



**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Extraordinary Jurisdiction)

**S.B. : HON'BLE MR. JUSTICE S. P. WANGDI , JUDGE**

**WP(C) No.26 of 2013**

**Petitioner** : Shri Gopal Pathak,  
S/o Krishna Lall Pathak,  
R/o Rhenock, Reshi,  
East Sikkim.

versus

- Respondents** :
- 1. The State of Sikkim  
through the Chief Secretary,  
Government of Sikkim,  
Gangtok.
  - 2. The Director General of Police,  
Sikkim Police,  
Police Headquarters,  
Government of Sikkim, Gangtok.
  - 3. Shri Akshay Sachdeva, IPS  
IGP/Law & Order  
(Appellate Authority),  
Sikkim Police, Police Headquarters,  
Government of Sikkim, Gangtok.
  - 4. Shri Ram Niwas Yadav, IPS  
Superintendent of Police  
(Disciplinary Authority),  
Sikkim Police,  
Government of Sikkim,  
North Sikkim at Mangan.
  - 5. Smt. Paru Ruchal,  
Deputy Superintendent of Police  
(Enquiry Officer),  
Sikkim Police,  
Government of Sikkim.



## Application under Articles 226 and 227 of the Constitution of India

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### Appearance

Mr. B. Sharma, Senior Advocate with Mr. Bhola Nath Sharma and Mr. R. P. Sharma, Advocates for the Petitioner.

Mr. J. B. Pradhan, Additional Advocate General with Mr. Karma Thinlay, Senior Government Advocate with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for the State-Respondents.

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## **J U D G M E N T**

(4<sup>th</sup> December, 2014)

### **Wangdi, J.**

**1(i).** The Petitioner was a Lance Naik 982179 in the Sikkim Police Force and posted at Phodong Police Station, North Sikkim. He had joined the Police Force in the year 1998. A disciplinary proceeding was commenced against him under Rule 7 of the Sikkim Police Force (Discipline and Appeal) Rules, 1989 for violation of Rule 10(a) of the Sikkim Government Servants' Conduct Rules, 1981 and for conduct unbecoming of a member of a Police Force as defined

under Rule 4(a) of the Sikkim Police Force (Recruitment, Promotion and Seniority) Rules, 2000 read with Section 125(g) of the Sikkim Police Act, 2008 and the Sikkim Police Force (Discipline & Appeal) Rules, 1989.

**(ii)** As per the Articles of Charge handed over to him vide Memorandum No.930/SSP/North dated 17-04-2013, the Petitioner was alleged to have recited derogatory and defamatory poems in Nepali language publicly criticising policies of the Government of Sikkim.

**(iii)** Upon consideration of the materials on record and the report submitted by the Inquiry Authority, he was found guilty of the charges and, as a deterrent measure, the Disciplinary Authority ordered for his removal from service with immediate effect from the date of the order.

**2.** The Appeal filed by the Petitioner under Rule 11 of the Sikkim Police Force (Discipline & Appeal) Rules, 1989 was also dismissed by Office Order No.09/IGP/L&O dated 30-01-2014 passed by the Appellate Authority. By filing the present Writ Petition, the

Petitioner has sought for mandamus quashing the entire disciplinary proceedings commencing from 17-04-2013 that culminated in the impugned order of the Appellate Authority dated 30-01-2014 and for a direction to treat the Petitioner to be in service.

**3(i).** Although in the Writ Petition, a number of grounds have been raised to assail the proceedings but, during the course of the arguments, Mr. B. Sharma, Learned Senior Advocate, appearing on behalf of the Petitioner, chose to confine himself to the following: -

- (a) Before the impugned order of the Disciplinary Authority dated 28-06-2013, Annexure P17, was passed, the Petitioner was not supplied with a copy of the enquiry report upon which it was based thereby vitiating the entire proceedings;
- (b) The Petitioner was denied opportunity to cross-examine the witnesses produced on behalf of the Governments including Dr. Mandeep Singh Tuli, DIGP/Range, who had forwarded a CD to the Senior Superintendent of Police, North District, Mangon, who was the Disciplinary Authority. The CD which formed one of the basis of the findings of the Inquiry Authority, was itself not proved;

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- (c) The admission of his being guilty of the charges in his reply to Memorandum bearing No.1470/SP/North dated 18-06-2013 was made under coercion. The Petitioner was not provided with the assistance of any other Police Officers to present the case on his behalf as provided under Rule 8 of the Sikkim Police Force (Discipline & Appeal) Rules, 1989;
- (d) The evidence of the witnesses clearly reflected that the Petitioner was not present in the questioned indoor political meeting;
- (e) The punishment imposed upon the Petitioner was grossly disproportionate to the offences charged against him.

