THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 25th JULY, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.65 of 2015

Petitioner :

Tashi Chopel Bhutia,
S/o Shri Tshering Bhutia,
R/o Lamaten Busty,
East Sikkim.

versus

Respondents :

1. The State of Sikkim
through the Director General of Police,
Police Headquarters,
Gangtok.

2. The DIG (Range)
Appellate Authority,
Police Headquarters,
Gangtok.

3. The Superintendent of Police,
East District,
Gangtok.

4. Shri Manoj Tiwari, IPS
Police Headquarters,
Gangtok.

5. Mrs. Linda Palmo, SPS
Enquiry Officer
(the then SDPO, Rangpo),
Police Headquarters,
Gangtok.

6. Shri S. R. Shengha, SPS
the then SHO, Sadar Police Station,
Police Headquarters,
Gangtok.

Petition under Article 226 of the Constitution of India

Appearance

Mr. Jorgay Namka, Advocate with Mr. Tempo Gyatso Bhutia and Ms. Panila Theengh, Advocates for the Petitioner.

Petitioner in person.

Mr. J. B. Pradhan, Additional Advocate General, Mr. Karma Thinlay Namgyal, Senior Government Advocate with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for State-Respondents No.1 to 3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Aggrieved by the impugned Memoranda bearing No. 849/SP/E dated 10-09-2013 and No.1045/SP/E dated 08-11-2013 and impugned Office Orders (hereinafter "O.O.") No.1175/SP/EAST dated 16-12-2013 and No.155/POL/RANGE/2014/235, dated 26-05-2014 and Findings of the Respondent No.5 in her Enquiry Report dated NIL, the Petitioner by filing the instant Writ Petition, prays for quashing of all of the above and for issuance of writ/order or direction to quash all subsequent amendments to the Sikkim Police Force (Discipline and Appeal) Rules, 1989 (for short "the Rules"), to initiate a Judicial Enquiry against the Respondents No.4 and 6, and other reliefs.

2. The Petitioner was selected and appointed on merit to the post of Sub-Inspector in the Sikkim Police, vide O.O. dated 06-07-2004 issued by the Respondent No.1 and posted in various Police

Stations in Sikkim. During such postings on account of his commendable work, he was rewarded with Cash and Appreciation Letters. While the Petitioner was posted at Namchi, South Sikkim, the Respondent No.4 was posted as the Superintendent of Police (SP), South District, Shri Mordent Thapa as the SDPO South, Respondent No.6 as Station House Officer, Jorethang Police Station, South Sikkim. Due to acrimony with the Respondent No.4 during the course of official works, the Petitioner sought for and was granted a transfer to Gangtok, East Sikkim, shortly thereafter Respondent No.4 was also transferred and posted as S.P. East, Mordent Thapa was transferred and posted as SDPO, East and the Respondent No.6 as the SHO, Sadar Police Station, the Respondent No.5 was the SDPO, Rangpo. Thus, the Respondents No.5, 6 and SDPO Mordent Thapa were working directly under the Respondent No.4 in the East District at the relevant time. The case of the Petitioner arises on account of Memoranda bearing Memo No.849/SP/E dated 10-09-2013 (Annexure P7) and Ref. No.1045/SP/E dated 08-11-2013 (Annexure P28) served against him by Respondent No.4, the First Memo based on a Complaint of one Shunu Thendup Bhutia, and the second on two e-mails received from one Indra Kumar Yonzon. Vide Memo No.846/SP/E dated 10-09-2013 (Annexure R1) the Petitioner was placed under suspension with immediate effect until further orders. The Articles of Charge mentioned in both the Memoranda respectively are reproduced hereinbelow;

Memo No.849/SP/E dated 10-09-2013

Article – I

SI Tashi Chopel Bhutia was not on bonafide duty on 30/08/13 as there is no relevant record in general diary of Sadar P.S. relating to his departure to Star Hotel, Gangtok.

Article – II

SI Tashi Chopel Bhutia have not brought any information related to the matter involving Shri Shunu Thendup Bhutia to the notice of SHO/Sadar P.S. and the Superior Officers.

Article – III

SI Tashi Chopel Bhutia has made no record in general diary of Sadar P.S. about any matter relating to Shri Shunu Thendup Bhutia reportedly occurred on 30/08/2013.

Ref. No.1045/SP/E dated 08-11-2013

Article –I

Vide Memo no. 846/SP/E, DATED 10/09/2013 SI Tashi Chopel Bhutia is presently under suspension and was not on bonafide duty on 16/09/13, his act amounts to gross violation of established norms and rules.

Article – II

For wilfully absenting himself to report to the office of Superintendent of Police, East District, Gangtok, East Sikkim against O.O no.846/SP/E, dated 10/09/2013 and rule 56.19(1) of the Sikkim Police Manual.

Article – III

The Delinquent Officer had other two (2) Departmental Enquiries undergone in the past while he was posted at Namchi P.S., South Sikkim. Such repeated misdemeanour projects conduct of unbecoming of a police officer.

Article – IV

A Bailable Warrant of Arrest originated from the Ld Sessions Judge, South & West, Namchi vide Despatch No.26/C/S, dated 31/10/13 was acknowledged, wherein the Hon'ble court has directed for the same in connection with SC case No.11/2013, State v/s Ujwal Gurung, when the delinquent Officer refused to receive the summon of the said case dated 07/10/2013.

