view of the statutory framework, it is demonstrable that the 1950 Act and the Army Rules, 1954 have been applied to civilian personnel of the GREF only for the purpose of discipline. The reasons are obvious. The GREF is a force raised and maintained under the authority of the Central Government, its units are set up on the lines of the Indian Army, it

works with and under close coordination with regular army in border areas, facilitates the Indian Army to carry out its operational role, etc. Hence, it has been felt appropriate that the 1950 Act should be made applicable to a force raised and maintained by the Central Government as considered necessary in the interest of discipline. The issue can be perceived from a different perspective. The GREF personnel are subjected by legislative scheme to dual disciplinary control, and such an arrangement is permissible as has been held in R. Viswan. When the offence is such that the provisions of the 1950 Act, as extended to GREF, apply for the purpose of discipline, it will be open to the competent disciplinary authority under the 1950 Act, to proceed against the delinquent under its provisions, and if found guilty, award appropriate punishment. In this context, we may give an example. If an offence is committed in relation to an enemy, offences on active service, mutiny, desertion, disobedience, etc., considering the nature and gravity of the offence, it may warrant severe action against the delinquent by way of trial by a Court Martial. In other disciplinary cases, the competent authority may decide to proceed under CCS(CCA) Rules, 1965 in which the maximum permissible punishment is only 'dismissal from service'."

19) From the foregoing analysis of the legal position, it is clear that members of GREF/BRO are subject to a dual disciplinary authority, namely, the authority prescribed under the Army Act and the authority prescribed under the Rules of 1965. Thus, a member of GREF can be proceeded against in the matters of disciplinary issues either under the Army Act and the rules framed thereunder or under the Rules of 1965. It is entirely the discretion of the Disciplinary Authority to make a choice of the provisions under which a

member of the GREF has to be proceeded against. If it is a case of grave disciplinary issue, like commission of an offence in relation to an enemy or an offence while on active service etc. it may warrant action against the delinquent official by a Court Martial but in case of less graver offences, the delinquent official can be proceeded against under the Rules of 1965.

20) Now coming to the facts of the present case, the charges against the petitioner, as is evident from the statement of imputation of misconduct, are that he is guilty for non-opening of bank accounts in nationalized banks in respect of CPLs who were having no bank accounts, not maintaining proper documents during recruitment of CPLs at 81 RCC and non-issuance of identity cards to CPLs. This appears to be a misconduct which is not of a grave nature and, therefore, the competent authority has decided to proceed against the petitioner in terms of the Rules of 1965 and not under the provisions of the Army Act and the rules framed thereunder. It is true that a Court of Inquiry was held before the framing of Memorandum of Charges. However, holding of such Court of Inquiry against the petitioner was not even mandatory in the facts and circumstances of the present case having regard to the fact that the respondents have decided to proceed against the petitioner under the Rules of 1965 and not under

the Army Act and the rules framed thereunder. Thus, even if Rule 180 of the Army Rules has not been adhered to by the respondents while conducting the Court of Inquiry, the same may not be fatal to the enquiry which has been initiated by the respondents against the petitioner under the Rules of 1965. The judgments relied upon by the petitioner pertain to the cases where the delinquent officials/officers were proceeded against by the Army Authorities under the Army Act and the rules framed thereunder and they were being tried before a Court Martial. It is in those circumstances that adherence to Rule 180 of the Army Rules has been held to be mandatory. The ratio laid down in those judgments is not attracted to the facts of the present case. The contention of the petitioner in this regard is, therefore, without any substance.

21) The other contention that has been raised by learned counsel for the petitioner for assailing impugned order dated 7th February, 2025, is that the reply filed by the petitioner to the memorandum of charges has not been properly considered by the respondents before imposing the penalty upon him. It has also been contended that the procedure prescribed under the Rules of 1965 has not been following by the respondents before passing the impugned order.

22) In the present case, the petitioner has been imposed the penalty which is categorized as a minor penalty in terms of Rule 11 of the Rules of 1965. Rule 16 of the Rules of 1965 provides the procedure for imposing minor penalties. It reads as under:

16.Procedure for imposing minor penalties :

(1) Subject to the provisions of sub-rule (5) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;*
- (b) holding an inquiry in the manner laid down in sub-rules (3) to (24) of rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;*
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;*
- (d) consulting the Commission where such consultation is necessary. The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission to the Government servant, who shall be required to submit, if he so desires, his written representation or submission on the advice of the Commission, to the Disciplinary Authority within fifteen days; and*
- (e) recording a finding on each imputation or misconduct or misbehaviour.*

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (24) of Rule 14, before making any order imposing on the Government servant any such penalty.

