WP(C) 920/2001
BEFORE
THE HON'BLE MR. JUSTICE I. A. ANSARI

(1) Until 16. 2. 1994, when the petitioner was dismissed from service, the petitioner, in this writ petition, was a Sub-Inspector of Police under the Arunachal Police. The petitioner preferred an appeal against the order of his dismissal from service, but his appeal was turned down. The petitioner has, therefore, approached this Court by way of the present writ application under article 226 of the Constitution of India challenging not only the legality of the order of his dismissal from service, but also the appellate order turning down his appeal. The petitioner has also challenged the legality and fairness of the very disciplinary proceeding drawn against him, which culminated into his dismissal from service.

(2) Briefly stated, the case set up by the petitioner, in his writ petition, is as follows: the petitioner has been serving as a Sub-Inspector of Police under the Arunachal pradesh Police since 17. 2. 1989. The petitioner was placed under suspension vide order, dated 16. 2. 94, issued by the respondent No. 3, with effect from 26. 01. 94, in exercise of powers contained in Rule 10 (1) of the CCS (CCanda) Rules, 1965, on the ground that a departmental proceeding was contemplated against the petitioner. The petitioner was, then, served with Memo No. PHQ/dp-10/94, dated 14. 3. 94, whereby the petitioner was informed that a regular departmental proceeding had been drawn against him and the petitioner was accordingly directed to show cause under Rule 14 of the ccs (CCanda) Rules, 1965, read with section 7 of the Police Act, 1861. According to the article of charges as well as statement of imputation, while posted at Pasighat Police Station, the petitioner, on 11. 12. 93 at about 2400 hrs, forcibly got opened the lock up and severely assaulted the UTP, namely, Bagang Lago, causing serious injuries to him requiring him to be the Assam Medical College hospital, Dibrugarh, for treatment. The petitioner submitted his written statement denying and disputing the correctness/ truthfulness of the accusations made against him, whereupon the respondent no. 3, vide order, dated 14. 3. 94 (Annexure-C to the writ petition), informed the petitioner that Sri N. Gungte, deputy Superintendent of Police, Pasighat, had been appointed as enquiry authority/ officer (hereinafter as \the EO\)to enquire into the charges framed against the petitioner. No presenting officer was, however, appointed to present the case before the EO. Thus, the EO performed the role of both presenting and as well as enquiry officer and, acting more as a prosecutor and without holding any enquiry with fairness and bona fide, the eo submitted his report to the authority concerned, whereupon the petitioner was informed, vide Order No. PHQRDP-10/94, dated 27. 6. 94, issued by the respondent no. 3 that penalty of dismissal from service had been awarded to the petitioner with effect from the date of the said order. This punishment of dismissal from service was passed without furnishing copy of the enquiry report and/or without giving any opportunity of hearing to the petitioner on the question of penalty that was proposed to be imposed on him. The petitioner, who is completely innocent and is the only earning member of his family, preferred an appeal against the said order imposing penalty on him, but by order, dated 29. 9. 94 annexure-I to the writ petition), petitioner's appeal was rejected and the punishment imposed on him was confirmed.

(3) The respondents have contested this ease by filing their affidavit-in-opposition, the case of the respondents being, in short thus: Appointment of the presenting officer was not essential. The enquiry conducted by the EO was in accordance with law. The penalty of dismissal from service was correctly imposed on the petitioner and his appeal was, therefore, turned down. The respondents have prayed for dismissing the writ petition.

(4) I have carefully perused the materials available on record. I have heard Mr P. K. Tiwari, learned counsel for the petitioner, and Mr R. H. Nabam, learned

Addl. Senior government Advocate appearing on behalf of the respondents.