3. On 10-09-2013, besides issuing the Memo No.849/SP/E, the Respondent No.4 also appointed Respondent No.5 as the Inquiring Authority (E.O.) vide O.O. No.982/SP/E, dated 10-09-2013 and Tshering Yangzom Bhutia, Court Inspector East as the Presenting Officer (P.O.), to present the case of the Disciplinary Authority. On 16-09-2013, the Respondent No.4, again vide O.O. bearing Memo No.869/SP/E (Annexure P9), with the prior approval of the IGP/L&O, constituted a three Member Committee comprising of (i) ASP/East Shri Dhiren Lama (ii) Dy.SP/Traffic Smt. Ongmu Bhutia (iii) SDPO/Gangtok Shri Mordent Thapa, for conducting a discreet Enquiry on the aforementioned Complaint of Shunu Thendup Bhutia with a direction to report back to him on or before 19-09-2013. All Members of the Committee were allegedly working directly under the Respondent No.4 at the relevant time, who for his part is said to be prejudiced against the Petitioner.

4. That, on 16-09-2013 the E.O. directed the Petitioner vide Police Radiogram (Annexure P10), to submit his Written Statement by 20-09-2013 in connection with the Memo No.849/SP/E but without furnishing relevant documents to him, to enable him to file his Written Statement. The Petitioner without the benefit of the documents listed and the statements of witnesses filed his reply on 20-09-2013, vehemently denying the contents of Annexure I of the Memorandum dated 10-09-2013. That, on 21-09-2013 Shunu Thendup Bhutia had written to the Respondent No.5 with a copy to

Respondents No.4 and 6 stating that the Complaint against the Petitioner was due to a misunderstanding, which was not considered and the Departmental Enquiry continued. That, the Respondent No.4 to further harass the Petitioner issued Show Cause Notice being Memo No.992/SP/E dated 25-10-2013 (Annexure P23) requiring the Petitioner, to explain why disciplinary action should not be initiated against him, alleging, *inter alia*, that during the suspension period of the Petitioner he had remained absent from 04-10-2013 till 25-10-2013, without permission resulting in the pendency of Departmental Proceedings, when in fact the Petitioner had signed on the Attendance Register when provided to him.

5. Subsequently, the Respondent No.3 is alleged to have received two e-mails from one Indra Kumar Yonzon, dated 02-10-2013 and 04-10-2013, based on which Mordent Thapa, SDPO wrote a letter to Respondent No.3, surprisingly in the letterhead of Respondent No.3, bearing Memo No.968/SP/E dated 11-10-2013 (Annexure P27), indicating that since the e-mails bore a similarity to the earlier Complaint against the Petitioner, the communication be forwarded to the Respondent No.5, which was duly complied with by the Respondent No.3 although senior to the SDPO, without verifying the genuineness of the Complaint.

6. Consequently, alleging that additional substance of misconduct had surfaced against the Petitioner, the Respondent No.4

issued a Memorandum bearing Ref. No.1045/SP/E dated 08-11-2013 (Annexure P28) with four additional new Charges. Vide Police Radiogram dated 14-11-2013, he was directed to file his Written Statement on 15-11-2013, which he filed on 18-11-2013, without documents or statement of witnesses being furnished to him, denying all the Charges against him. On 09-12-2013, the Petitioner and Lnk Mohan Kumar Sharma who had faced a Departmental Enquiry for the same offence, (vide Memo No.848/SP/EAST dated 10-09-2013) appeared before Respondent No.4 where both were handed over copies of O.O., of which O.O. No.1156/SP/E 1156/E dated 09-12-2013 (Annexure P34) pertained to the Petitioner. The suspension of Lnk Mohan Kumar Sharma was revoked vide O.O. Ref. No.1155/SP/EAST, dated 09-12-2013, whereas the Petitioner was directed to Show Cause within one week against the penalty to be imposed on him. Again, on 16-12-2013 both he and Lnk Mohan Kumar Sharma were handed over individual O.Os, both bearing No.1175/SP/E dated 16-12-2013, wherein both were found guilty but the Disciplinary Authority ordered the Petitioner's removal from service with immediate effect. That, the O.O. was based on the Enquiry Report and evidence which had not been furnished to the Petitioner. Later, another O.O. bearing Ref. No.1381/SP/EAST dated 16-12-2013 was issued to him whereby three days' leave availed by him was also treated as "E.O.L.". It is his contention that he was not given an opportunity to defend himself and to specifically cross-

examine the witnesses or to examine the documents neither was he given copies of the relevant documents or opportunity to adduce his evidence both oral and documentary to counter the allegations against him, leave alone the opportunity of hearing as required by the principles of natural justice.

7. On 29-01-2014, the Petitioner preferred an Appeal before Respondent No.2, based on the File of the Departmental Enquiry and Memorandum, sans the Enquiry Report, the basis of the impugned O.O. dated 16-12-2013. He alleges that he was neither summoned nor heard by the Appellate Authority but the impugned O.O. dated 26-05-2014 was subsequently served on him. Being aggrieved by the said O.O., he petitioned the Government and while awaiting adjudication therefrom, he received communication dated 05-05-2015 from the AIGP, Police HQ, Gangtok, Sikkim, informing him that the Government had rejected his prayer, hence, the instant Petition with the above prayers.

8. The Respondents No.1 to 3 apart from denying and disputing the averments in the Petition, asserted that on 08-09-2013 the Complaint filed by Shunu Thendup Bhutia addressed to the O/C Sadar P.S. accused the Petitioner and two other staff of cheating, on 30-08-2013 at 12.10 p.m. at the Hotel Star Bar, Gangtok. The Respondent No.6 had a discussion with the Respondent No.4 on this matter who directed the Additional S.P. to enquire into the matter

and submit a Report on 12-09-2013, as the allegation was of a serious nature. On receiving a verbal Report from the Additional S.P., Disciplinary Proceedings were initiated against the Petitioner for misconduct and negligence in accordance with Rule 7 of the Rules and Sikkim Police Force (Disciplinary and Appeal) Amendment Rules, 1995. A Supplementary Memorandum was issued based on e-mails from Indra Kumar Yonzon. The Enquiry Committee on going through the entire call details of the Petitioner and others received by them from the Service Providers found that the mobile phone used by Lnk Mohan Kumar Sharma was in the name of Karma Chedup Bhutia, which was in constant contact with the mobile number of the Petitioner. That, the Enquiry Authority on examining the second Complainant found that one *Tashi Agya* had conducted the raid in the Hotel where the Complainant was lodged but Lnk Mohan Kumar Sharma and the Petitioner refused to cross-examine Indra Kumar Yonzon. That, they had both been identified by Complainant Shunu Thendup Bhutia also.

