

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 352 OF 2011.

Datta K. Kudchadkar, major, married,
r/o Flat No.4, Geetanjali Apts.,
Pontemol, Curchorem, Goa. Petitioner.

Versus

- 1 State of Goa, through its Chief
Secretary, having office at
Secretariat, Porvorim-Goa.
- 2 The Chief Secretary,
Government of Goa, the
Appellate Authority under the
Civil Services (Classification,
Control and Appeal) Rules,
1965.
- 3 Inspector General of
Prisons/Disciplinary Authority,
Government of Goa, having
office at Collectorate Bldg.,
Panaji, Goa. Respondents.

Mr. V. A. Lawande, Advocate for the petitioner.

Mr. M. Salkar, Government Advocate for the respondents.

**Coram:-F. M. REIS,
K. L. Wadane, JJ.**

Reserved on: 19th January, 2016.

Pronounced on: 4th March, 2016.

JUDGMENT (Per K. L. Wadane, J)

The petitioner has filed this petition challenging the
inquiry report dated 12.4.2010 by the inquiring authority; order

dated 6.5.2010 passed by the Disciplinary Authority, respondent no.3 as well as the order dated 11.2.2011 passed by the Appellate Authority, respondent no.2.

2. Brief facts of the case may be stated as follows:-

On 3.8.2006, the respondent no. 3 placed the petitioner under suspension with immediate effect. By order dated 30.7.2008 the order of the suspension was revoked with immediate effect. The petitioner filed Writ Petition No. 494/2009 claiming regular salary during the period of suspension. On 12.8.2009, the respondent no.3 issued memorandum to the petitioner disclosing the proposal to hold an inquiry against the petitioner and the substance of imputation was set out and following charges/Articles were framed:-

i. **Article - I** : That Shri Datta K. Kudchadkar, while functioning as Jailor during the period from 22.12.2005 to 1.8.2006 failed to INSPECT the cells of the Judicial Lock-up, Panaji regularly and prevent the escape of undertrial prisoner Deepak Shreshta from Panaji Judicial Lock-up, who escaped from Judicial Lock-up, Panaji during night intervening 31.7.2006 and 1.8.2006 from the cell No.2 by cutting the bars of toilet window.

ii. **Article -II** : That during the aforesaid period and while functioning in the aforesaid Judicial Lock-up, Panaji the said Shri Datta K. Kudchadkar, Jailor failed to inspect the cells of the said Judicial Lock-up, thus giving way for sneaking inside the unauthorised articles including the hacksaw blade in cell No.2 by which the bars of the toilet window were cut.

One Mr. M. V. Corjuencar, Deputy Collector (Revenue) was appointed as the Inquiry Officer and during the inquiry in all four witnesses were examined by the Presiding Officer and after hearing both sides, the Inquiry Officer submitted his report to the Disciplinary Authority, respondent no. 3 on 16.4.2010. The petitioner were served with the report of the Inquiry Officer along with memorandum. Thereafter, the petitioner submitted his representation. The Disciplinary Authority, respondent no. 3 has accepted the report and findings of the Inquiring Authority and imposed major penalty of dismissal from service. The petitioner filed Appeal before the respondent no.2 challenging the order of Disciplinary Authority dated 6.5.2010. The Appellate Authority i.e. the respondent no. 3 after hearing both the sides, dismissed the appeal. Therefore, the present Writ Petition.

3. We have heard the arguments of Mr. V. A. Lawande, learned Advocate appearing for the petitioner and Mr. M. Salkar, learned Government Advocate appearing for the respondents.

4. In support of his submissions, the learned Government Advocate has relied upon the following judgments:

- i. ***Pradeep Kumar Modwill and Another Vs. UOI and Ors., WP(c) No. 2850/2011 of the Delhi High Court.***
- ii. ***Sunil Kumar Banerjee Vs. State of West Bengal, 1980 AIR(SC)1170.***

5. Considering the rival contentions and submissions made by both the parties, following points arise for our consideration:-

<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS</u>
1. Whether the inquiring authority has given opportunity to the petitioner to lead defence evidence?	 Yes.
2. Whether the inquiring authority put the questions to the petitioner based upon the circumstances appearing in the evidence for the purpose of enabling the petitioner to explain it?	 No.