**(ii)** It was then submitted that the Appellate Authority while passing the impugned order dated 30-01-2014, Annexure P30, failed to take into account that the objections referred to above had been squarely taken before him, but were not considered rendering the finding liable to be quashed and set aside.

**(iii)** Relying upon the Constitutional Bench decision in ***Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and Others : (1993) 4 SCC***

727, it was submitted that the Petitioner having not been supplied with a copy of the enquiry report, grave prejudice has been caused to him rendering the entire proceeding violative of Articles 14 and 16 of the Constitution of India as well as the principles of natural justice and, therefore, liable to be quashed and set aside.

4. Mr. J. B. Pradhan, Learned Advocate General, would submit that there was no error or irregularity or non-compliance of the procedure on the part of the Inquiry Authority and the Disciplinary Authority while arriving at the impugned decision. The Petitioner having unequivocally admitted to the offending charges, the issues raised in assailing the proceeding were irrelevant and of no consequence. Relying upon ***Union of India & Others* vs. *Bishamber Das Dogra* : (2009) 13 SCC 102**, it was submitted that even otherwise non-supply of copy of the enquiry report to a delinquent did not *ipso facto* made the proceedings illegal. It was only if serious prejudice was caused by such omission would the disciplinary proceedings be vitiated and that also from the stage when the

Petitioner was denied with a copy of the enquiry report. On the question of not having been given an opportunity of being represented by an Officer to present his case as raised by the Petitioner, it was submitted that under Rule 8 of the Sikkim Police Force (Discipline & Appeal) Rules, 1989, an option was available to the delinquent to take the assistance of any officer of choice. The Petitioner obviously chose not to take the option even when he was fully aware of such right. It was submitted that the Petitioner had been provided with sufficient opportunity to cross-examine the witnesses and that any extent of cross-examination would not wipe away the categorical admission made by him. Referring to ***Manoj H. Mishra* vs. *Union of India and Others* : (2013) 6 SCC 313**, it was urged that the Petitioner in any case could not have resiled from an admission of guilt at a later stage.

**5(i).** I have heard the Learned Counsel for the parties and have given my anxious consideration to the entire facts and circumstances of the case. Considering the peculiar facts where there are written admissions by the Petitioner at three stages of the disciplinary

proceedings, i.e., first in the written statement, second in reply to Memorandum dated 17-04-2013 submitted to the Inquiry Authority and third, in reply to the Memorandum dated 18-06-2013 issued by the Disciplinary Authority, questioning the validity of the disciplinary proceedings for non-supply of copy of enquiry report to him, denial of opportunity to cross-examine witnesses and the prejudice caused to him thereby appear to be an afterthought. These questions may have called for serious consideration had the Petitioner been assailing the disciplinary proceedings right from its inception.

*(ii)* For the sake of convenience, we may reproduce below the relevant portions of the reply dated 01-05-2013, Annexure R-11, to Memorandum No.930/SSP/North dated 17-04-2013 and reply dated 21-06-2013, Annexure R-19, to Memorandum No.1470/SP/North dated 18-06-2013: -

**Reply dated 01-05-2013**

".....

That in respect to the allegations made against me in the memorandum I humbly



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submit that I have submitted my written statement to the effect, wherein I have brought to your good office knowledge that it was not done with any malafide intentions but it is humbly prayed that the recitation of my poem highlighting the policies of the State government were not knowingly done with an intention to malign and to criticize the Government of the day but it was just a pure poems recited on the mentioned date i.e 2<sup>nd</sup>/12/2012 at around 3.30 pm. I was going towards Rongli bazaar to meet my relatives on the way near petrol pump lower Dalapchand , I saw gathering at the house of Jeetu Tamang who is known to me, seeing gathering my friends and jeetu Tamang called me there to join them. Without having the knowledge that there was indoor meeting of political party during day time, I joined. There I was encouraged by my friend and villagers to recited poem.