9. That, the Findings of the E.O. with respect to the Articles of Charge I to III and Supplementary Articles of Charge I to IV reveal that the Charges against the Petitioner stood proved and records and evidence of the Enquiry Report were read over to the Petitioner affording him the opportunity of filing a representation, against the penalty proposed to be imposed, which the Petitioner failed to avail of. Opportunities extended to the Petitioner to represent his case

before the E.O. and to peruse the records of the Enquiry Proceedings were also neglected. Vide O.O. dated 16-12-2013, he was removed from service with information of his right to Appeal within forty five days from the date of delivery of Order. He filed an Appeal on 29-01-2014 and was heard in person on 19-04-2014. The Appellate Authority on due consideration of the matter confirmed the penalty imposed vide its O.O. dated 26-05-2014. The Order was pasted in his house at Chujachen, Rongli in the presence of two witnesses. On 23-05-2014, 13-07-2014 and 28-07-2014 the Petitioner submitted representations before the Hon'ble Chief Minister but reinstatement was not considered.

10. The allegation of motive and *mala fide* intention of the Respondent No.4 and misuse of his official position is denied. That, the records of the Order Sheet would reveal that on 21-11-2013, the Respondent No.5 had sent a WT Message to the Petitioner and the P.O. to appear on 22-11-2013, but the P.O. informed the Respondent No.5, on the same night, that the Petitioner did not seek to be present in the Office of the E.O. for cross-examination. It was averred that the Writ Petition is liable to be dismissed on the grounds that no fundamental or legal rights of the Petitioner have been violated as well as on the ground of delay and *laches inasmuch* as the Disciplinary Proceedings was initiated on 10-09-2013 and O.O. dated 16-12-2013 issued for removal of the Petitioner from service, duly confirmed by the Appellate Authority on 26-05-2014, the Order being served on the

Petitioner on 13-06-2014. The Writ Petition was filed on 13-10-2015 after a delay of one year and four months.

11. Before this Court, the arguments canvassed by Learned Counsel for the Petitioner was that various provisions of Rule 7 of the Rules at the stage of Enquiry and Rule 11 at the Appellate Stage, were flouted, besides the penalty imposed was not proportionate to the Charges. It is pointed out that initially the Complaint of Shunu Thendup Bhutia was made to the SHO, Sadar P.S., surprisingly the Respondent No.4 sought an Enquiry by the ASP/E, but before the Report of the ASP could be filed, Memorandum dated 10-09-2013 was issued, evidently on realisation by Respondent No.4 that he had failed to adhere by the procedure prescribed by Law. Compromise entered into with the Complainant Shunu Thendup Bhutia who in the first instance had not named the Petitioner or Lnk Mohan Kumar Sharma in the Complainant was not considered and a second Memorandum bearing Memo No.1045/SP/E dated 08-11-2013, was issued to the Petitioner, on the basis of e-mails which also did not name the Petitioner or Lnk Mohan Kumar Sharma. That, the E.O. conducted the Enquiry as per her whims without sufficient Notice to him, while the P.O. appeared once during the Enquiry, although Rule 7(11) requires her to be present during the entire period of Enquiry.

12. That, the Respondent No.6 neither registered the Complaint of Shunu Thendup Bhutia nor did he verify the

genuineness of the Complaint, and the entire records of the Departmental Enquiry were not supplied to the Petitioner. Whatever records the Petitioner could gather revealed that, on 10-09-2013 he was summoned by Respondent No.3 to his Office at Gangtok, where Respondent No.5, was already present with the Court Inspector Tshering Yangzom Bhutia. According to Learned Counsel, Respondent No.4 in the presence of the above Officers verbally abused him and threatened to finish his career. That, in fact the face off culminated in the issuance of the Memoranda and O.Os without determining the genuineness of the Complaints, thereby rendering the Departmental Enquiry against the Petitioner as *void ab initio* and illegal.

13. That, the records of the Enquiry Report are not in consonance with the ground reality of the Enquiry *inasmuch* as the Respondent No.5 in her Report had suggested that Lnk Mohan Kumar Sharma's statement was recorded and made available by the Respondent No.6, while the Departmental Enquiry reveals that Lnk Mohan Kumar Sharma was in fact interrogated by Respondent No.5 and the three Member Enquiry Team. That, the Respondent No.5 has tried to imply that Lnk Mohan Kumar Sharma was examined by the Enquiry Committee before 16-09-2013, which is incorrect as the Committee was constituted only on 16-09-2013. Although Respondent No.5 vide records admits that the statement of Shunu Thendup Bhutia was recorded by her on 21-09-2013, in the absence of the

Petitioner and the P.O., but the signature of the P.O. appears therein. The statement of Indra Kumar Yonzon having been recorded on 21-10-2013 is false, as records reveal that it was on 23-10-2013 this too in the absence of the Petitioner and the P.O., but once again the P.O's signature appears therein, which tantamounts to a criminal act. That, on 30-08-2013 he had duly informed the Respondent No.6 that he was going to Adampool in connection with a theft case thus, the allegation that he was not on duty on 30-08-2013 is incorrect.