6. Mr. V. A. Lawande, learned Advocate appearing for the petitioner has argued that when one of the inmate in the jail

escaped from the jail on 31.7.2006, at that time, the petitioner was not on duty. Therefore, it cannot be said that the petitioner was negligence in performing his duties. Mr. Lawande, further argued that the petitioner as usual duties hours were from 9.00am to 6.00p.m and admittedly, one of the prisoner namely Deepak Shrestha escaped from the jail in the night intervening between 31.7.2006 to 1.8.2006. In fact, other employees who were on duty at the relevant time were responsible and were negligent.

7. As against this, Mr. Salkar, learned Government Advocate appearing for the respondents has argued that it was duty of the petitioner to periodically check the lock up and the articles supplied to the prisoners by their relatives. The petitioner has not checked the jail premises from time to time, though it was suggested by the other staff. Therefore, there was total negligence on the part of the petitioner. Therefore, Mr. Salkar, has supported the punishment imposed upon the petitioner.

8. Mr. Lawande, further argued that the Inquiring Authority has not given an opportunity to lead defence evidence nor a questions were put to him based upon the evidence and the circumstances appearing against the petitioner. Therefore, according to Mr. Lawande, there was breach of principle of

natural justice as well as the Inquiring Authority has not followed the relevant provisions of Sub Rule 18 Rule 14 of the Central Civil Services Rules (Classification, Control and Appeal) Rules, 1965(hereinafter referred to as "Rules of 1965").

9. To prove the charges against the petitioner in all four witnesses were examined and it is material to note that the witnesses consistently have deposed that the prisoner Shri Deepak Shrestha escaped from the cell no.2 from the judicial lock-up by cutting the window grills on 31.7.2006 in the night. Witnesses have noticed that the window grills of cell no. 2 was cut by using hacksaw blade. The witnesses have further deposed that they were checking the premises during the tenure of jailor Mr. Chandrakant Harijan, however, they were not allowed to check the clothing, bedding and belonging of the inmates without the order of the Jailor. During the tenure of this petitioner they have not done a single check of the judicial lock-up, Panaji. They have also stated that they had informed the petitioner on several occasion that they will conduct the search, but he did not give any consideration. They also deposed that the petitioner was very close to the under trial prisoners. Looking to the sum and substance of the evidence of the four witnesses, it appears that they have deposed about the negligence on the part of the petitioner while performing his duties.

10. From the inquiry report, it appears that the Inquiring Authority has given an opportunity to the petitioner to lead defence evidence and to produce documentary evidence. However, the petitioner has not led any evidence nor produced any documents.

11. The relevant observation of the Inquiring Authority is as follows:-

“Although the Charged Officer was given opportunity to lead his evidence by way of independent witness or to produce any documentary evidence the Charged Officer has not led any evidence nor produced any documents and submitted that prosecution story is full of contradictions and after thought. In this context it is stated that the Charged officer has not given any evidence. Almost every witnesses have deposed the same facts in evidence, hence, the said submission cannot be accepted.”

12. The Inquiry Officer has further mentioned in the report that opportunity was given to the petitioner. There was no reason for the Inquiry Officer to incorporate such contention falsely. Therefore, there is no substance in the allegations of the petitioner that he was not given opportunity to lead the defence

evidence. Therefore, point no.1 is answered in the negative.

13. It is further say of the petitioner that the questions based upon the circumstances/evidence against him were not put to him so as to enable him to explain the circumstances appearing in the evidence against him.

14. On perusal of the entire report of the Inquiring Authority, we do not find that the Inquiry Officer has formulated the questions based upon the evidence appearing against the petitioner and the same were put to the petitioner delinquent. The petitioner was facing serious charges of misconduct and ultimately awarded an major penalty of dismissal from service. In such circumstances, we are of the opinion that opportunity was to be given to the petitioner to explain the circumstances appearing in the evidence against him. Rule 14(18) of the Rules of 1965 clearly provided that it is obligatory on the Inquiring Authority to question the delinquent officer on the circumstances appearing against him in the evidence for the purpose of enabling him to explain any circumstances. However, from the report, no where it is mentioned that the questions based upon the evidence against the petitioner were formulated and it was put to him. Hence, Inquiry Officer has not followed the procedure laid down under Rule 14(19) of the Rules of 1965.