(5) It has been submitted, on behalf of the petitioner, that though appointment of a presenting office may not be essential. The EO has to act while conducting enquiry in a departmental proceeding in the form of a Judge and shall not assume the responsibility of proving the charge on behalf of the disciplinary authority. In the case at hand, however, submits Mr Tiwari, the EO examined witnesses, whose names did not figure in the list of witnesses, which had been furnished to the petitioner, at the time when he was directed to show cause against the article of charge and the statement of imputation. Examination of witnesses outside the said list, submits Mr tiwari, is against the principles of natural justice inasmuch as no prior information in this regard was given to the petitioner and those witnesses were, contends Mr tiwari, examined to plug the loopholes in the proceeding and bring materials against the petitioner by fair means or foul. An instance of this way of conducting the enquiry can be seen from the re-examination of Constable T. Katung; so contends Mr Tiwari. This witness, pointis out Mr Tiwari, when initially examined, on 11. 5. 94, clearly stated to the effect that he knew nothing about the alleged incident of assault on the UTP, but on 20. 5. 94, the said witness was, again, brought before the eo and he made a statement contradicting his earlier statement. Not only that this witness was examined by EO himself, but that the questions put to him shows; contends Mr Tiwari, that the EO had, even before concluding the recording of the statement of this witness, already formed his opinion that his earlier statement, mads on 11. 9. 94, was false. That apart, submits mr Tiwari, the EO, on his own and without any document having been furnished/ exhibited by witnesses, relied upon the documents shown to the petitioner and that too without giving any prior information to the petitioner inasmuch as these documents did not find mention in the list of documents, which had been furnished to the petitioner.

(6) Elaborating his above contentions, points out Mr Tiwari, the impugned order, dated 27. 6. 94, whereby the respondent No, 3 dismissed the petitioner from service, gives absolutely no indication that the respondent No. 3 made any effort to ascertain whether the materials on record were sufficient to hold that the petitioner was guilty of the charge. In fact, this order of dismissal, contends Mr Tiwari, appears to proceed on the presumption that the accused had assaulted the UTP without provocation. This demonstrated, contends mr Tiwari, a pre-judged and predetermined mind, which was a completely wrong approach to the matter by the respondent No. 3.

(7) It is also submitted by Mr Tiwari that without furnishing any copy of the enquiry report, the respondent No. 3 passed the order, dated 27. 6. 94, dismissing the petitioner from service. This act of the respondent No. 3 is, contends Mr Tiwari, wholly against the settled position of law laid down by the Apex Court in Union of india and Anr-Vs-Mohd. Ramzan Khan (AIR 1991 SC 471) and Managing director, ECIL-Vs-S. B. Karunakar (AIR 1994 SC 1074).

(8) Mr Tiwari has further submitted that even while disposing of this appeal vide order, dated 29. 9. 94, respondent No. 2 merely stressed upon the question as to whether the penalty imposed on the petitioner was justified and no indication was given in this order that any endeavour had been made by the respondent No. 2 to ascertain if the enquiry was conducted in accordance with law and principles of natural justice and whether the finding of guilt reached against the petitioner by the eo was sustainable on the basis of materials on record. This shows, contends mr Tiwari, lack of application of mind by the authority concerned, while turning down the appeal of the petitioner.

(9) In any view of the matter, contends mr Tiwari, the conduct of the EO cannot be approved and the whole enquiry proceeding deserves to be set aside. Mr tiwari has further submitted that in no way, order of dismissal, which was passed without furnishing the petitioner with a copy of the enquiry report, can be sustai

ned nor the appellate order turning down the appeal of the petitioner can, in the facts and circumstances of the case, be treated, submits Mr Tiwari valid and justified.

(10) Controverting the above submissions made on behalf of the petitioner, Mr Nabam has submitted that the enquiry conducted was in accordance with law and that the EO did not act like a prosecutor. Mr Nabam has also submitted that non-furnishing of the enquiry report, in the facts and circumstances of the present case, did not cause any prejudice to the petitioner inasmuch as he knew what the witnesses had stated in the inquiry. The order of dismissal of the petitioner and also the order passed on his appeal may, therefore, submits Mr Nabam, be maintained.

(11) Having heard both sides and upon perusal of the materials on record, what attracts my eyes, most prominently, is the fact that the enquiry report was, admittedly, not furnished to the petitioner before the penalty of dismissal from service was imposed on him. In the case of Md. Ramzan Khan (supra), which arose out of 42nd Amendment of Constitution of India, whereby Article 311 (2) of the constitution of India, which provided for giving of opportunity of showing cause against the punishment proposed to be inflicted on a delinquent, was done away with, the Apex Court laid down that giving of the enquiry report to the delinquent is necessary to enable the delinquent to know what conclusions have been arrived at by the EO and whether the conclusions reached are correct. Providing of such an opportunity to the delinquent is, according to the Apex Court, a demand of the principles of natural justice which every such enquiry must adhere to.