14. That the E.O. took the statement of PI Karma Chedup Bhutia on record which was sent with a covering letter dated 21-10-2013, duly affixing her signature and allowing the P.O. also to affix her signature. A Notice under Section 91 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), was issued to BSNL Telecom Service, Vodafone Telecom Service and Airtel Telecom Service in the letterhead of Respondent No.5, countersigned by the Respondent No.4, substantiating that the Departmental Enquiry against him was illegal and motivated. It is contended that due to the Show Cause Notice dated 25-10-2013, he was unable to be present before the Court at Namchi as the Respondent No.3 deliberately failed to grant him leave on time.

15. That, the records of the Departmental Enquiry also revealed that on 21-11-2013 Lnk Mohan Kumar Sharma of Sadar P.S. had undertaken to pay a sum of Rs.1,25,000/- (Rupees one lakh and

twenty five thousand) only, to Indra Kumar Yonzon, which reveals that the Petitioner was not involved in the case for which Memorandum bearing Ref. No.1045/SP/E dated 08-11-2013 was issued to him. That, after Written Statement was filed, the Petitioner was not summoned by the Respondents No.3 or 5 to inform him of the results of his Written Statement in violation of the Rules. That although Lnk Mohan Kumar Sharma and he were tried for similar offences there was no compliance of Rule 8.

16. He denies that there was any delay or *laches* as after the last Order dated 26-05-2014 he approached the Government as borne out by the records. To buttress his submissions on the various points raised by him, he has placed reliance on ***Anil Kumar*** vs. ***Presiding Officer and Others***[1]; ***Kashinath Dikshita*** vs. ***Union of India and Others***[2]; ***Union of India and Others*** vs. ***Prakash Kumar Tandon***[3]; ***State of Uttar Pradesh and Others*** vs. ***Saroj Kumar Sinha***[4]; ***Union of India and Others*** vs. ***Mohd. Ramzan Khan***[5]; ***Lajja Ram and Others*** vs. ***Union Territory, Chandigarh and Others***[6]; ***Basanti Prasad*** vs. ***Chairman, Bihar School Examination Board and Others***[7] and ***Ashok Kumar*** vs. ***State of Bihar and Others***[8].

17. *Per contra*, the Learned Additional Advocate General opened his arguments citing the decisions of the Hon'ble Apex Court

1. AIR 1985 SC 1121
2. (1986) 3 SCC 229
3. (2009) 2 SCC 541
4. (2010) 2 SCC 772
5. (1991) 1 SCC 588
6. (2013) 11 SCC 235
7. (2009) 6 SCC 791
8. (2008) 8 SCC 445

in ***Union of India and Others*** vs. ***P. Gunasekaran***[9] and ***State of Uttar Pradesh and Another*** vs. ***Man Mohan Nath Sinha and Another***[10], urging that, these Judgments lay down the parameters of Judicial Review in disciplinary matters and that Courts should refrain from travelling beyond the said ambit. Controverting the submissions of the Petitioner, he asserts that the entire Disciplinary Rules have been duly adhered to by the concerned authorities, the Charges were framed, Inquiry completed, the Findings arrived at and the penalty imposed. The Petitioner was given a copy of the Findings after the matter was completed as evident from the Appeal. According to him, Rule 8 of the Rules is not mandatory. The records would also reveal that Enquiry Report was made over to the Petitioner before the Appeal which is evident from the fact that the said Report has been filed in his Appeal. Placing reliance on ***State of U.P.*** vs. ***Harendra Arora and Another***[11], he submitted that every infraction of Rule does not vitiate proceedings. He also placed reliance on ***Managing Director, ECIL, Hyderabad & Others*** vs. ***B. Karunakar and Others***[12].

18. The next point canvassed in his argument was with regard to delay and *laches*. Relying on ***Naresh Kumar*** vs. ***Department of Atomic Energy and Others***[13] and ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another*** vs. ***K. Thangappan and Another***[14], it was contended that making multiple

9. (2015) 2 SCC 610 10. (2009) 8 SCC 310
11. (2001) 6 SCC 392 12. (1993) 4 SCC 727
13. (2010) 7 SCC 525 14. (2006) 4 SCC 322

petitions before the Government is no ground for condonation of delay and *laches*. Reiterating that the procedure prescribed has been duly followed and the principles of natural justice duly complied with, he contended that the Writ Petition deserves no consideration and ought to be dismissed.

19. Heard Counsel at length and submissions considered. I have also meticulously perused the records of the case, the relevant Rules and the cases cited at the Bar.

20. The question that arises for consideration is whether the impugned Memoranda and O.Os were issued by the Authorities without compliance of procedure prescribed by Statue.

21. This Court is aware that the scope of Judicial Review in dealing with Departmental Enquiry cannot be directed against the decision, but has to be confined to the decision-making process. I am also aware and conscious that in Disciplinary Proceedings, it is not open to this Court to re-appreciate and reappraise the evidence led before the Inquiry Authority and to arrive at its own conclusion. This has clearly been opined in the decision of the Hon'ble Apex Court relied on by Learned Additional Advocate General in ***State of Uttar Pradesh and Another*** vs. ***Man Mohan Nath Sinha and Another***[10] (*supra*) wherein at Paragraph 14, it is held as follows;

> **"14.** The scope of judicial review in dealing with departmental enquiries came up for consideration before this Court in the case of *State of*

A.P. v. *Chitra Venkaka Rao* [(1975) 2 SCC 557] and this Court held: (SCC pp.562-63, paras 21 and 23-24)

> "*21.* …….... The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.
>
> ……..**"**

The ambit of Judicial Review in Disciplinary Proceedings has thus been lucidly laid down.