It is humbly submitted that my pure intention was of a recitation of a poem according to the request and pursuance of my friends, and not to criticize the government in any way whatsoever.

Furthermore I humbly submit that due to my ignorance and my little understanding of the Rules of Government Servant's, where in I should not have spoken on such issues henceforth I assure your good office that I shall in no circumstances shall repeat those unwanted recitation in public or in any competition/contest, I humbly request your good office that my suspension from my regular duty may be revoked and I may be allow to join my regular duty.

....."

Reply dated 21-06-2013

" .....

That in respect to the allegations made against me in the memorandum I humbly submit that I have submitted my written statement to the

effect, wherein I have brought to your good office knowledge that it was not done with any malafide intention but it is humbly prayed that the recitation of my poem highlighting the policies of the State government were not knowingly done with an intention to malign and to criticize the Government of the day but it was just a pure poems recited during the elocutions/debate contest where in I was asked to speak against the policies to the government.

It is humbly submitted that my pure intention was of a recitation of a poem according to the contest, and not to criticize the government in any way whatsoever.

Furthermore I humbly submit that I may be given an opportunity as it was not an intentional but it was just an act done due to my ignorance and my little understanding on the Rules of Government Servant's , where in I should not have participated in such elocution contest having tropics on such issues henceforth I assure your good office that I shall in no circumstances shall repeat those unwanted recitation in public or in any competition/contest, I humbly request your good office that my suspension from my regular duty may be revoked and I may be allow to join my regular duty.

....."

*(iii)* On a bare perusal of the replies extracted above, it is apparent that while admitting that he had made the derogatory statements in the form of poems, the Petitioner has, however, qualified it by stating that he did so on being exhorted by his friends without intention to criticise the policies of the Government and further, that he was ignorant of the rules which

prohibited Government servants from indulging in such activities. Essentially, therefore, commission of the action that was charged against him stands admitted by him.

(iv) It is pertinent to note that after the matter was finally heard and judgment reserved on 11-11-2014, this Court while examining the records did not find any material substantiating the fact that the copy of the enquiry report had been handed over to the Petitioner before the decision of the Disciplinary Authority was passed. There was also no material to confirm as to whether the Petitioner had or had not been granted opportunity to cross-examine the witnesses produced by the Department including DIG (Range), Sikkim Police, who had forwarded the CD pertaining to the charge against the Petitioner. As these were felt essential for an effective adjudication, the case was again listed on 14-11-2014 to consider these aspects directing the Respondents also to produce the entire records of the disciplinary proceedings before the Inquiry Authority, the Disciplinary Authority and the Appellate Authority.

(v) In compliance to this order on 14-11-2014, records were produced by the Learned Senior Government Advocate in a sealed cover and the parties were heard again on 24-11-2014 on the limited aspects indicated above.

(vi) During the hearing, no new material of substance were put forth on behalf of the Petitioner except reiterating what had already been placed by him and to re-emphasise his contention that the enquiry report had not been supplied to him and that he had been denied the opportunity of cross-examining the witnesses.

(vii) I have perused the entire records pertaining to the disciplinary proceedings. Contrary to what was submitted on behalf of the Petitioner, I find that the Enquiry Officer has recorded each day's proceedings. It is also abundantly clear that the Petitioner had been given the opportunity to cross-examine the witnesses which he had declined.

(viii) The records reveal that with the Articles of Charge framed against the Petitioner contained in

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Annexure I and the Statement of Imputation of Misconduct or Misbehaviour in support of the Articles of Charge contained in Annexure II, the Petitioner had been supplied with the copies of the entire materials including the questioned video compact disk along with the list of witnesses, the receipt of which has been found to have been acknowledged by him in writing. Having received those materials before the commencement of the examination of the witnesses, it was open for the Petitioner to have cross-examined the witnesses and questioned the validity of the genuineness of the video compact disk. However, the records of the proceedings before the Inquiry Authority clearly reveal that he had chosen not to take the opportunity. One gets a clear impression that the Petitioner opted out of taking such opportunity in view of his admissions made in his two replies referred to earlier.

