GAHC010081372022

2026:GAU-AS:15581

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2950/2022

SUB (B AND R) DIPAK CHAKRABARTY JC/E 380049A
S/O- LATESUNILCHAKRABARTY
R/O- MAIDAM BAKARAPARA,
BYE LANE -8
(KRISHNAPUR PATH)
P.O- BASISTHA GUWAHATI
PIN-781029, DIST- KAMRUP (M)
ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY, TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI-110011

2:THE DIRECTOR GENERAL OF ASSAM RIFLES
DIRECTORATE GENERAL OF ASSAM RIFLES
LAITKOR
SHILLONG-10
MEGHALAYA

3:THE INSPECTOR GENERAL
ASSAM
RIFLES (NORTH)
HEADQUARTERS IGAR (N)
C/O- 99 APO
PIN-932554

4:THE INSPECTOR GENERAL
ASSAM
RIFLES (EAST)
HEADQUARTERS IGAR (EAST)
C/O- 99 APO
PIN-932553

5:COLONEL (ADMINISTRATION)
HEADQUARTERS IGAR (N)
C/O- 99 APO
PIN-932554

6:EX- OFFICIO COMMANDANT
HEADQUARTERS NAGALAND RANGE (NORTH)
C/O- 99 APO
PIN-934827

7:RECORDING OFFICER OF SOE HEADQUARTERS NAGALAND RANGE (NORTH)
C/O 99 APO
PIN- 934827

Advocate for the Petitioner : MR. K N CHOUDHURY, MS. D SHARMA,MS. K HAZARIKA,MS. C DUTTA,MS. M BAISHYA,MS G DUGAR,MS. B SARMA,MR A TEWARI

Advocate for the Respondent : ASSTT.S.G.I., MR. K GOGOI

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : 01.10.2026

Date of pronouncement of judgment : 14.10.2026

Whether the pronouncement is of the operative of the judgment? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. K. N. Choudhury, learned Senior Counsel, assisted by Mr. A. Tewari, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned CGC,

for the respondents.

2. By filing the present writ petition, the petitioner has challenged the order dated 18.10.2021 passed by the Inspector General Assam Rifles (North), whereby he was dismissed from service under Section 11(1) of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010. The petitioner has also challenged the order dated 11.03.2022 passed by the Director General, Assam Rifles, whereby his appeal preferred under Rule 28 of the Assam Rifles Rules, 2010 came to be rejected.

3. The petitioner was enrolled as Naib Subedar (B&R) in the Assam Rifles on 12.10.1989 and was promoted to the rank of Subedar (B&R) on 05.07.2011. The proceedings against the petitioner arose out of a sting operation styled as "Operation Hilltop", which was aired on 24.09.2014 and 25.09.2014 and contained allegations of corruption against personnel of the Assam Rifles. The petitioner was alleged to have accepted illegal gratification of Rs. 30,000/- from one *Mr. C.C. Mathew*, a contractor of the Assam Rifles. A Court of Inquiry was thereafter convened by order dated 29.09.2014, followed by an amendment dated 01.10.2014 and a corrigendum dated 07.10.2014.

4. The petitioner was thereafter subjected to a Summary of Evidence in respect of the allegations. Subsequently, a General Assam Rifles Court (GARC) was convened for his trial. A charge-sheet dated 07.04.2017 and 21.04.2017 was issued, containing a charge under Section 55 of the Assam Rifles Act, 2006 read with Section 7 of the Prevention of Corruption Act, 1988 and an alternative charge under Section 49 of the Assam Rifles Act, 2006. A convening order dated 29.05.2017 was thereafter issued for assembling the GARC at Agartala. The petitioner challenged the charge-sheet and the convening order before the

Meghalaya High Court in W.P.(C) No.129/2017.

5. The proceedings before the GARC were stayed by order dated 07.06.2017 and, thereafter, by judgment and order dated 15.06.2017, the Meghalaya High Court set aside the charge-sheet on the ground that the GARC did not have jurisdiction to try an offence under the Prevention of Corruption Act, 1988. The said decision was challenged by the Assam Rifles in W.A. No.37/2017. During the pendency of the said appeal, the question of jurisdiction of a GARC to try offences under the Prevention of Corruption Act, 1988 came to be considered by the Supreme Court in Civil Appeal No.5136/2019 arising out of SLP(C) No.18113/2018. By judgment dated 01.07.2019, the Supreme Court held that the GARC had jurisdiction to try offences under the Prevention of Corruption Act, 1988 against members of the Assam Rifles. Thereafter, W.A. No.37/2017 was disposed of by the Meghalaya High Court on 11.03.2020.

6. The earlier convening order dated 29.05.2017 was thereafter cancelled by order dated 21.03.2020. The petitioner was subsequently issued a show-cause notice dated 15.06.2021 under Section 11(1) of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010. The petitioner submitted his reply to the said show-cause notice on 18.07.2021. Thereafter, by order dated 18.10.2021, the petitioner was dismissed from service. The petitioner preferred an appeal against the said order on 09.12.2021 and also submitted a reminder dated 12.01.2022. The appeal was rejected by order dated 11.03.2022. Being aggrieved, this writ petition is filed.