22. It would now be necessary to embark on an assessment as to whether the procedure prescribed by the Rules was adhered to

by the concerned authorities. Rule 7 of the Rules deals with procedure for imposing penalties specified in Clauses (xi) to (xv) of Rule 3, which reads as follows;

> **"3. Penalties.-** Without prejudice to the provision of any law, or any special orders for the time being in force, the following penalties may, for good and sufficient reasons, be imposed on any police officer, namely:-
>
> .....
>
> (xi) Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the police officer will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
>
> (xii) Reduction to a lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to promotion of the police officer to the time scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the police officer was reduced and his seniority and pay on such restoration to that grade, post or Service;
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> (xiii) Compulsory retirement;
>
> (xiv) ***Removal from service which shall not be a disqualification for future employment under the Government;***
>
> (xv) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.
>
> ....."
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> **[emphasis supplied]**

23. Presently, we are concerned with the penalty imposed on the Petitioner as provided in Rule 3(xiv), i.e., removal from service, vide O.O. bearing Ref. No.1175/SP/EAST, dated 16-12-2013, duly confirmed vide O.O. No.155/POL/RANGE/2014/235, dated 26-05-2014 of the Appellate Authority. Rule 7(1) in this regard mandates that, no order imposing any of the penalties specified in clauses (xi) to (xv) of rule 3 shall be made, except after an inquiry held, as far as may be, in the manner provided in the rule. Rule 7(2) provides that whenever a disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a police officer, it may itself inquire into, or appoint an authority to inquire into the truth thereof. Pausing here for a moment, in the light of the above Rule, O.O. No.982/SP/E dated 10-09-2013 (Annexure R3) was issued by the Respondent No.3 in exercise of the powers conferred by Rule 7(2), appointing Smt. Linda Palmu Chettri, SDPO, Rangpo Respondent No.5, as the Inquiring Authority to inquire into the truth of any imputation or misconduct against the Petitioner. Rule 7(5)(c) of the Rules lays down that; *where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a police officer or a legal practitioner, to be known as the Presenting Officer to present on its behalf the case in support of the article of charge*. There has been no compliance of this Rule as no separate O.O. appointing PI Tshering Yangzom Bhutia as the P.O. has

been issued. Although in O.O. bearing No.1175/SP/EAST dated 16-12-2013 (Annexure P36) the Respondent No.3 has stated, *inter alia*, at Article IV, Paragraph 3 that, CI/East, Tshering Yangzom was appointed as Presenting Officer vide O.O. No.982/SP/East, dated 10-09-2013, perusal of the said O.O. would prove to the contrary.

24. The documents on record would reveal that in terms of Rule 7(3)(i) the substance of imputations of misconduct or misbehaviour were framed into definite and distinct Articles of Charge.

25. Rule 7(4) of the Rules requires the Disciplinary Authority to deliver or cause to be delivered to the police officer a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and *a list of documents and witnesses by which each article of charge is proposed to be sustained*. This Rule is specific, in that, the Disciplinary Authority has to indicate the name of the witnesses and the exact document on which it would rely for the purpose of proving each specific Article of Charge. However Annexure I in Annexure P7 contains an omnibus list of documents and list of witnesses with no specifications as required *supra*. Secondly, as per the same Rule the Petitioner is required to submit, within such time as may be specified, a Written Statement of his defence and whether he desired to be heard in person. On this aspect, the E.O. has neglected to send a proper Notice to the Petitioner, Notice having been issued by her only

by a Police Radiogram dated 16-09-2013 (Annexure P10), addressed to the Petitioner, giving him four days time to submit Written Statement. There is nothing in the Notice to indicate that the E.O. had enquired of the Petitioner as to whether he desired to be heard in person. This circumstance clearly works to the prejudice of the Petitioner as he is uninformed of the circumstance that he can make verbal submission if he so desires. It is also the constant refrain of the Petitioner that no documents were made available to him thereby causing him serious prejudice in preparation of defence. The records bear out this argument as no documents apparently were made over to him. While on this subject useful reference can be made to the decision in ***Managing Director, ECIL, Hyderabad and Others*** vs. ***B. Karunakar and Others***[12] *(supra*) wherein the decision of ***Khem Chand*** vs. ***Union of India***[15] was relied on. The relevant extract is as follows;

> **"**.....
>
> "If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the Government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause,

15. AIR 1958 SC 300

> but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct, it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case."**"**

As laid down hereinabove, the purpose of furnishing documents would be to enable the Petitioner to have a level playing field to exonerate himself.

26. Rule 7(6)(v) of the Rules provides that, disciplinary authority where it is not the inquiring authority, shall forward to the inquiring authority, a copy of the Order appointing the Presenting Officer, as already discussed. Here the Disciplinary Authority has appointed the Inquiring Authority being Respondent No.5, vide Memorandum No.982/SP/E dated 10-09-2013, but there is no order appointing the P.O. as required by the Rules.

27. Rule 7(7) of the Rules requires that the concerned officer shall appear in person before the inquiring authority on such day and time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour as the inquiring authority may, by a notice in writing, specified in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow. The WT

Message dated 16-09-2013 issued rather peremptorily, cannot be said to be a Notice in writing issued by the inquiring authority as required by the Rules. There is no indication in the Notice as to when the Memo with the Articles of Charge were sent by the E.O. or the Disciplinary Authority and received by the Petitioner. The Radiogram gives him four days to file his reply whereas Rule 7(7) states as follows;

> **"**(7) The police officer shall appear in person before the inquiring authority on such day and time ***within ten working days*** from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour as the inquiring authority, may by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.**"** **[emphasis supplied]**

Evidently the Inquiry Authority has overlooked this provision of the Rules.

