

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

W.P. (C) NO.(SH) 171/2013

1. Union of India,
Represented by the Secretary, to the
Govt. of India, Ministry of Defence,
South Block, New Delhi-110001.
2. The General Officer Commanding,
H.Q. 101 Area, C/o 99 APO,
Pin-908101.
3. Administrative Commandant,
Station Cell,
H.Q. 101 Area,
C/o 99 APO,
Pin-908101.

:::: Petitioners

-Vs-

Shri. Shekhar Nath,
C/o Archana Das,
Lower Lumparing,
Juster Compound,
Beat House, Laban,
Shillong-4, Meghalaya.

:::: Respondent

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH
THE HON'BLE MR. JUSTICE S.R. SEN**

For the Review Petitioners	:	Mr. R Deb Nath, CGC
For the Respondent	:	None appears
Date of hearing	:	24.06.2013
Date of Judgment & Order	:	24.06.2013

JUDGMENT AND ORDER(ORAL)

(T. Nandakumar Singh, J)

Heard Mr. R Deb Nath, learned counsel appearing for the petitioners who were the respondents in Original Application No.273/2011 filed by the present respondent before the Central Administrative Tribunal Guwahati Bench, Guwahati.

2. By this writ petition, the petitioners are questioning the legality or otherwise of the judgment and order dated 06.12.2012 passed by the Central Administrative Tribunal Guwahati Bench, Guwahati, allowing the said Original Application No.273/2011. In that original application, the present respondents prayed for quashing (i) the impugned Memorandum of charges dated 16.02.2007; (ii) the impugned enquiry report dated nil; (iii) the impugned penalty order dated 30.06.2007; and (iv) the impugned appellate order dated 09.07.2011. The impugned Memorandum of charges dated 16.02.2007, reads as follows:-

"ARTICLE I

That the said Shri. Sekhar Nath, Conservancy Safaiwala of Station Cell HQ 101 Area, a Govt. servant in terms of Rule 2(b) of CCS (Conduct) Rules, 1964, while functioning as Conservancy Safaiwala during the period from 11 Nov 1997 to Jan 2007.

ARTICLE II

That during the period from Nov 97 to Jan 2007, while functioning in the office of Station Cell HQ 101 Area, the said Shri. Shekar Nath, Conservancy Safaiwala committed misconduct that is an act which is unbecoming of a Government servant in contravention of rule 3(1) (iii) of CCS (Conduct) Rules, 1964."

Order of the appellate authority dated 09.07.2011 also reads as follows:-

**“DIRECTIONS OF GOC 101 AREA ON THE
PETITION SUBMITTED BY SHRI. SEKHAR NATH
AGAINST PENALTY ORDER DATED
30 JUNE, 2007.**

1. *In concur with the recommendation of Station Commander.*
2. *I have perused the petition submitted by Shri. Sekhar Nath and find it devoid of any merit.*
3. *I direct that the petition be dismissed.*

Station: C/o 99 APO
Dated: 09 Jul 11

Sd/- illegible
(VK Narula)
Lt. Gen. GOC,
101 Area.”

3. We have given our anxious consideration to the statement of articles of charges i.e. Memorandum of charges dated 16.02.2007, the relevant portions of which were quoted above; and on such perusal, we are of the considered view that the said articles of charges are very vague, inasmuch as, no materials have been mentioned as to the misconduct alleged to have been committed by the respondent/writ petitioner. In the absence of materials, particularly, the articles of charges, much prejudice shall cause to the delinquent in the departmental enquiry, inasmuch as, the delinquent will not be able to put up his defence. It is a settled law that in the case of vague articles of charges, the delinquent will be very much prejudiced in the departmental enquiry.

4. The learned Tribunal vide impugned order dated 06.12.2012, in a clear term, held that the said articles of charges against the respondent/writ petitioner are very vague. For coming to that finding, the learned Tribunal also placed reliance on the decisions of the Apex Court in ***M.V. Bijlani vs. Union of India & Others: (2006) 5 SCC 88*** and ***Govt. of A.P. & Others vs. A. Venkata Raidu: (2007) 1 SCC 338***.

5. Over and above, the order of the appellate authority dated 09.07.2011 is a cryptic one. It is a settled law that the validity or otherwise of the order is to be decided on the basis of the reasons mentioned in the order itself; and the cryptic order cannot be validated in the course of judicial proceedings questioning the cryptic order by allowing the reasons and materials on the basis of which the cryptic order had been passed by way of affidavit or otherwise. It is also a settled law that the reason is the heartbeat of the order.

6. In the above factual backdrop, we are unable to persuade ourselves to interfere with the judgment and order of the Tribunal dated 06.12.2012 for allowing the Original Application No.273/2011 and thereby quashing (i) the impugned Memorandum of charges dated 16.02.2007; (ii) the impugned enquiry report dated nil; (iii) the impugned penalty order dated 30.06.2007; and (iv) the impugned appellate order dated 09.07.2011.

7. Accordingly, this writ petition is devoid of merit and is hereby dismissed.

JUDGE

JUDGE

LAM