

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

F.M.A. 3276 of 2012

With

CAN 3 of 2012 (Old CAN 11496 of 2012)

CAN 4 of 2018 (Old CAN 5864 of 2018)

Union of India & Ors.

Vs.

S. K. Ajmer

For the Appellants : Ms. Chandreyi Alam

For the Respondent :Mr. K. B. S. Mahapatra,
Mr. Aditya Shit

Judgment on : May 15, 2026

Madhuresh Prasad, J.:

1. The Commandant (CISF Unit) ECL Seetalpur vide order dated 20/21.12.2005 awarded a penalty of reduction of pay by one stage with cumulative effect to the writ petitioner, a constable in the force. The petitioner's appeal against the order of the disciplinary authority was rejected by the appellate authority on 17.02.2006. The order of the disciplinary authority and the appellate authority were impugned in the writ petition. The Hon'ble Single Judge by a judgment dated 22.03.2011 set aside the order of the disciplinary authority relying upon the provisions contained in Clause (c) of sub-Rule (5) of Rule

36 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the “2001 Rules” for short). The Hon’ble Single Judge concluded:

“When acting on the representation of the Presenting Officer the Inquiring Authority concluded that the charge against the petitioner was not proved, the Disciplinary Authority could not take a view different from what the Presenting Officer took before the Inquiring Authority. By this I mean that the Disciplinary Authority presenting his case before the Inquiring Authority through his duly appointed Presenting Officer was not competent to take a different stand at the time of consideration of the report of the Inquiring Authority.

I am, therefore, of the view that the Disciplinary Authority making a stand contrary to the one taken by his Presenting Officer before the Inquiring Authority acted without jurisdiction. Accordingly, his order and the order of the Appellate Authority affirming his order both are liable to be set aside.”

2. The judgment of the Learned Single Judge is the subject matter of the present intra court appeal preferred by the Union of India.
3. CAN 3 of 2012 (Old CAN 11496 of 2012) was disposed of earlier on 03.04.2013. CAN 4 of 2018 (Old CAN 5864 of 2018) was disposed of earlier by an order dated 05.03.2021. These two applications therefore, are wrongly listed today.
4. The charge memo dated 02.08.2005 based on which the enquiry was conducted contained one charge:

“That CISF No. 944521193 Constable Sk. Ajmir of CISF Unit ECL Seetalpur (Rajmahal Camp) was detailed for "A" shift duty from 0500 hrs.to 1300 hrs on 27.12.04 at NCD Lower duty post. At about 0815 hrs on the same day Insp/Exe. S. Mukherjee conducted surprise checking in NCD lower duty post area along with Insp/Exe. S.K.Mishra, Insp/Exe.R.R.Sinha and noticed that the said Constable (Sk. Ajmir) is suspiciously talking with miscreants who were 12-13. In the mean-time one of them namely Md. Jamshed Alam was apprehended by HC/GD O.P. Thapa who was on PTL duty in same area. The above miscreant identified const. Sk. Ajmir during the course of interrogation stating that this constable (Sk.Ajmir) called them to steal the coal from his duty post by paying Rs.5/- per head, which clearly indicates his involvement with the miscreants. The above act on the part of No. 944521193 Const. Sk. Ajmir tantamounts to gross indiscipline, misconduct, dereliction of duty and

disobedience of lawful order being a member of disciplined Force, like CISF. Hence, the charge.”

5. The Enquiry Officer by an enquiry report on 25.11.2005 held the charge not proved. The Disciplinary Authority communicated a copy of the enquiry report to the writ petitioner by his communication dated 02.12.2005, along with his disagreement note after recording reasons for such disagreement and his own findings on the charge, which was based on the material on record before the Enquiry Officer. The writ petitioner responded to the same and after consideration of the writ petitioner's response the punishment order dated 20/21. 12. 2005 was passed by the Disciplinary Authority.
6. The learned Advocate for the Union of India submits that the petitioner was proceeded against by issuance of a charge memo. An enquiry was conducted on the basis of the charge memo before the competent authority. Before the enquiring authority the department relied upon documents and deposition of witnesses. The petitioner was afforded opportunity to effectively participate in the enquiry before the Enquiry Officer. There is no allegation that there was any procedural infirmity till submission of the enquiry report dated 25.11.2005.
7. After submission of the enquiry report, a disagreement note was served on the writ petitioner by the Disciplinary Authority in terms of Rule 36 (21) (ii) (iii) of the 2001 Rules, wherein findings were recorded by the Disciplinary Authority relying on evidence on record before the Enquiry Officer. Therefore, there was no scope for interference with the conclusions of the Disciplinary Authority.

8. The procedure for consideration of an enquiry report by the Disciplinary Authority is prescribed in Rule 36 (21) (ii) (iii) of the 2001 Rules, which reads:

“36. ...

(21)...