28. Rule 7(11) of the Rules provides that the inquiring authority shall, if the police officer fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date, not exceeding thirty days, after recording an order that the Police Officer may, for the purpose of preparing his defence,-

> **"**(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule 3;
>
> (ii) submit a list of witnesses to be examined on his behalf.**"**

29. In this regard, it would be worthwhile to firstly refer to the Show Cause of the Petitioner dated 20-09-2013 (Annexure P13) where he, *inter alia*, denies and objects to the allegations made against him as nothing more than a conspiracy to break the morale of men in action and he vehemently denies the Charges imputed against him as fabricated and malicious. Rule 7(11) of the Rules is extracted hereinbelow;

> **"**(11) The inquiring authority shall, if the police officer fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to later date not exceeding thirty days after recording an order that the police Officer may, for the purpose of preparing his defence,-**"**

30. On going through the Order dated 20-09-2013 of the Departmental Inquiry No.30 in the Office of the Sub-Divisional Police Officer, Rangpo Sub-Division, East Sikkim, the Petitioner denied all the Charges against him but the E.O. has not indicated any directions given by her to the P.O. in compliance of the Rules (*supra*). The P.O. for her part is conspicuous by her absence on the said date. Thus, the procedure prescribed, requiring the P.O. to produce the evidence to prove the Articles of Charge has evidently not been complied with, neither was the matter listed to another date not exceeding thirty days. Annexure R6, the Order, claims to have examined Shunu Thendup Bhutia and Renuka Chhetri on 20-09-2013 but no separate statements are found in the records of the case and the categorical contention of the Petitioner is that no such documents were made

over to him. In the same breath, it is relevant to impress here that the scheme of Rule 7(11) does not envisage that the witnesses will be examined on the same day that the Officer denies the Charges, but in the instant matter as would clearly appear from the Order dated 20-09-2013, Shunu Thendup Bhutia and Renuka Chettri have been examined on the same day. The Petitioner is also to be extended the opportunity as enumerated in Rules 7(11)(i) and 7(11)(ii) *supra* this has clearly been circumvented. The E.O. has apparently not recorded the statement of the witnesses on separate sheets of papers, but has merely reflected such examination in her Order Sheet that the witnesses were examined, needless to mention that no evidence emerges to indicate opportunity to the Petitioner to cross-examine any of the witnesses or to examine himself and his witnesses.

31. The P.O. appears to have been present at the Enquiry, only on 19-11-2013 whereas Rule 7(14) requires as follows;

> **"**(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the police officer. The Presenting Officer shall be entitled to re-examine the witnesses on any point on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.**"**

The Presenting Officer is to produce the oral and documentary evidence for the Disciplinary Authority but if she has remained

absent this process was obviously not adhered to. Thus, the argument of the Petitioner that the P.O. was absent on the dates of Inquiry is substantiated by the records.

32. Lnk Mohan Kumar Sharma who was not mentioned as a witness in Annexure IV of the Articles of Charge, in Memo No.849/SP/E has also been examined by the E.O. as per the Order Sheet, dated 19-11-2014. There is no evidence whatsoever to indicate that the Petitioner was given an opportunity to cross-examine this witness as prescribed under Rule 7(14) of the Rules. In this context, it is true that Rule 7(15) of the Rules allows the P.O. to produce evidence not included, in the list given to the Petitioner, but this is, subject to permission of the Inquiring Authority. The Order Sheet in question reflects no such prayer for examination of additional witnesses or permission thereof by the E.O. thereby singularly flouting the provisions of Rule 7(15) of the Rules.

33. The records also reveal that there has been no compliance of procedure prescribed in Rule 7(16)(17)(18)(19) of the Rules which reads as follows;

> **Rule 7(16)**
>
> (16) When the case for the disciplinary authority is closed, the police officer shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the police officer shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

No records exist in this context.

Rule 7(17)

> (17) The evidence on behalf of the police officer shall then be produced. The police officer may examine himself in his own behalf if he so prefers. The witnesses produced by the police officer shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

The Order Sheet does not reflect at all that the Petitioner was allowed to examine himself or his witnesses which is indeed unconscionable conduct on the part of the E.O.

Rule 7(18)

> (18) The inquiring authority may after the police officer closes his case, and shall, if the police officer has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the police officer to explain any circumstances appearing in the evidence against him.

This provision can be juxtaposed with Section 313 of the Cr.P.C. but no such statement appears to have been prepared by the E.O.

Rule 7(19)

> (19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the police officer, or permit them to file written briefs of their respective case, if they so desire.

This bears a similarity to criminal proceedings as final arguments are to be after closure of the matter but records are devoid of either verbal or written arguments.

34. Rule 7(22) of the Rules requires that;

> **"**(22) (1) After the conclusion of the inquiry, a report shall be prepared and it shall contain –

> (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
>
> (b) the defence of the police officer in respect of each article of charge;
>
> (c) an assessment of the evidence in respect of each article of charge;
>
> (d) the findings on each articles of charge and the reasons therefor.
>
> ……."

35. Annexure R7 of the joint Counter-Affidavit of Respondents No.1 to 3 would reveal that the Findings of the E.O. (Annexure R7) are as per the requisites of Rule 7(22)(1)(a) and (b) of the Rules, but in the instant matter it is observed that there is no independent assessment of the evidence, by the E.O., in respect of each Articles of Charge, as required under Rule 7(22)(1)(c) of the Rules. It is also apparent that there has been no compliance of Rule 7(22)(1)(c) [*sic*, (d)] of the Rules, i.e., there are no Findings by the E.O. on each Articles of Charge and the reasons therefor, she has merely noted what the witnesses have stated. On this aspect, we may advert usefully refer to the decision in ***Anil Kumar*** vs. ***Presiding Officer and Others***[1] (*supra*) where it has been held that-

> **"5.** We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. **The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to**

> **him or was considered not credit-worthy.** He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. ..... It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order-sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. ....."
>
> **[emphasis supplied]**

Thus, it concludes that the E.O. as a *quasi-judicial* authority has to exhibit her application of mind judicially which is woefully lacking herein.

36. What emerges as another ambiguous situation is the subsequent appointment of a three Member Committee by the Respondent No.4 on 16-09-2013, vide Memo No.869/SP/E, after appointment of the Inquiring Authority. The Rules do not speak of constitution of a Committee for the purposes of any discreet Enquiry, pursuant to appointment of an Inquiry Authority.

