THE HIGH COURT OF MEGHALAYA

WP(C)No.193/2014

Shri. Bharat Singh,
S/o Late Basudev Singh,
R/o Staff Quarters,
Shillong District Jail,
Shillong, East Khasi Hills District,
Meghalaya. **::::** Petitioner

-**Vs-**

1. The State of Meghalaya, through the
Commissioner & Secretary to the Govt. of Meghalaya,
Home (Jails) Department, Shillong.

2. The Director General of Prisons,
Shillong, Meghalaya

3. The Additional Director General of Prisons,
Shillong, Meghalaya.

4. The Superintendent District Jail,
Shillong, Meghalaya.

5. Shri. A.C. Baruah,
Superintendent cum the Enquiry Officer,
District Jail, Jowai, Jaintia Hills Meghalaya. **::::** Respondents

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner : Mr. K Paul, Adv

For the Respondents : Mr. S Sen Gupta, GA

Date of hearing : ***27.10.2014***

Date of Judgment & Order : ***27.10.2014***

JUDGMENT AND ORDER(ORAL)

Heard Mr. K Paul, learned counsel for the petitioner and Mr. S Sen Gupta, learned GA appearing for the respondents.

2. By this writ petition, the petitioner is assailing the impugned order dated 07.11.2013 passed by the Director General of Prisons,

Meghalaya, Shillong for imposing major penalty of removal from service to the petitioner. In the impugned order itself, it is stated that the Assam Services (Discipline and Appeal) Rules, 1964 (for short 'the Rules of 1964') was adopted by the Govt. of Meghalaya and also the procedures prescribed under Rule 9 of the Rules of 1964 for imposing major penalty to the writ petitioner had been followed. As the present writ petition is filed challenging the dismissal order dated 07.11.2013 solely on the ground that the procedures prescribed for imposing major penalty under Rule 9 of the Rules of 1964, had not been followed in the disciplinary proceedings against the petitioner, this Court by an order dated 13.10.2014, had granted two weeks' time to the learned GA to keep the record available (record for departmental proceedings) for perusal by this Court at the time of hearing, if so required. Accordingly, Mr. S Sen Gupta, learned GA appearing for the respondents placed before this Court the proceedings of the departmental enquiry against the petitioner. Before entering into the controversy between the parties as to the compliance of the procedures prescribed under Rule 9 of the Rules of 1964, brief fact leading to the filing of the present writ petition is noted.

3. The petitioner was serving as Warder and sometime in the year 2009, the petitioner was posted in B-Class ward in the Shillong District Jail. On 31.05.2009, there was a jail break leading to escaping of 7 Under Trial Prisoners (for short 'UTPs'). The petitioner is not denying the said incident of jail break but what is pleaded in the present writ petition is that the petitioner, while trying to prevent the escape of the UTPs, was assaulted with a heavy metallic object by one of the escapees, and as a result, he had serious head injuries and thereafter, the petitioner fell unconscious and was treated in Civil Hospital, Shillong. For that jail break incident, the petitioner was placed under suspension vide order of the Additional Director of Prisons, Meghalaya dated 01.06.2009 with immediate effect pending disposal of the disciplinary

proceedings on account of the escape of 7 UTPs from Shillong District Jail on 31.05.2009. By an order dated 03.01.2011, one Shri. A.C. Baruah, District Jail, Jowai had been appointed as enquiry officer against the petitioner for the said incident, and the petitioner had been informed for appointment of the enquiry officer only on 03.01.2011. It is also stated in the writ petition that after the appointment of Shri. A.C. Baruah as enquiry officer for the disciplinary proceedings against the petitioner vide order dated 03.01.2011, the disciplinary proceedings was started only on 10.01.2011. As this writ petition is filed heavily relying on Rule 9 of the Rules of 1964, it would be more convenient to reproduce Rule 9 of the Rules of 1964 as follows:-