(ii)The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

(iii)The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with the reasons for disagreement, if any and record its own findings on any article of charge , to the enrolled member of the Force who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days irrespective of whether the report is favourable or not to the enrolled member of the Force.....”

9. The learned advocate for the Union of India relying upon Rule 36(21)(i),(ii),(iii) of the C.I.S.F Rules, 2001 submits that the petitioner’s disciplinary authority, before proceeding to pass orders in disagreement with findings of the Enquiry Officer, has given the petitioner an opportunity to represent by a notice dated 02.12.2005. The petitioner was also forwarded a copy of the enquiry report along with the notice dated 02.12.2005.

10. According to the learned advocate for the Union of India there is substantial and sufficient compliance with the requirement to observe natural justice inherent in the procedural prescription contained in Rule 36, considered above.

11.The Disciplinary Authority in the present case has complied with the procedure. There is, therefore, no infirmity in the procedure adopted by the Disciplinary Authority requiring any interference. The judgment of the Hon'ble Single Judge is, therefore, unsustainable.

12.The learned advocate for the respondent on the other hand submits that the notice dated 02.12.2005 does not sub-serve the principles of natural justice in as much as the notice, does contain a copy of the enquiry report, however, the notice is nothing but a post decisional hearing since the notice records final and conclusive findings of the Disciplinary Authority, which *ipso facto* vitiates the notice being in violation of the principle of natural justice.

13.He further submits that after issuance of the notice dated 02.12.2005 he was required to be given an opportunity of oral/ personal hearing by the Disciplinary Authority before the Disciplinary Authority arrived at a conclusion. Unless an opportunity of oral hearing is given, the compliance with natural justice contemplated in the Rule would remain illusive as the petitioner would not have sufficient opportunity to convince the Disciplinary Authority to accept the findings of the enquiry report; or that the conclusions of the Enquiry Officer were well founded with reference to material on record.

14.In support of his submissions he relied upon decisions of the Hon'ble Apex Court in the case of ***Yoginath D. Bagde -Vs. - State of Maharashtra and Another*** reported in ***(1999) 7 SCC 739***; ***Punjab National Bank and Others -Vs. Kunj Behari Misra*** reported in

(1998) 7 SCC 84; and *Lav Nigam -Vs.- Chairman & MD, ITI Ltd. And Another* reported in (2006) 9 SCC 440.

15. The learned advocate for the appellants, however, submits that the second point regarding there being no oral hearing was not urged before the Hon'ble Single Judge.
16. The writ petitioner succeeded before the Hon'ble Single Judge on the sole ground urged. Since the findings of the Hon'ble Single Judge are assailed by respondent/appellant by way of an appeal, the writ petitioner cannot be prevented from raising the other grounds.
17. We, therefore, granted an opportunity to the learned advocate for the appellants, to address the Court on the petitioner's submission that petitioner was entitled to an opportunity of oral hearing by the Disciplinary Authority.
18. The learned Advocate for the appellant submitted that the writ petitioner's claim for an oral/personal hearing was legally unsustainable. The notice of disagreement dated 02.12.2005 was issued by the Disciplinary Authority in strict compliance with the procedure prescribed under Rule 36 (21) (ii) (iii) of the 2001 Rules, which obligates the Disciplinary Authority to give an opportunity to make a written representation/submission. The writ petitioner was given such opportunity.
19. In case of disagreement by the Disciplinary Authority the procedure is prescribed in the 2001 Rules, relevant provision of which has been extracted above. Sub-Clause (iii) of Clause 21 of Rule 36 of the 2001 Rules prescribes that a copy of the enquiry report together with

reasons for disagreement and findings of the Disciplinary Authority on any article of charge are to be communicated to the enrolled Member of the force giving him an option to submit “*his **written representation or submission** to the Disciplinary Authority within 15 days irrespective of whether the report is favourable or not to the enrolled member to the force*”. The rule does not contemplate anything other than a written representation or submission to be made by the charged officer. The Rule does not contemplate any oral/personal hearing irrespective of the fact that the Enquiry Officer’s report is favourable to the enrolled Member or not.

20. We have gone through the communication/notice of the Disciplinary Authority dated 02.12.2005. We find that the Disciplinary Authority communicated a copy of the enquiry report to the writ petitioner. He also referred to the statement of certain witnesses namely Md. Jamsed Alam and one Inspector/ Exe namely S. Mukherjee, and thereafter recorded his reasons for disagreement with the report of the Enquiry Officer. The reasons for disagreement was duly communicated along with his own findings on the article of charge to the petitioner (enrolled member of the force). He also gave an opportunity of representation to the writ petitioner. Therefore, we find substantial compliance with the procedural prescription contained in Rule 36 (21) (ii) (iii) of the 2001 Rules extracted above. Therefore, the findings of the Hon’ble Single Judge that the enquiry report was binding on the Disciplinary Authority, is clearly unsustainable.