7. Mr. K. N. Choudhury, learned Senior Counsel, for the petitioner submits that the petitioner was dismissed from service without a regular trial by a GARC, although the earlier proceedings had been initiated for the purpose of trying the

very allegations on which the subsequent order of dismissal was founded. It is submitted that after the earlier GARC proceedings did not proceed, the respondents invoked Section 11(1) of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010 and relied upon the proceedings of the Court of Inquiry and Summary of Evidence for arriving at a conclusion against the petitioner. Therefore, it is contended that the exercise of power under Rule 20 was not legally sustainable.

8. Learned Senior Counsel submits that the respondents proceeded on the basis that the trial by the GARC had become barred by limitation under Section 98 of the Assam Rifles Act, 2006. It is contended that such understanding of Section 98 is erroneous, inasmuch as the GARC had already been convened by order dated 29.05.2017 within the prescribed period and the proceedings could not proceed thereafter on account of the proceedings before the Meghalaya High Court. It is further submitted that, while computing the period of limitation, the period during which the stay granted by the Meghalaya High Court remained operative from 07.06.2017 to 11.03.2020 was required to be excluded in terms of the proviso to Section 98.

9. Learned Senior Counsel submits that the respondents, having proceeded on the basis that the GARC trial had become time-barred, invoked Section 11(1) of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010 and relied upon the proceedings of the Court of Inquiry and Summary of Evidence for dismissing the petitioner from service. It is contended that the GARC trial was never conducted and, therefore, the alleged offence was never proved against the petitioner.

10. Learned Senior Counsel submits that the Court of Inquiry and the

Summary of Evidence could not have been relied upon in the manner in which they have been relied upon in the impugned order. Particular emphasis is placed upon Rule 184 of the Assam Rifles Rules, 2010. It is contended that the respondents, having proceeded against the petitioner under Section 11(1) read with Rule 20 after the GARC trial was not held, could not have relied upon the proceedings of the Court of Inquiry and Summary of Evidence to impose the penalty of dismissal. Learned Senior Counsel submits that Rule 184 renders the proceedings of a Court of Inquiry inadmissible as evidence and that, in any event, the proceedings of the Court of Inquiry and Summary of Evidence were conducted in a manner which denied the petitioner the procedural safeguards available under the Rules, particularly the opportunity to cross-examine *Mr. C.C. Mathew*.

11. Learned Senior Counsel submits that the proceedings of the Court of Inquiry and Summary of Evidence were further vitiated by the denial of an opportunity to cross-examine *Mr. C.C. Mathew*, who was the person from whom the petitioner was alleged to have accepted the amount of Rs. 30,000/-. It is contended that *Mr. C.C. Mathew* did not appear for examination and, instead, a written manuscript attributed to him was introduced during the Summary of Evidence. The petitioner was thereafter asked to submit a written questionnaire in relation to the said statement. The petitioner declined to adopt that course and sought the physical presence of *Mr. C.C. Mathew* so that he could cross-examine him. In support of his contention, learned Senior Counsel, relies upon Rule 49(2) of the Assam Rifles Rules, 2010.

12. It is submitted that the requirements contemplated under Rule 183(8) of the Assam Rifles Rules, 2010 was not afforded to the petitioner during the Court

of Inquiry. Learned Senior Counsel submits that the allegations arising from the sting operation directly concerned the petitioner's character and service reputation and, therefore, the petitioner was entitled to the safeguards prescribed under Rule 183(8). It is contended that the petitioner was not afforded an effective opportunity to cross-examine *Mr. C.C. Mathew*, notwithstanding his request for the physical presence of the said witness. Learned Senior Counsel further refers to the proceedings before the Delhi High Court concerning the appearance of *Mr. C.C. Mathew* and the assurance given by the Assam Rifles authorities regarding security and other arrangements for his appearance.

13. Learned Senior Counsel further submits that the impugned order dated 18.10.2021 relies upon an allegation which was not part of the charge for which the GARC had been convened. Particular reference is made to paragraph 18(b) of the impugned dismissal order, wherein it has been recorded that the petitioner had demanded Rs. 30,000/- from *Mr. C.C. Mathew* in connection with construction work and had subsequently insisted that he visit Guwahati for payment of the said amount. The said allegation was not contained in the show-cause notice and that the petitioner was not afforded an opportunity to meet the allegation before the order of dismissal was passed.

14. Learned Senior Counsel submits that the impugned order further relies upon the call details, photographs and the alleged telephone conversation between the petitioner and *Mr. C.C. Mathew* to conclude that the petitioner had accepted Rs.30,000/- as illegal gratification. It is contended that the electronic material was not properly authenticated and that neither the devices from which the material was obtained nor any forensic report establishing its authenticity

was produced. He disputes the reliance placed upon such material in the absence of an opportunity to cross-examine the persons connected with the same.