(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;*
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;*
- (iii) his representation, if any;*
- (iv) the evidence produced during the inquiry;*
- (v) the advice of the Commission, if any;*
- (vi) the findings on each imputation of misconduct or misbehaviour; and*
- (vii) the orders on the case together with the reasons therefor.*

23) From a perusal of aforesaid Rule it is clear that for imposing a minor penalty, a delinquent official has to be informed in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, whereafter a reasonable opportunity of making a representation has to be afforded to him. Upon receipt of the representation, if the Disciplinary Authority is of the opinion that an inquiry has to be held in the manner laid down in Rule 14, which provides for holding of enquiry in cases relating to imposition of major penalties,

then such an inquiry has to be held. However, in a case where the Disciplinary Authority is not of such opinion, then it can take a decision with regard to imposition of minor penalty upon the delinquent official after taking into account his representation.

24) In the present case, the Memorandum of Charges and Statement of Imputations dated 2nd August, 2024, were admittedly served upon the petitioner. It is also an admitted case of the parties that the petitioner submitted his representation against the Memorandum of Charges on 4th September, 2024. The Disciplinary Authority, after considering the representation of the petitioner against the Memorandum of Charges and Statement of Imputations, imposed minor penalty of reduction to lower stage in the timescale of pay by one stage for a period of three years upon the petitioner and it has been further provided that he would earn increments of pay during the period of such reduction and on expiry of the said period, the reduction will not have any effect of postponing the future increments of his pay.

25) If we have a look at the impugned order dated 7th February 2025, it has been clearly stated therein that representation of the petitioner dated 4th September, 2024, has been examined by the Disciplinary Authority and it has also examined other relevant documents of the case,

whereafter it has come to the conclusion that the petitioner has been found guilty of non-opening of bank accounts in nationalized banks in respect of CPLs. It has also been found that the allegations relating to irregularities/corruption in recruitment and payment of wages stand proved.

26) So far as the scope of interference in the orders of a Disciplinary Authority which is based upon the examination of record is, concerned, the same is very limited in nature. The Hon'ble Supreme Court has, in the case of **State of Rajasthan v. Heem Singh**, (2021) 12 SCC 569, summed up the law in the following manner:

“37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining

discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

27) From the foregoing analysis of the legal position, it is clear that the scope of interference in respect of a decision taken by a Disciplinary Authority under Article 226 of the Constitution is very limited. While exercising its powers of judicial review, the High Court has to consider whether the action has been taken by the competent authority, whether the procedure prescribed under the law has been followed, and whether the principles of natural justice in conducting the proceedings have been followed. It is only if the Disciplinary Authority has acted wholly arbitrarily or that

finding recorded by the Disciplinary Authority is based on no evidence, that High Court can exercise its powers of judicial review and interfere with such an order.

28) In the instant case, there was sufficient material before the Disciplinary Authority which demonstrated that the petitioner had not followed the laid down guidelines with regard to opening of bank accounts of CPLs in nationalized banks and that there were irregularities in the recruitment and payment of wages to CPLs. The Disciplinary Authority has properly followed the procedure prescribed under Rule 16 of the Rules of 1965, inasmuch as the petitioner has been given reasonable opportunity of making a representation against the Statement of Imputations and the said representation has been properly considered by the Disciplinary Authority. In these circumstances, there is no ground to interfere in the impugned action taken by the Disciplinary Authority in terms of impugned order dated 7th February, 2025.

29) The ground urged by learned counsel for the petitioner with regard to the alleged vagueness of the Statement of Imputations is without any substance as the Statement of Imputations clearly gives the details of the allegations levelled against the petitioner and, in fact, the petitioner has made a detailed representation dated 4th September 2024, against

the Statement of Imputations, wherein he not raised any issue with regard to vagueness of the allegations mentioned in the Statement of Imputations.

30) Lastly, it is been contended by learned counsel for the petitioner that the Memorandum of Charges has been served upon the petitioner belatedly. In this context, it is to be noted that the transactions which formed the basis of the impugned Memorandum of Charges pertain to the years 2019 to 2022. Before framing the charges, a Court of Inquiry was conducted to ascertain the veracity of the allegations made against the petitioner. It is thereafter that the Memorandum of Charges dated 2nd August, 2024 came to be framed against the petitioner. In these circumstances, there was no undue delay in framing of memorandum of charges against the petitioner. It is true that, ordinarily, the enquiry has to be initiated against a delinquent official without any undue delay but there is no straight-jacket formula laying down that if an inquiry is initiated after a particular period of time, the same would get vitiated. In these circumstances, the ground projected by the petitioner cannot form a basis for quashing the impugned order.

31) For what has been discussed hereinbefore, the petition is devoid of merit. The same is dismissed accordingly.

32) The record be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

SRINAGAR

07.08.2026

“Bhat Altaf-Secretary”

Whether the Judgement is speaking:	YES
Whether the Judgement is reportable:	YES/No