**(ix)** Thus no procedural illegality appears to have been committed by the Respondents except that the Petitioner had not been given a copy of the enquiry report. The question that would then seriously arise is



as to whether or not any prejudice had been caused to the Petitioner for such omission.

(x) In *ECIL (supra)* it has no doubt been laid down that *“a denial of the enquiry officer’s report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice”*. But, the Constitution Bench does not stop there. While answering incidental questions raised in the case, it has, *inter alia*, been held as under: -

“30. Hence the incidental questions raised above may be answered as follows: -

- [i] .....
- [ii] .....
- [iii] .....
- [iv] .....

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have

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made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

**31.** Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals

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which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. ....."

[underlining mine]

(xi) In ***Bishamber Das Dogra (supra)*** cited on behalf of the Respondent, the Hon'ble Supreme Court has relied upon the above ratio and on a large number of its earlier decisions. In paragraph 20, reference has also been made to ***Aligarh Muslim University vs. Mansoor Ali Khan : (2000) 7 SCC 529*** and ***S. L. Kapoor vs. Jagmohan : (1980) 4 SCC 371*** in holding that —

"20. .... in a peculiar circumstance observance of the principles of natural justice may merely be an empty formality as if no other conclusion may be possible on admitted or indisputable facts. In such a fact situation, the order does not require to be quashed if passed in violation of natural justice. The Court came to the conclusion that a person complaining non-observance of the principles of natural justice must satisfy that some *real prejudice* has been caused to him for the reason that there is no such thing as a merely technical infringement of natural justice."

It was then concluded as under: -





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“21. Thus, in view of the above, we are of the considered opinion that in case the enquiry report had not been made available to the delinquent employee it would not ipso facto vitiate the disciplinary proceedings as it would depend upon the facts and circumstances of the case and the delinquent employee has to establish that real prejudice has been caused to him by not furnishing the enquiry report to him.”

(xii) When we consider the case at hand on the anvil of the above ratio and ask the question as to whether any prejudice has been caused to the Petitioner, the answer would certainly be in the negative having regard to the fact that the Petitioner has not denied the charges against him. Even the Petitioner's plea that he was not aware of the Sikkim Government Service Rules that debarred Government servants from indulging in the activities charged against him, appears to be quite lame and an afterthought as we find from the order of the Appellate Authority that during the training period, all police personnel are imparted training regarding various departmental rules and procedures and are regularly sensitised on those. Apart from this, it is in the uncontroverted evidence of SHO, Phodong Police Station, that all staff of Police Station are regularly

briefed during the roll call about the roles and responsibilities as a Police Officer citing various laws that forbade Police Officers from indulging in the kind of activities charged against the Petitioner.

(xiii) As held in the case of ***Aligarh Muslim University (supra)***, in the facts and circumstances of the present case, observance of the principles of natural justice would merely be an empty formality as no other conclusion may be possible on the admitted and undisputable facts. No real prejudice has been shown to have been caused to the Petitioner for the reason of satisfying a mere technical infringement of natural justice.

6. Under these circumstances, delving into the other questions, raised by the Petitioner, in my view, would be otiose and purely academic and, therefore, unnecessary. For these reasons, I find no merit in the Writ Petition.

7. However, before parting, it is observed that the offence charged against the Petitioner appears to be the only one committed by him during his career of

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about 15 years. Having regard to the fact that the Petitioner has pleaded for pardon and that he has a family to take care of and further, that he is dependent on the salary for the sustenance of his family and himself, the State-Respondents may like to review the Petitioner's case on humanitarian consideration and convert the punishment to a less stringent one.

**8.** With the above observation, the Writ Petition stands dismissed.

**9.** The records produced on behalf of the Respondents on 24-11-2014 be returned to the Learned Senior Government Advocate.

**10.** No order as to costs.

( S. P. Wangdi )  
Judge

04-12-2014

Approved for reporting : Yes

Internet : Yes