37. Vide Memorandum bearing Ref. No.1045/SP/E dated 08-11-2013 supplementary Articles of Charge were framed against the Petitioner in connection with a Complaint from one Indra Kumar Yonzon as already detailed hereinabove. Vide the said Memorandum the Respondent No.5 was appointed as E.O. vide Order No.98 (*sic*, 982) dated 10-09-2013 and a direction also given to PI Tshering

Yangzom to continue as the P.O., although it may again be reiterated that there was no specific order appointing PI Tshering Yangzom as the P.O. The E.O., by Police Radiogram, dated 14-11-2013, directed the Petitioner to be present before her on 15-11-2013. It has not been disclosed as to when the Memo was made available to the Petitioner. It would also be unfair on the Petitioner to have received an indifferent Notice by Police Radiogram, dated 14-11-2013, directing him to be present on 15-11-2013, when natural justice would dictate that sufficient time ought to be afforded to him to meet and avert the serious allegations as made in the Articles of Charge. Apart from which the Rules lay down the period of time to be given to the Petitioner for his defence. The Petitioner instead of filing his reply on 15-11-2016, as per Annexure R6 of the Counter-Affidavit of Respondents No.1 to 3 (i.e., Order Sheet of the E.O.), appears to have filed his Show Cause on 18-11-2013. However, in this matter too, the same procedure as in the Memo No.849/SP/E dated 10-09-2013 appears to have been followed by the E.O., instead of strictly adhering to the Rules.

38. It is also evident from the O.O. dated 09-12-2013 bearing Ref. No.1156/SP/EAST 1156/E, issued after completion of the Enquiry, that, the records and evidence of the Enquiry Report had not been made available to the Petitioner but admittedly the contents had merely been read over to him, which is by itself appalling as the Authority assumes that the Petitioner would have an elephantine

memory to recall all relevant points on a mere reading of the contents. The said O.O. may be beneficially quoted hereinbelow;

> "……
>
> The enquiry report of the departmental enquiry, which was ordered vide Memo No.849/SP/East dated 10/09/2013, and subsequently supplementary charges framed vide Memo No.1045/SP/East dated 08/11/2013, initiated against you under Rule 7 of the Sikkim Police Force (Discipline & Appeal) Rules, 1989 is submitted today.
>
> **All the records and the evidences of the enquiry report have been read over to you.**
>
> You are hereby allowed to show cause within one weeks (*sic*) time against the penalty proposed to be inflicted. Any representation on this behalf submitted by you shall be duly taken into consideration before final orders are passed.
>
> ……" **[emphasis supplied]**

39. This is clear indication that fair play was thrown out of the window with no qualms by the Disciplinary Authority and adequate opportunity denied to the Petitioner to disprove the allegations or to put forth his case. In this context, one may beneficially refer to the decision by ***Kashinath Dikshita*** vs. ***Union of India and Others***[2] (*supra*) wherein the Hon'ble Apex Court setting aside the order of dismissal rendered by the Disciplinary Authority as violative of Article 311(2) of the Constitution, *inter alia*, opined that –

> **"12.** Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with

> reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. ....."

In the same vein in ***State of Uttar Pradesh and Others*** vs. ***Saroj Kumar Sinha***[4] (*supra*) the decision of ***State of Punjab*** vs. ***Bhagat Ram***[16] was relied on wherein it was held as follows;

> "*7.* The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.
>
> *8.* It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

40. That having been said, the O.O. at paragraph 3 (*supra*) is *de hors* the provisions of the Rules as Rule 7(25) provides that if the Disciplinary Authority having regard to its findings on all or any of the Articles of Charge is of the opinion that any of the penalties specified in clause (xi) to (xv) of Rule 3 should be imposed on a police officer, it shall not be necessary to give the police officer any

16. (1975) 1 SCC 155

opportunity of making representation to the penalty proposed to be imposed. Thus, the question of the Disciplinary Authority asking the Officer to file a representation does not arise, hence the O.O. No. 1156/SP/EAST 1156/E dated 09-12-2013 on this count is superfluous. I hasten to add that in fact as per the Proviso (iii) of Rule 11(5) the Appellate Authority is to extend to the Petitioner an opportunity to file such a representation. The relevant Proviso reads as follows;

> **"**Provided that -
>
> .....
>
> (iii) if the proposed penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (ix) to (xv) of rule 3 and an inquiry under rule 7 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity for making representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and**"**

41. Needless to add such an opportunity finds no place in the proceedings before the Appellate Authority allegedly held on 19-04-2014. The O.O. bearing No.1175/SP/EAST dated 16-12-2013 does not elucidate the separate Findings of the Disciplinary Authority, save the statement that he agrees with the findings of the E.O., that each Article of Charge has been proved thereby establishing non-compliance of Rule 7(27) of the Rules which requires as follows;

> **"**(27) Orders made by the disciplinary authority shall also be communicated to the police officer who shall be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings of each articles of charge, or, where the disciplinary authority is not the inquiring

> authority, a copy of the report of the inquiry authority and **a statement of the findings of the disciplinary authority** together with brief reasons for its disagreement, if any, with the findings of the inquiring authority unless they have already been supplied to him and also a copy of the advice, if any, given by the Commission, and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.**"**
>
> **[emphasis supplied]**

42. It was argued by Learned Additional Advocate General that every infraction does not make the proceedings invalid relying on the decision of the Hon'ble Apex Court in ***State of U.P.*** vs. ***Harendra Arora and Another***[11] (*supra*) wherein it was held as follows;

> **"13.** The matter may be examined from another viewpoint. There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would make the consequent action void and/or invalid? The statute may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee. Such provision must be strictly complied with as in these cases the theory of substantial compliance may not be available. For example, where a rule specifically provides that the delinquent officer shall be given an opportunity to produce evidence in support of his case after the close of the evidence of the other side and if no such opportunity is given, it would not be possible to say that the enquiry was not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touchstone of prejudice. The test would be, whether the delinquent officer had or did not have a fair hearing. In the case of *Russell* v.