15. Learned Senior Counsel further submits that there was a material variation between the charge contained in the charge-sheet pursuant to which the GARC was convened and the charges subsequently set out in the show-cause notice dated 15.06.2021. It is pointed out that the first charge in the show-cause notice referred to the petitioner as having been a public servant "accepting gratification", whereas the corresponding charge in the charge-sheet alleged that he had "agreed to accept gratification". It is submitted that the alternative charge was also differently worded. Learned Senior Counsel contends that, notwithstanding the differences between the charge-sheet and the show-cause notice, the respondents subsequently proceeded against the petitioner by treating the allegation as an act of "misconduct", although the GARC trial had never been conducted.

16. It is submitted that there is no finding against the petitioner in any proceeding establishing his acceptance of illegal gratification of Rs. 30,000/-. Learned Senior Counsel submits that the respondents could not treat the petitioner as blameworthy merely on the basis of the proceedings of the Court of Inquiry and Summary of Evidence, particularly when the petitioner had challenged the manner in which those proceedings were conducted and had not been afforded the opportunity to cross-examine *C.C. Mathew*. It is contended that the alleged offence was never proved in a GARC trial. He has also disputed the sufficiency of the material relied upon by the respondents and has contended that suspicion, presumption and surmise cannot substitute evidence

even in a departmental proceedings.

17. Learned Senior Counsel submits that the appellate authority failed to examine the aforesaid aspects while disposing of the appeal preferred by the petitioner. It is contended that the appeal was rejected without dealing with the objections relating to the absence of a regular trial, the violation of the principles of natural justice and the procedural irregularities in the Court of Inquiry and Summary of Evidence. Therefore, the appellate order dated 11.03.2022 has been passed without proper consideration of the grounds raised in the appeal.

18. Learned Senior Counsel relies upon the judgment and order dated 03.08.2026 passed by the Division Bench of the High Court of Tripura in **Shibu Limbu v. Union of India & Ors., W.A. No. 116/2025**, and submits that the Division Bench held that the power under Rule 20(2) of the Assam Rifles Rules, 2010 cannot be invoked lightly or arbitrarily to dispense with a regular trial by the GARC. The authority must have sufficient grounds for arriving at the satisfaction that such a trial is inexpedient or impracticable, and that the decision remains subject to judicial review. Learned Senior Counsel submits that, in the present case, the GARC trial was never held and the respondents proceeded to dismiss the petitioner by relying upon the materials collected during the Court of Inquiry and Summary of Evidence, despite the petitioner's objections to the manner in which those proceedings were conducted. It is, therefore, submitted that the reasons assigned by the respondents for dispensing with the GARC trial must be examined in the light of the principles laid down in **Shibu Limbu (Supra)**.

19. Learned Senior Counsel submits that the power under Section 11(1) of

the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010 was not validly exercised in the present case as the reasoning adopted for treating the GARC trial as time-barred was misconceived, and the reliance upon the proceedings of the Court of Inquiry and Summary of Evidence was contrary to Rule 184, and therefore, the dismissal of the petitioner is arbitrary and as such, unsustainable.

20. On the other hand, Mr. K. Gogoi, learned CGC, appearing for the respondents, submits that the challenge raised by the petitioner essentially seeks a re-appreciation of the material relied upon by the competent authority and, therefore, cannot be examined by this Court in exercise of judicial review under Article 226 of the Constitution. It is submitted that the scope of judicial review in matters concerning administrative action is limited to examining the legality of the decision-making process and the Court does not sit as an appellate authority over the decision taken by the competent authority. Reliance is placed upon the judgment of the Supreme Court in **Tata Cellular v. Union of India,** reported in **(1994) 6 SCC 651**, to contend that interference is warranted only where there is illegality, irrationality, breach of principles of natural justice or procedural impropriety.

21. Learned CGC submits that the proceedings against the petitioner arose from the sting operation "Operation Hilltop", which disclosed allegations of corruption involving personnel of the Assam Rifles. The Court of Inquiry was convened to investigate the allegations emerging from the sting operation and was not initiated on the basis of any complaint made by *C.C. Mathew*. Learned CGC submits that *C.C. Mathew* was summoned through the Judicial Magistrate but did not appear before the Court of Inquiry. The respondents, however,

examined other relevant witnesses, including *Shyju Maruthumpilly*, who had conducted the sting operation, as well as *Suresh Kumar Gupta* and *Sapan Saha*. On the basis of the material collected during the Court of Inquiry, the petitioner was held blameworthy along with other personnel and disciplinary action was directed.

22. Learned CGC further submits that the petitioner was thereafter subjected to the Summary of Evidence and was given adequate opportunity to defend himself. It is contended that the attendance of *C.C. Mathew* could not be secured during the Summary of Evidence on account of the passage of time and the security concerns stated by the respondents. Consequently, a written statement duly signed by *C.C. Mathew* was obtained under Rule 49(6) of the Assam Rifles Rules, 2010. The petitioner was given an opportunity to cross-examine the said witness through a written questionnaire, but he declined to avail of the same and insisted upon the physical presence of the witness. Learned CGC submits that even an adjournment of 24 hours was granted to enable the petitioner to reconsider his decision, but the petitioner continued to decline the opportunity. It is, therefore, contended that there was no denial of natural justice and that the requirements of Rule 49 were duly complied with.