> *"**9**. **Procedure for imposing penalties.** (1) Without prejudice to the provisions of the Public Servant (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in rule 7 shall be passed except after an inquiry, held as far as may be in the manner hereinafter provided.*
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> *(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in person.*
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> *["At the time of delivering the charges, the Disciplinary Authority shall invariably furnish to the Government servant a list of documents and witnesses by which each article of charges is proposed to be sustained"].*
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> ***Explanation** - In this sub-rule and sub-rule (3), the expression "the Disciplinary Authority" shall include the authority competent under these rules to impose upon the Government servant any of the penalties specified in rule 7.*
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> *(3) The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify that such permission may be refused if for reasons to be recorded in writing, in the opinion of the Disciplinary Authority such records are not relevant for the purpose or its against the public interest to allow him access thereto;*
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> *Provided that when a Government servant is permitted to inspect and take extracts from official records due case shall be taken against tempering removal or destruction of records.*

(4) On received of the written statement of defence, or if no such statement is received within the time specified, the Disciplinary Authority may itself inquire into such of the charge as are not admitted or, if it considers it necessary so to do, appoint for the purpose a Board of inquiry or an Inquiring Officer.

(5) The Disciplinary Authority may nominate any person to present the case in support of the charges before the Authority inquiring into the charges (hereinafter referred to as the inquiring authority). The Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regards to the circumstances of the case so permits.

(6) The enquiring Authority shall, in the course of the enquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regards to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person and to adduce documentary and oral evidence in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examine in his defence. If the Inquiring Authority declines to examine any witness or to admit any document in evidence on the ground that his evidence or such document is not relevant or material it shall record its reasons in writing.

(7) At the conclusion of the inquiry, the inquiring Authority shall prepare a report of the enquiry, recording its findings on each of the charges together with reasons therefor.

*[**Explanations**: - If in the opinion of the Enquiring Authority the proceedings of the enquiry establish any article of charge different from the original article of the charge it may record it findings on such article of charge:*

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has a reasonable opportunity of defending himself against such article of charge].

(8) The record of the inquiry shall include –

> *(i) the charges framed against the Government servant and the statement of allegations furnished to him under sub-rule (2);*
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> *(ii) his written statement of defence, if any;*
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> *(iii) the oral evidence taken in the course of the enquiry;*
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> *(iv) the documentary evidence considered in the course of the inquiry;*

(v) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and

(vi) a report setting out the finding on each charge and the reasons therefor,

(9) The Disciplinary Authority shall, if it is not the Inquiring Authority; consider the record of the inquiry and record its finding on each charge.

(10) ***Major Penalties -*** *If the Disciplinary Authority having regard to its findings on the charges and on the basis of evidence adduced during the inquiry, is of the opinion that any of the penalties specified in Clauses (iv) to (vii) of rule 7 should be imposed on the Government servant it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:*

Provided that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing and such penalty on the Government servant.

(11) ***Minor Penalties*** *- If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that if any of the penalties specified in clauses (i) to (iii) of Rule 7 should be imposed, it shall, pass appropriate orders and in every case in which it is necessary to consult the Commission, shall do so, after consulting the Commission.*

(12) (a) Notwithstanding anything contained in this rule, it shall not be necessary to follow the procedure laid down in the proceeding sub-rules in cases where it appears to the authority competent to impose the penalty at the initial stage of the proceedings that the penalty of censure would be adequate, but if at any later stage it is proposed to impose any other penalty specified in Rule. 7 the procedure laid down in the said rules shall be followed

(b) No order imposing the penalty of censure shall however be passed, except after –

(i) the Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make; and

(ii) such representation, if any is taken into consideration by the Disciplinary Authority."

4. Mr. S Sen Gupta, learned GA appearing for the State respondents is not disputing that under Rule 9 (6), the enquiry authority shall, in the course of enquiry consider such documentary evidence and take such

oral evidence as may be relevant or material in regard to the charges and the Govt. servant shall be entitled to cross-examine witnesses examined in support of the charges and to adduce documentary and oral evidence in his defence. In the writ petition, the petitioner had categorically stated that no witness i.e. prosecution witness was examined in presence of the petitioner in support of his charge as provided under Rule 9 of the Rules of 1964, and no opportunity to cross-examine the prosecution witness was available. Mr. K Paul, learned counsel for the petitioner further contended that no prosecution witness was examined in the disciplinary enquiry against the petitioner.