> *Duke of Norfolk* [(1949) 1 All ER 109 (CA)] it was laid down by the Court of Appeal that the principle of natural justice cannot be reduced to any hard-and-fast formulae and the same cannot be put in a straitjacket as its applicability depends upon the context and the facts and circumstances of each case.**"**

The decision, however, does not prescribe to the view that substantive provisions of the Statute are not to be complied with. It only elucidates that in respect of procedural provisions other than of a fundamental nature the theory of substantial compliance would be available and in such cases objections have to be judged on the touchstone of prejudice. The foregoing discussions which for brevity are not repeated is proof of the fact that the procedure imbibed by the E.O. and the Disciplinary Authority was fraught with serious procedural lapses which have undoubtedly vitiated the Departmental Enquiry. The manner of Enquiry conducted by the E.O. leaves much to be desired as without a doubt the Rules have either been ignored or circumvented.

43. On the question of delay and *laches* although it has been pointed out by Learned Additional Advocate General that in ***Naresh Kumar*** vs. ***Department of Atomic Energy and Others***[13] (*supra*) it was opined that that where an employee keeps making representation after representation which are consistently rejected he cannot seek any relief on that ground. That, in the instant case after the notice of dismissal was issued to him the Petitioner has failed to approach the Court on time. On this aspect, we may usefully refer to the decision of the Hon'ble Apex Court in ***Basanti Prasad*** vs. ***Chairman, Bihar***

School Examination Board and Others[7] (*supra*) wherein it was, *inter alia*, held that -

> **"19.** Reference may be made at this stage to the decisions of this Court in *Moon Mills Ltd.* v. *Industrial Court* [AIR 1967 SC 1450] and *Maharashtra SRTC* v. *Balwant Regular Motor Service* [AIR 1969 SC 329] wherein this Court has approved the view expressed by the Privy Council in *Lindsay Petroleum Co.* v. *Prosper Armstrong Hurd* [(1874) 5 PC 221]. The Court had observed: (*Lindsay case*, PC pp.239-40)
>
> > "Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."
>
> **20.** In *State of M.P.* v. *Nandlal Jaiswal* [(1986) 4 SCC 566], it was held as under: (SCC p.594, paras 23-24)
>
> > "*23.* ..... There can be doubt that the petitioners were guilty of gross delay in filing the writ petitions with the result that by the time the writ petitions came to be filed. .....
> >
> > *24.* ..... If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. ..... Of

> course, this rule of laches or delay is not a rigid rule which can be cast in a straitjacket formula, for there may be cases where despite delay and creation of third-party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third-party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; *ex hypothesi* every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."**"**

44. Reverting to the matter of ***State of U.P.*** vs. ***Harendra Arora and Another***[11] (*supra*), referring to the case of ***Russell*** vs. ***Duke of Norfolk***[17] it was correctly observed therein that the principle of natural justice cannot be reduced to any hard and fast formulae and the same cannot be put into a straitjacket as its applicability depends upon the context and the facts and circumstances of each case.

45. It would also be worthwhile to point out that in ***Karnataka Power Corpn. Ltd. through its Chairman & Managing Director and Another*** vs. ***K. Thangappan and Another***[14] (*supra*) it was held as hereinbelow;

> **"7.** What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co.* v. *Prosper Armstrong Hurd* [(1874) 5 PC 221] (PC at p.239) was approved by this Court in *Moon Mills Ltd.* v. *M. R. Meher* [AIR 1967 SC 1450] and *Maharashtra SRTC* v. *Shri Balwant Regular Motor Service* [AIR 1969 SC 329]. Sir Barnes had stated:
>
> "Now, the doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct

17. (1949) 1 All ER 109 (CA)

> done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

On a consideration of the above Judgments, it is manifest that when it comes to the question of delay and *laches* the Court is to exercise its discretion, of course this cannot be arbitrary but must be fair and just and above all to secure the ends of justice.

46. On the anvil of the above decisions, and on considering the cogent and consistent grounds put forth by the Petitioner the delay has been satisfactorily explain which does not appear to be an inordinate or unexplained nor is it the Respondents' case that third party rights have accrued in the interregnum. Resultant, I am of the considered opinion that non-compliance of the statutory procedure has prejudiced the Petitioner as he was denied the opportunity of proving his innocence having been issued ambiguous Notices, given insufficient time to resist the Charges, no opportunity of cross-examining the witnesses, no opportunity of examining himself or his witnesses and not being handed over the relevant documents. The

other shortcomings have already been enumerated and discussed hereinabove and to avoid prolixity are not being reiterated.

47. Accordingly, I have to opine that the Enquiry is vitiated being in violation of the Rules which provide for specific procedure to be adhered to in the Disciplinary Proceedings. Consequently, the impugned Memoranda bearing Memo No.849/SP/E dated 10-09-2013 and Ref. No.1045/SP/E dated 08-11-2013 and impugned O.Os Ref. No.1175/SP/EAST dated 16-12-2013 and No.155/POL/RANGE/2014/235 dated 26-05-2014 as also the Findings of Respondent No.5 due to the aforesaid reasons, are a nullity and *non est* in the eyes of the Law and are hereby quashed and set aside.

48. The Writ Petition is allowed.

49. In view of the Order *supra*, the necessary consequential benefits to the Petitioner will follow, in accordance with Law.

50. No order as to costs.

Sd/-
(Meenakshi Madan Rai)
Judge
25-07-2016

Approved for reporting : **Yes**

Internet : **Yes**

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