23. Learned CGC submits that the Hearing of Charge was also conducted in accordance with Rule 47 of the Assam Rifles Rules, 2010. It is contended that the petitioner was afforded an opportunity to cross-examine the prosecution witness examined at that stage and was also given an opportunity to make a statement and produce defence witnesses, which he declined. The respondents, therefore, submit that the petitioner was given opportunities at the different stages of the proceedings to defend himself and cannot now contend that the

proceedings stood vitiated for want of opportunity.

24. With regard to the GARC proceedings, learned CGC submits that the GARC had assembled in June 2017 but the trial was adjourned *sine die* following the order dated 15.06.2017 passed by the Meghalaya High Court in W.P.(C) No.129/2017. It is submitted that the subsequent decision of the Supreme Court dated 01.07.2019 settled the question of jurisdiction of the GARC to try offences under the Prevention of Corruption Act, 1988 and, thereafter, the Meghalaya High Court, by order dated 11.03.2020 in W.A. No.37/2017, permitted the GARC proceedings to proceed. However, by that stage considerable time had elapsed, the members originally detailed for the GARC had either been posted out or had superannuated, and the earlier convening order was consequently cancelled on 21.03.2020.

25. Learned CGC submits that although it was proposed to convene a fresh GARC, the outbreak of the COVID-19 pandemic and the restrictions imposed during the lockdown made it impracticable to assemble the Court. It is contended that a GARC would require the presence of the prescribed number of members, a Law Officer, the accused, counsel, defending officers and witnesses, including civilian witnesses from Kerala and Delhi. The respondents further submit that considerable time had elapsed from the year 2014 and several service witnesses had either retired or been posted elsewhere. These circumstances, rendered the convening of a fresh GARC impracticable.

26. Learned CGC further submits that the proceedings had also become barred by limitation under Section 98 of the Assam Rifles Act, 2006. For the purpose of computation, the limitation period commenced from 23.12.2014, when the Directorate General Assam Rifles directed disciplinary action on the

basis of the Court of Inquiry. The period from 15.06.2017 to 11.03.2020, during which the proceedings before the Meghalaya High Court remained pending, was excluded and the limitation period recommenced from 12.03.2020. It is contended that a fresh GARC was required to be assembled before 15.09.2020, but the same could not be assembled for the reasons already stated. Learned CGC places reliance upon **Union of India & Ors. v. Harjeet Singh Sandhu**, reported in **(2001) 5 SCC 593**, to contend that expiry of the period of limitation for trial does not *ipso facto* take away the power of the competent authority to proceed administratively under the applicable statutory provisions.

27. Learned CGC submits that under these circumstances the competent authority invoked Section 11(1) of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010. It is submitted that Rule 20 permits the competent authority to dispense with trial by a Force Court where it is satisfied that such trial is inexpedient or impracticable and that the further retention of the person in service is undesirable. According to the respondents, the competent authority recorded its satisfaction on the basis of the prolonged litigation, cancellation of the earlier convening order, posting or retirement of members and witnesses, the COVID-19 restrictions, the requirement of securing civilian witnesses from different places and the limitation prescribed under Section 98.

28. Learned CGC submits that the show-cause notice dated 15.06.2021 afforded the petitioner an opportunity to explain why his service should not be terminated and that the petitioner submitted his reply dated 18.07.2021. The competent authority thereafter considered the petitioner's reply together with the material available from the Court of Inquiry and Summary of Evidence

before passing the dismissal order dated 18.10.2021. Therefore, the decision was not based upon the mere existence of the preliminary proceedings but upon the material which, in the opinion of the competent authority, established the petitioner's involvement in acceptance of Rs. 30,000/- as illegal gratification.

29. Learned CGC submits that the contention that the allegation referred to in paragraph 18(b) of the dismissal order was a new allegation is misconceived. It is contended that the allegation regarding the demand of Rs. 30,000/- in connection with construction work and the subsequent demand for payment was already reflected in the material collected during the Court of Inquiry and Summary of Evidence, including the written statement attributed to *C.C. Mathew*. It is submitted that the petitioner was given an opportunity to deal with the said material through the written questionnaire but declined to cross-examine *C.C. Mathew* in that manner. Therefore, no fresh allegation was introduced at the stage of dismissal.

30. Learned CGC further submits that the alleged acceptance of Rs. 30,000/- was supported by the material collected during the proceedings, including the telephone conversation between the petitioner and *C.C. Mathew*, the call details and the photographs of their meeting on 12.08.2014. The photographs depicted the petitioner and *C.C. Mathew* together and included photographs in which currency notes were visible. The telephone conversations and the surrounding circumstances, taken together, provided sufficient material for the competent authority to conclude that the amount had been accepted as illegal gratification.

31. Learned CGC submits that the difference in the wording of the charge-sheet and the show-cause notice does not materially alter the allegation against the petitioner. The particulars of the charge remained the same, namely, the

alleged acceptance of Rs. 30,000/- from *C.C. Mathew* as gratification other than legal remuneration. Therefore, no new or materially different charge was introduced at the stage of the show-cause notice or dismissal.