5. Without holding any proper enquiry as provided under Rule 9 of Rules of 1964, the respondents surprisingly issued the impugned order dated 07.11.2013 for imposing major penalty of removal from service to the petitioner. Soon after the receipt of the impugned order dated 07.11.2013, the petitioner also filed an application to the disciplinary authority for furnishing copies of the statements of the prosecution witnesses alleged to have been examined in the disciplinary proceedings against the petitioner. The disciplinary authority had furnished copies of the statements of prosecution witnesses said to have been examined in the departmental enquiry against the petitioner and on perusal of the statements of the prosecution witnesses, it is crystal clear that those statements of the prosecution witnesses were not statements examined in the course of departmental enquiry inasmuch as, departmental or enquiry against the petitioner is admittedly started on 10.01.2011. Copies of the statements of the prosecution witnesses furnished to the petitioner are statements of the prosecution witnesses recorded on 31.05.2009. It is reiterated that the disciplinary enquiry against the petitioner was admittedly started on 10.01.2011. Paras 12 & 13 of the writ petition are quoted hereunder:-

"*12. That the petitioner states that thereafter the respondents in reply vide letter dated 24.3.2014 issued the copies of the deposition of witnesses who were examined in the alleged departmental proceeding No.5/2013. However on perusal of the depositions issued by the respondents, it transpired that the furnished statements were the preliminary statements of the witnesses recorded on the date of incident i.e. 31.05.2009 and that no evidence whatsoever was led in the departmental proceeding to establish the charges against the petitioner thus reasonably inferring that no departmental proceeding by the enquiry officer was ever conducted and the alleged departmental proceeding No.5/2013 was a mere sham and an eye wash only to make the petitioner a scapegoat in the entire episode.*

13. That the petitioner submits that from the copies supplied to the petitioner on request, it appears that the alleged departmental proceeding has not been conducted at the first place and enquiry report so submitted only displays the arbitrariness with which the petitioner has been dismissed from service without adhering to the mandatory procedural norms so laid down under the law. Having dismissed the petitioner from service without giving any opportunity and against the principle of 'Audi alterem partem', the respondent authority has erred in law thus acting against the principle of natural justice and equity. As such the impugned order dated 07.11.2013 being illegal, arbitrary and against the principle of natural justice is liable to be quashed and set aside."

6. The respondents had filed affidavit-in-opposition dated 09.09.2014 in the present writ petition and in that affidavit-in-opposition, the respondents are not categorically denying the pleadings of the writ petitioner in the said paras i.e. 12 & 13, that no evidence i.e. the statements of the prosecution witnesses were recorded in the departmental enquiry. As stated above, the file containing the proceedings of the departmental enquiry against the petitioner is available before this Court. On perusal of such disciplinary proceedings, it is crystal clear that no prosecution witnesses were examined in the course of departmental enquiry against the petitioner and the copies of prosecution witnesses furnished to the petitioner are the statements of prosecution witnesses which might have been recorded in the preliminary enquiry i.e. before the departmental enquiry.

7. For the foregoing reasons, this Court is of the considered view that the procedures prescribed for imposing major penalty under Rule 9 of the Rules of 1964 had not been followed in the said departmental enquiry. As a result, the impugned order dated 07.11.2013 basing on the said enquiry report is liable to be interfered with. Accordingly, the impugned order dated 07.11.2013 is hereby set aside and quashed. As the impugned order dated 07.11.2013 is interfered with only on technical ground or technical loopholes in the departmental enquiry against the petitioner, this Court is of the considered view that one more chance should be available to the disciplinary authority to conduct the departmental enquiry a fresh in strict compliance with the procedures prescribed under Rule 9 of the Rules of 1964 from the stage of examination of the prosecution witnesses. The departmental enquiry cannot be proceeded against the dismissed person.

8. In the result, the petitioner should be reinstated in service within a month from the date of receipt of this judgment and order and it is made clear that if the departmental enquiry is to be initiated a fresh in the manner indicated in the above paras, the enquiry should be completed within a period of three months from the date of initiation of the departmental enquiry. The petitioner should also be entitled to receive arrear pay for the period from 01.06.2009 till the date of reinstatement. The amount of arrear pay should be decided by the respondents and the amount so decided, shall be paid to the petitioner within 45 days from the date of reinstatement.

9. Writ petition is allowed.

JUDGE

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