(12) I am guided to adopt the above views from the observations made by the apex Court in Md. Ramzan Khan (supra), which read as:

\with the Forty Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the inquiry officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the inquiry officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the inquiry officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authoritv in the matter of reaching his conclusion, rules of natural justice would be affected. ******* ******** ******** deletion of the second opportunity from the scheme of Article 311 (2) the Constitution of india has nothing to do with providing a copy of the report to the delinquent in the matter of making representation. Even though the second stage of the inquiry in Article 311 (2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the inquiry officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report to meet the recommendations of the inquiry officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. We. therefore. , come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. . . . We make it clear that wherever there has been an inquiry officer and he has furnished a report to the disciplinary authoritv at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal of any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled

to make a representation against it if he so desires, and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to change hereafter. \
(emphasis supplied).

(13) In the subsequent case of Managing director, ECIL (supra), the Apex Court had the occasion to consider the judgment of Md. Ramzan Khan's case (supra) and while answering the question whether furnishing of the enquiry report to the petitioner is essential, notwithstanding the 42nd Amendment, the Court drew a distinction, in this regard, between an enquiry, which has been held by the disciplinary authority himself, and the enquiry, which any person other than the disciplinary authority holds. In this case, the Apex Court has clearly laid down that if the disciplinary authority himself is the eo, there is no report and, hence, question of furnishing of a copy of the findings of the disciplinary authority to the delinquent before the penalty is imposed on him does not arise at all, but if the enquiry is held by a person other than the disciplinary authority, then, principles of natural justice require that a copy of the enquiry report along with the EO's recommendations, if any, in the matter of proposed punishment, be supplied to the delinquent in order to let him know the conclusions of the EO so as to enable him to have his say in the matter, if it is not so done, it would make the final order imposing penalty, if any, liable to challenge.

(14) In the case at hand, the impugned order of dismissal from service was passed. , on 27. 6. 94, when the settled position of law was, and has continued to be, that if the enquiry was/is conducted by a person other than the disciplinary authority furnishing of copy of the enquiry report along with recommendations, if any, of the enquiry officer is a condition precedent before final decision is taken by the disciplinary authority holding the delinquent guilty of the charge (s) and/or before the penalty is imposed. In the case at hand, since the enquiry report was not furnished to the petitioner before the penalty of dismissal from service was imposed on him, the impugned order of his dismissal of service passed, on 27. 6. 94, is against the settled position of law, as indicated above, and cannot, therefore, allowed to stand good on record. In this view of the matter, subsequent order, dated 29. 9. 94, aforementioned passed by the respondent No. 2 turning down the appeal of the petitioner becomes ineffective and nonest in law and this appellate order too cannot be allowed to remain good on record.

(15) If the impugned order imposing penalty as well as the appellate order confirming the said penalty are set aside, as it deserves to be done in the instant case, the enquiry report remains, as such, ineffective. Since the petitioner has the opportunity of having his say on the enquiry report, when the said impugned orders stand set aside, he may also submit to the disciplinary authority the reason (s)for which the petitioner considers the conducting of the enquiry by the EO unfair and against the principles of natural justice. If the disciplinary authority does not accede to the grievances of the petitioner, the petitioner will be entitled to express his grievances, in this regard, before the appellate authority. If both the authorities aforementioned do not give the relief (s), which the petitioner considers himself entitled to, he may be at liberty, if he may so justify, to approach this Court for exercising its writ jurisdiction.

(16) Because of the foregoing reasons, I consciously refrain from expressing any views/opinion on the fairness or otherwise of the enquiry conducted by the EO.

(17) In the result and for the reasons discussed above, this writ petition partly succeeds. The impugned orders, dated 27. 6. 94 and 29. 9. 94, aforementioned shall accordingly stands set aside and the respondents are directed to furnish to the petitioner the enquiry report of the EO with his recommendations, if any, and the petitioner shall, upon being so furnished with the materials aforementioned, be igiven adequate time and opportunity to [have his say in the matter bef

ore the [findings of the EO are accepted and/or acted upon and/or any penalty is imposed on the petitioner by the disciplinary authority concerned.

(18) With the above observations and directions, this writ petition is disposed of.

(19) No order as to costs.