32. Learned CGC further submits that the proceedings under Section 11 read with Rule 20 are departmental in nature and are not governed by the strict rules of evidence applicable to a criminal trial. The applicable standard is that of preponderance of probabilities and that the Court, while exercising judicial review, is primarily required to examine whether the petitioner was afforded adequate opportunity and whether the decision-making process suffered from violation of natural justice. Therefore, the petitioner's reliance upon the provisions of the Indian Evidence Act, including Section 65(B), is misplaced.

33. Learned CGC submits that a Court of Inquiry is a fact-finding proceeding intended to investigate the circumstances of an incident and to identify personnel who may be blameworthy on the basis of the material placed before it. It is contended that the requirements of Rule 183 were complied with and that the petitioner was afforded opportunities to remain present, cross-examine witnesses, produce evidence and make his statement. Thus, he submits that the Court of Inquiry or Summary of Evidence is not vitiated by procedural irregularity.

34. Learned CGC relies upon **State of Punjab v. Ram Singh Ex Constable,** reported in **1992 AIR 2188**, and **M.M. Malhotra v. Union of India,** reported in **(2005) 8 SCC 351**, in support of the submission that the expression "misconduct" is not capable of a precise and exhaustive definition and takes its meaning from the nature of the delinquency and the context in which it is used. It is contended that acceptance of illegal gratification by a member of a

disciplined force constitutes serious misconduct and that, having regard to the nature and gravity of the act attributed to the petitioner, the competent authority was justified in considering his further retention in service undesirable.

35. Learned CGC submits that the appellate authority, namely, the Director General Assam Rifles, considered the appeals dated 09.12.2021 and 12.01.2022 and rejected the same by order dated 11.03.2022. The appellate order was passed after due application of mind and that there is no basis to describe the same as mechanical or predetermined. He, therefore, submits that the competent authority had jurisdiction to invoke Section 11(1) read with Rule 20 of the Assam Rifles Rules, 2010 after the GARC trial became impracticable, had afforded the petitioner an opportunity to show cause, had considered the material available on record and had recorded reasons for concluding that his further retention in service was undesirable. No violation of natural justice or procedural requirement has been established and as such, the writ petition is liable to be dismissed.

36. I have considered the submissions advanced by learned counsel for the parties and have perused the materials available on record.

37. The proceedings against the petitioner arose out of the sting operation styled as "Operation Hilltop", following which a Court of Inquiry and a Summary of Evidence were conducted in relation to the allegation that the petitioner had accepted illegal gratification of Rs. 30,000/- from one *C.C. Mathew*. A General Assam Rifles Court (GARC) was thereafter convened for his trial by order dated 29.05.2017. However, the proceedings could not proceed in view of the litigation before the Meghalaya High Court concerning the jurisdiction of the GARC to try offences under the Prevention of Corruption Act, 1988. After the Supreme Court

settled the question of jurisdiction by judgment dated 01.07.2019, the writ appeal pending before the Meghalaya High Court was disposed of on 11.03.2020. The earlier convening order was, however, cancelled by the respondents on 21.03.2020.

38. The respondents thereafter took the view that, having regard to the passage of time, the availability of officers and witnesses, the restrictions arising from the COVID-19 pandemic and the limitation prescribed under Section 98 of the Assam Rifles Act, 2006, it was not practicable to proceed with a fresh GARC. The petitioner was accordingly issued a show-cause notice dated 15.06.2021 under Section 11 of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010. Upon consideration of his reply dated 18.07.2021, the competent authority passed the order dated 18.10.2021 dismissing him from service, relying upon the material collected during the Court of Inquiry and Summary of Evidence. The petitioner's appeal against the dismissal order was rejected by the Director General, Assam Rifles, on 11.03.2022.

39. The challenge to the impugned orders raises two connected aspects. The first concerns the circumstances in which the respondents considered it inexpedient or impracticable to proceed with the GARC and invoked the power under Section 11 read with Rule 20. The second concerns the reliance placed upon the Court of Inquiry and Summary of Evidence for imposing the penalty of dismissal, particularly in view of the petitioner's objection that he was not afforded an effective opportunity to cross-examine C.C. Mathew and to meet the material relied upon against him. These aspects require examination in the light of the statutory provisions governing the exercise of power and the procedure followed in the present case.

40. Section 11 of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010 confers upon the competent authority the power to terminate the service of a person in the circumstances contemplated therein. The exercise of such power is, however, subject to the conditions prescribed. The competent authority must be satisfied that trial by a Force Court is inexpedient or impracticable and that the further retention of the person in service is undesirable. These requirements must be examined independently, as the existence of the statutory power does not, by itself, justify dispensing with the regular trial.

41. The difficulty with the respondents' approach lies in Section 98 of the Assam Rifles Act, 2006. The provision prescribes the period within which a trial by an Assam Rifles Court may be commenced. It does not prescribe a period within which a trial, once validly commenced, must necessarily be concluded. The distinction assumes importance in the present case, as the GARC had already been convened by order dated 29.05.2017, but the proceedings could not progress on account of the judicial proceedings concerning its jurisdiction to try the offences under the Prevention of Corruption Act, 1988.