21. Insofar as the second submission regarding oral hearing not being granted to the writ petitioner by the Disciplinary Authority, we find that under the 2001 Rules the petitioner was allowed personal/oral hearing by the Enquiry Officer while considering the charges with reference to the material on record. The petitioner was given the due opportunity to cross-examine the witnesses, and to refute the charges. The Enquiry Officer while conducting such enquiry was acting as a delegatee of the Disciplinary Authority. The Disciplinary Authorities discretion to agree or disagree with findings of the Enquiry Officer is limited to consideration of material placed before the Enquiry Officer in the course of such personal/oral hearing.

22. In the case of **Yoginath D. Bagde** (*supra*) relied upon by the writ petitioner, we find that the Apex Court found fault in the procedure adopted by the Disciplinary Authority therein since the Rule under which the enquiry was conducted did not contemplate an opportunity being given to the charge-sheeted employee by the Disciplinary Authority when he/she proposed to differ with the findings of the Enquiry Officer, favourable to the charge-sheeted employee. Rule 9(2) therein merely contemplated recording of reasons for disagreement and thereafter to give a notice stating the proposed penalty. The Rule, therefore, did not contemplate an opportunity of hearing at this stage. The Disciplinary Authority did not give any opportunity to the charge-sheeted employee by communicating any reasons for disagreement. He was allowed an opportunity to show-cause only against the proposed punishment. It

was in this context that the Apex Court found the conclusion of the Disciplinary Authority vitiated.

23. In **Kunj Behari Misra** (*supra*) the Hon'ble Supreme Court of India stated the law regarding requirement of giving of such an opportunity by the Disciplinary Authority before differing with finding of the Enquiry Officer favourable to the charge-sheeted employee. The Apex Court held:

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

24. Therefore, this decision does not support the petitioner's claim for an opportunity of oral hearing to be given by the Disciplinary Authority while differing with the Enquiry Report.

25. In the case of **Lav Nigam** (*supra*) also the Apex Court reiterated the law laid down in **Kunj Behari Misra** (*supra*) and **Yoginath D. Bagde** (*supra*) which we have already discussed above. In the case of **Lav Nigam** (*supra*) the Apex Court found that no notice/opportunity at all was given by the Disciplinary Authority before recording its final conclusions differing with the findings of the

Enquiry Officer. A show-cause was merely issued on the point of proposed punishment. The issue of no opportunity being given to the present petitioner by the Disciplinary Authority does not arise in the facts of the present case. Therefore, we find that the petitioner's claim for an opportunity of oral hearing by the Disciplinary Authority is not supported by these judgments.

26. We have taken note of above that the opportunity given by the Disciplinary Authority was in terms of Rule 36 (21) (ii) (iii) of the 2001 Rules. The learned Advocate for the writ petitioner has also not submitted any specific instance of prejudice being caused.

27. A plain reading of the provision reveals that it requires an opportunity to make a representation. The compliance with natural justice was inherent in the provisions, which provisions are statutory and are also not put to challenge by the writ petitioner.

28. In this connection, we consider it apposite to refer to decision of the Hon'ble Supreme Court of India in the case of ***Union of India and Another vs. Jesus Sales Corporation*** reported in **(1996) 4 SCC**

69. In paragraph 5 of the report, the Apex Court held:

“5. ...

When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the

appeal or the application only after affording a personal hearing....”

29. We also take into consideration another decision of the Hon’ble Supreme Court of India cited by the learned Counsel for the appellant in the case of ***Union of India vs. Jyoti Prakash Mitter*** reported in **(1971) 1 SCC 396** wherein the Apex Court held that it is not necessarily an incident of the rules of natural justice that personal hearing must be given to a party likely to be effected by the order. The mere denial of such opportunity will not vitiate an order. The party is entitled to know the material against him and for an opportunity of making a representation.

30. This requirement in our above considered opinion is substantially complied with in the present case in terms of the statutory rule. We, therefore, find no force in submissions advanced on behalf of the writ petitioner respondent that while differing with findings of the enquiry officer, the Disciplinary Authority was required to grant an opportunity of oral hearing.

31. We have already held that the finding of the Hon’ble Single Judge that enquiry report submitted by the Enquiry Officer was binding on the Disciplinary Authority is unsustainable.

32. Lastly, it was submitted by the learned Advocate for the respondent writ petitioner that Disciplinary Authority has wrongly recorded that statement of the two witnesses who deposed in the enquiry was not properly considered by the Enquiry Officer. The law by now is well settled that in exercise of judicial review the Court would not sit in

appeal over the decision; judicial review being confined to the decision making process. We, therefore, refrain from going into such re-appreciation of the decision of the Disciplinary Authority.

33.The judgment of the Hon'ble Single Judge in view of our above consideration is unsustainable.

34.The judgment is set aside.

35.The appeal is allowed.

36. Pending application/s if any, stands also disposed of.

37.Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)