15. From the inquiry report, it further reveals that the Presenting Officer examined four witnesses to prove the charges levelled against the petitioner and thereafter, the petitioner was asked whether he wants to lead defence evidence or not, on which the petitioner refused to lead any evidence or produced any documents. Thereafter, the inquiry was straight away posted for written submissions of both sides. Thereafter, the presenting Officer as well as the petitioner have submitted their written synopsis.

16. With reference to Rule 14(19) of the Rules of 1965, the question arises whether the written brief filed by the Presenting Officer should be made available to the petitioner before he files his own written brief. It will be seen from the phraseology of Rule 14 sub rule 19 of the Rules of 1965 that the Inquiry Officer has to hear the arguments that may be advanced by the parties after their evidence have been closed. But he can, on his own or at the desire of the parties take written brief in case he exercises the discretion of taking written brief, it will be, for that he should first take the brief from the Presenting Officer and supply it to the petitioner/Government Servant and take the brief from the petitioner. In case copy of the brief of the Presenting Officer is not given to the Government Servant, it will be like hearing the arguments of the Presenting Officer at the back of the

Government Servant.

17. The requirement of Rule 14(19) of the Rules of 1965 and the basic of the principle of natural justice, it requires that the delinquent officer should be served with the copy of the written brief filed by the Presenting Officer before he is called upon to file his written brief filed by the Presiding Officer before he is called upon to file his written brief. So also it is not clear from the report that written brief/arguments submitted by the Presenting Officer were supplied to the petitioner, so as to defend him and explain the circumstances. Thus, from the record it is seen that the Inquiring Authority has not followed the procedure as contemplated under Rule 14(18) and (19) of the Rules of 1965.

18. From the above reasons, we are of the opinion that the Inquiring Authority has given opportunity to the petitioner to lead defence evidence. However, it has failed to formulate the questions based upon the evidence appearing against the petitioner.

19. On perusal of the order passed by the Disciplinary Authority, it appears that the disciplinary Authority has also lost the sight about non observance of the procedure laid down under Rule 14(18) and (19) of the Rules of 1965. The same is the

case with the order passed by the Appellate authority, respondent no.2.

20. On perusal of the order passed by the Appellate Authority, respondent no.2, it appears that it has only considered that the Inquiring Authority has given opportunity to the petitioner to lead defence evidence. But however, the respondent no. 2 has lost sight to see whether the Inquiring Authority has formulated the questions based upon the evidence appearing against the petitioner.

21. As per the provisions of Rule 27 sub Rule 2 (a) it is for the respondent no. 2 to see whether the procedure laid down in this Rule has been complied with and if not, whether such non compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice. The respondent no.2 has failed to exercised supervisory powers/jurisdiction conferred on it as per the Rule 27 sub rule 2 of the Rules of 1965.

22. The judgments relied upon by the learned Government Advocate are inapplicable to the facts of the present case.

23. For the reasons stated above, we are of the opinion

that an opportunity must be given to the petitioner to explain the circumstances appearing in the evidence against him.

24. Hence, we pass the following:-

ORDER

- i. Writ Petition is allowed.
- ii. Inquiry report dated 12.4.2010 passed by the inquiring authority; order dated 6.5.2010 passed by the Disciplinary Authority, respondent no.3 as well as the order dated 11.2.2011 passed by the Appellate Authority, respondent no.2 is quashed and set aside.
- iii. Matter is remanded to the Inquiry Officer and relegated at the stage of formulation of the questions appearing in the evidence against the petitioner.
- iv. Inquiry Officer is directed to formulate the questions based upon the evidence appearing against the petitioner and hear the parties in accordance with law.
- v. Parties to appear before the Inquiry Officer on 15th March, 2016 at 10.00a.m.
- vi. Rule made absolute in the aforesaid terms.

vii. Petition stands disposed of.

K. L. WADANE, J.
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F. M. REIS, J.