42. The record indicates that the proceedings before the Meghalaya High Court culminated in the judgment and order dated 11.03.2020 in W.A. No. 37/2017, following the decision of the Supreme Court dated 01.07.2019. The original convening order was thereafter cancelled by the Inspector General Assam Rifles (North) on 21.03.2020, with the respondents proposing to convene a fresh GARC. Thus, the inability to proceed with the trial was not attributable merely to an unexplained failure on the part of the petitioner to face the proceedings. The intervening judicial proceedings concerning the jurisdiction of

the GARC form part of the circumstances in which the original trial could not proceed.

43. The proviso to Section 98 contemplates exclusion of the period during which proceedings remain stayed by a Court. The period covered by the judicial proceedings, therefore, had to be dealt with in accordance with the statutory provision and the orders passed by the Courts. The respondents have furnished their own calculation of limitation, under which the period from 15.06.2017 to 11.03.2020 was excluded and limitation recommenced on 12.03.2020. Even proceeding on that calculation, it was necessary for the competent authority to examine the legal effect of the original convening order and the subsequent cancellation thereof before concluding that a trial by the GARC had become incapable of being.

44. It appears that, the respondents' calculation proceeds on the basis that a fresh GARC was required to be assembled before 15.09.2020. However, the mere expiry of the period calculated by the respondents does not, by itself, establish that the regular trial had become impracticable within the meaning of Rule 20. The question was not confined to whether a fresh convening order could be issued within the period reckoned by the respondents. The competent authority was required to consider the statutory position and the circumstances which prevented the trial from proceeding, and thereafter arrive at the satisfaction required under Rule 20(2).

45. The orders passed by the Supreme Court in **Cognizance for Extension of Limitation, In Re,** reported in **(2020) 19 SCC 10**, and the subsequent order dated 10.01.2022, reported in **(2022) 3 SCC 117**, arose from the extraordinary circumstances created by the COVID-19 pandemic and dealt with

exclusion of the period specified therein for the purposes covered by those orders. The respondents' decision to cancel the convening order on 21.03.2020 was followed by the period during which the Supreme Court had issued directions concerning limitation in view of the pandemic. The effect and scope of those directions, insofar as they applied to the proceedings in question, therefore ought to have been considered before the authority proceeded on the premise that the GARC trial had become time-barred.

46. The respondents have further relied upon the practical difficulties in assembling a fresh GARC. It is stated that the officers originally detailed as members had either been posted out or had superannuated; that a fresh Court would require the assembly of at least five members, a Law Officer, the accused, counsel and other personnel; and that several civilian witnesses were located in Kerala and Delhi. The respondents have also referred to the passage of time and the effect of the COVID-19 restrictions. Upon due consideration, these circumstances, in my view, may explain the administrative difficulties faced by the respondents in arranging a fresh trial. However, the statutory test under Rule 20 is not whether convening a Force Court would be inconvenient or would require considerable administrative arrangements. The authority must be satisfied that trial by a Force Court is inexpedient or impracticable and that further retention of the person in service is undesirable. The two requirements are distinct and both must be addressed on the basis of the circumstances of the particular case. Administrative difficulties, without an adequate examination of their effect upon the possibility of holding a trial, cannot by themselves substitute for the satisfaction contemplated by the Rule.

47. A profitable reference may be made to the decision of the Supreme Court

in **Union of India v. Tulsiram Patel**, reported in **(1985) 3 SCC 398**, wherein the Court considered the exceptional power to dispense with a regular disciplinary inquiry under Article 311(2)(b) of the Constitution and explained that such power cannot be exercised lightly or arbitrarily. The aforesaid principle was applied in **Tarsem Singh v. State of Punjab**, reported in **(2006) 13 SCC 581**, wherein the Supreme Court held that the decision to dispense with a regular departmental inquiry could not be sustained in the absence of material justifying such a course. Though the aforesaid decisions arose in the context of Article 311(2)(b), the principle underlying the exercise of such exceptional power provides guidance in examining the scope and application of Rule 20 in the present case.

48. Rule 20 provides a statutory course where the competent authority is satisfied that a trial by a Force Court is inexpedient or impracticable and that the person's further retention in service is undesirable. The provision does not, however, permit the regular trial to be dispensed with merely because an allegation of misconduct has been made or because preliminary proceedings have already been conducted. The reasons for dispensing with the trial must bear a rational connection with the circumstances of the case and must satisfy the conditions prescribed by the Rule.

49. The Division Bench of the High Court of Tripura in **Shibu Limbu (Supra)**, judgment and order dated 03.08.2026, considered the exercise of power under Section 11 of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010, in circumstances arising from the same operation and the same general course of proceedings. The Division Bench examined the scope of Section 98, the conditions governing recourse to Rule 20 and the

procedure followed in relying upon the earlier proceedings against the person concerned.

50. The reasoning of the Division Bench in **Shibu Limbu (Supra)** is undoubtedly persuasive in examining the present case. The statutory conditions governing the exercise of power under Rule 20 cannot be treated as satisfied merely because the respondents considered it difficult to convene a fresh GARC after the earlier proceedings had been interrupted. The material placed before this Court does not establish that the competent authority adequately addressed the distinction between the limitation for commencement of trial and the circumstances which could render the trial inexpedient or impracticable. Nor do the administrative difficulties stated in the affidavit, when considered by itself, sufficiently demonstrate satisfaction of both conditions prescribed under Rule 20(2).

51. There is a further aspect concerning the material relied upon by the competent authority. The petitioner was not tried by the GARC convened against him. No verdict of the Force Court was, therefore, rendered on the charge of accepting illegal gratification. The respondents instead relied upon the earlier Court of Inquiry and Summary of Evidence while deciding that the petitioner was blameworthy and that his further retention in service was undesirable. The legality of the impugned action must accordingly be examined not only with reference to the reasons for dispensing with a GARC trial, but also with reference to the procedure by which the material collected in the earlier proceedings was relied upon against the petitioner.

52. A Court of Inquiry is intended to ascertain facts concerning an incident or allegation, while a Summary of Evidence forms part of the process

contemplated under the applicable Rules. The fact that such proceedings have been conducted does not, by itself, dispense with the procedural requirements governing the use of the material collected therein. This assumes particular importance where the regular trial does not take place and the earlier material is thereafter relied upon as the basis for imposing the major penalty of dismissal from service.

53. The respondents state that *C.C. Mathew* was summoned through judicial process but did not appear. They further state that, during the Summary of Evidence, his written statement was obtained under Rule 49(6), as his attendance could not be secured owing to the passage of time and the risk to his life. According to the respondents, the petitioner was offered an opportunity to put questions to *C.C. Mathew* by way of a written questionnaire and was given 24 hours to reconsider his refusal. The petitioner, however, continued to insist upon the physical presence of *C.C. Mathew*. In view of the above, it is required to consider the relevant provisions. Rule 49(2) provides for the recording of evidence in the presence of the accused and recognizes the right of the accused to cross-examine witnesses who give evidence against him. Rule 49(6) provides for the use of a written statement in the circumstances contemplated therein and prescribes the procedure to be followed. The availability of the procedure under Rule 49(6) does not dispense with the need to examine whether, in the particular circumstances, the procedure adopted afforded the person concerned a fair opportunity to meet the material relied upon against him.

54. In the present case, the allegation of acceptance of illegal gratification was supported, *inter alia*, by the statement attributed to *C.C. Mathew*. The

petitioner disputed the manner in which that statement was relied upon and insisted upon the physical presence of *C.C. Mathew* for cross-examination. The respondents rely upon the offer of a written questionnaire and the petitioner's refusal to avail himself of that opportunity. That circumstance must be considered; however, it does not by itself conclude the question whether the procedure adopted was adequate in the context of the allegation, the nature of the material relied upon and the subsequent decision to dispense with a regular GARC trial.

55. Rule 183(8) of the Assam Rifles Rules, 2010 contemplates an opportunity, before an opinion adverse to a person subject to the Act is given, to know what has been stated against him, cross-examine the witness who has given evidence against him, make a statement and call witnesses in his defence. The procedural requirements governing the Court of Inquiry and the Summary of Evidence must be examined in their respective contexts. In the present case, the absence of *C.C. Mathew* and the reliance placed upon his written statement required careful consideration, particularly because the allegation concerned acceptance of illegal gratification and the statement was relied upon along with the other material to sustain the charge against the petitioner.

56. The respondents submit that the Court of Inquiry originated from the sting operation and not from a complaint made by *C.C. Mathew*. They also rely upon the evidence of *Shyju Maruthumpilly*, who conducted the sting operation and was examined as Witness No. 21, as well as the statements of *Suresh Kumar Gupta* and *Sapan Saha*, examined as Witness Nos. 14 and 16. These circumstances explain the other material available to the respondents. They do not, however, remove the need to examine the procedure followed in relation to

C.C. Mathew's statement, particularly when the dismissal order relies upon the alleged conversation and the circumstances surrounding the meeting between him and the petitioner.

57. The respondents further rely upon the call details, telephone conversation and photographs dated 12.08.2014. Their case is that the call records disclose communication between the petitioner and *C.C. Mathew*, while the photographs show them together and include images in which bundles of currency notes are visible. The respondents contend that the material, taken as a whole, establishes the petitioner's acceptance of Rs. 30,000/- as illegal gratification. The petitioner, on the other hand, has questioned the reliability and authenticity of the electronic material and has raised objections regarding forensic verification and the source devices.

58. This Court is conscious that departmental proceedings are not governed in every respect by the strict rules of evidence applicable to a criminal trial. The respondents' contention that the standard of proof in departmental proceedings is the preponderance of probabilities cannot be rejected merely because the allegation involves electronic material or circumstances which might also be relevant in a criminal prosecution. Nevertheless, the fact that the Indian Evidence Act does not apply with the same rigour does not dispense with the requirement of a fair procedure or relieve the competent authority of the obligation to consider the objections bearing upon the reliability of the material relied upon.

59. The Court is not required in the present proceedings to undertake a fresh assessment of each call record, photograph or part of the alleged conversation as though sitting in appeal over the decision of the competent authority. The

relevant consideration is whether the petitioner was afforded an effective opportunity to meet the case against him and whether the procedure followed was consistent with the statutory requirements, particularly when the material collected in the earlier proceedings was relied upon to impose dismissal without a subsequent trial by the GARC.

60. The dismissal order refers to the telephone conversation, the call details and the photographs as material which, when considered together, established acceptance of Rs. 30,000/- by the petitioner. In that setting, the objection concerning the absence of *C.C. Mathew* cannot be viewed in isolation from the other material relied upon. The statement attributed to *C.C. Mathew*, the alleged conversation and the photographs were considered cumulatively by the competent authority. The petitioner's objection was that he had not been afforded an effective opportunity to test the account attributed to *C.C. Mathew*, whose alleged payment formed the basis of the charge. The effect of that objection required due consideration before the material was relied upon to sustain the penalty.

61. The petitioner has further questioned the allegation referred to in paragraph 18(b) of the dismissal order, contending that the same was not disclosed in the show-cause notice and that he was not afforded an effective opportunity to answer it. The respondents state that the allegation was not new, as it was contained in the written statement of *C.C. Mathew* and was read out to the petitioner during the Summary of Evidence. They also submit that the petitioner was offered an opportunity to put questions to *C.C. Mathew* by written questionnaire.

62. The question is not merely whether the material had appeared at some

stage of the earlier proceedings. The relevant consideration is whether the petitioner was sufficiently apprised of the case proposed to be relied upon for imposing the penalty and was afforded a meaningful opportunity to respond to it. Where the final order relies upon an allegation in a manner which the delinquent specifically contends was not disclosed in the show-cause notice, the authority must address the objection and examine whether any prejudice was caused. In the present case, the petitioner had raised the objection in his reply, and the respondents' explanation that the statement had been read out to him does not, by itself, resolve the question of the adequacy of the opportunity afforded.

63. The respondents have relied **Harjeet Singh Sandhu** (Supra), in support of the contention that the competent authority possesses an independent administrative power under the applicable statutory scheme. The existence of such a power is not in dispute. However, the availability of an independent administrative power does not dispense with compliance with the conditions governing its exercise or render the exercise immune from judicial review where the statutory requirements or the principles of natural justice have not been followed.

64. The respondents' reliance upon the aforesaid decision, therefore, does not answer the objections arising from the manner in which Rule 20 was invoked in the present case. The competent authority was required to be satisfied that trial by the GARC was inexpedient or impracticable and that the petitioner's further retention in service was undesirable. The reasons furnished by the respondents concerning limitation, the availability of personnel and witnesses and the pandemic had to be assessed against those statutory

requirements. The authority was further required to ensure that the material relied upon for imposing the penalty had been considered through a procedure consistent with the applicable Rules.

65. On consideration of the materials placed before this Court, the reasons advanced by the respondents do not sufficiently establish that the statutory conditions for dispensing with the GARC trial were met. The conclusion that the trial had become time-barred was central to the decision to proceed under Rule 20, but the legal effect of Section 98 and the intervening circumstances were not adequately addressed. The practical difficulties referred to by the respondents, though capable of explaining the difficulties in assembling a fresh GARC, do not independently establish that the trial had become impracticable as contemplated by the Rule.

66. The manner in which the earlier proceedings were relied upon gives rise to a further procedural concern. The petitioner disputed the reliance upon the written statement of *C.C. Mathew* and sought his physical presence for cross-examination. Although the respondents state that a written questionnaire was offered, the petitioner's objection had to be considered in the context of the nature of the allegation and the reliance placed upon that statement together with the other material. The decision to impose the penalty without a GARC trial made it necessary to ensure that the procedure adopted in the earlier proceedings afforded the petitioner a fair opportunity to meet the case against him.

67. This Court is mindful of the limited scope of judicial review in matters of disciplinary action. The Court does not sit as an appellate authority to reappreciate the evidence or substitute its own assessment of the photographs,

call records or alleged conversation for that of the competent authority. Interference in the present case is warranted not because a different view ought to have been taken on the merits of the allegation, but because the exercise of the power under Rule 20 has not been shown to satisfy the statutory conditions governing the dispensing with of a regular trial, and the procedure by which the material was relied upon raises a material concern regarding the opportunity afforded to the petitioner.

68. The appellate authority was required to examine the petitioner's objections in the appeal against the dismissal order. The materials placed before this Court do not demonstrate that the appellate decision cured the deficiencies concerning the basis for dispensing with the GARC trial or the procedural objections raised by the petitioner. The rejection of the appeal, therefore, does not remove the infirmities in the original decision.

69. In view of the foregoing discussion, this Court is of the view that the impugned order dated 18.10.2021, by which the petitioner was dismissed from service under Section 11 of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010, cannot be sustained. The consequential appellate order dated 11.03.2022 is also liable to be set aside.

70. Accordingly, the order dated 18.10.2021 passed by the Inspector General Assam Rifles (North), dismissing the petitioner from service and the appellate order dated 11.03.2022 passed by the Director General, Assam Rifles, are hereby set aside.

71. The respondents shall extend to the petitioner the consequential service benefits flowing from the setting aside of the dismissal order, in accordance with the applicable rules. In the event that the petitioner has attained the age of

superannuation, the respondents shall calculate and release the retiral and other consequential benefits payable to him in accordance with law.

72. The writ petition stands allowed in the above terms. There shall be no order as to costs.

JUDGE

Comparing Assistant