

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 307 of 2022 with
WP(C) No. 308 of 2022

Date of Decision: 24.02.2023

Shri. Hemanta Choudhury Vs. North Eastern Electric
Power Corporation Ltd. & Ors.

Shri. Ajit Ranjan Das Vs. North Eastern Electric
Power Corporation Ltd. & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. S. Sen, Adv.

For the Respondent(s) : Mr. V.K. Jindal, Sr. Adv. with
Mr. V. Kumar, Adv.

i) Whether approved for reporting in Yes/No
Law journals etc:

ii) Whether approved for publication Yes/No
in press:

JUDGMENT AND ORDER

1. Both these writ petitions being similarly situated and identical in facts, are being disposed of by this common Judgment and

Order. In these writ petitions, the prayers of the writ petitioners are for declaring Office Orders No. 251 and 252 both dated 10.12.2021, passed by the Chairman & Managing Director, NEEPCO Limited imposing the major penalty of ‘reduction to a lower stage in the time scale of pay by one stage for one year with cumulative effect’ and the decision of the appellate authority to stand by these orders as conveyed by letter dated 20.06.2022, to be illegal and unconstitutional.

2. The brief facts are that both the writ petitioners are presently holding the post of Deputy General Manager (C), and while they were holding the post of Senior Manager (C), were assigned duties at Kameng Hydro Electric Project of NEEPCO in Arunachal Pradesh between December, 2012 and July, 2015. Apart from site activities, the writ petitioners were involved in other technical matters, which involved the stockpiling of River Bed Materials (RBM) of sand and boulders at the site in Kimi, Arunachal Pradesh, the details of which, that is, Challan No. Volume of RBM were recorded by the field staff and co-signed by an officer of the NEEPCO, and of the contractor. Based on these stockpiles and the measurement thereof, the contractors who supplied the materials, raised bills which were then processed for payment. The writ petitioners in this connection, were served with letters issued by the respondents, wherein it was stated that, in the

course of investigation, in the matter of payment to contractors in the said project, it was observed that, for the carriage/transportation of RBM from different government approved quarries, some vehicles used by the contractors were found to be scooters, cars, ambulance, etc. The petitioners were asked for comments as to the specific role in this matter, relating to payment made against non-genuine trips.

3. Replies had then been submitted by the petitioners, which were however found unsatisfactory, and a memorandum dated 02.01.2020, was issued by the respondent No. 2, whereby the Disciplinary Authority, proposed to hold an inquiry against the petitioners, as per Rule 29 of the Conduct, Discipline and Appeal Rules of NEEPCO. Statements and articles of charge, were framed against the writ petitioners, and the inquiry proceedings then commenced. The Inquiry Officer, on the completion of the inquiry, then by reports dated 10.06.2021 and 11.06.2021 respectively, found that the charges framed against the writ petitioners could not be established and that many of the vehicles listed in various challans, which were mentioned as fake in the vigilance report could not be proved as such. The Disciplinary Authority however, disagreed with the findings of the Inquiry Officer, and the tentative reasons for the disagreement were communicated to

the writ petitioners vide letter dated 10.08.2021. Replies were then submitted by the petitioners to the said reasons, which however, were found to be not convincing by the Disciplinary Authority. Thereafter, by office orders, major penalties was imposed on the petitioners. Though, appeals were preferred against the orders, the same were dismissed. Hence, the instant writ petitions before this Court.

4. I have heard learned counsel for the parties.

5. Mr. S. Sen, learned counsel for the petitioners submits that the petitioners to the articles of charge had submitted their replies and categorically denied the allegations by contending therein that, during the period under reference, the writ petitioners were involved in various other official and technical duties and as such, their constant presence at the stockpile yard was not possible and that, other officials like the Deputy Manager, Assistant Manager, including other staff of the corporation were engaged to record the details of vehicles, as well as, to take measurement of the materials. He further submits that, in the reply it had been stated that, there was no scope for the writ petitioners to ascertain the genuineness of the registration numbers of vehicles for processing of the bills, and also that, there was no provision that, the registration certificate of vehicle was to be verified, but that, the stock measurement register was regularly inspected by them and had been

found to be in order as per procedure. The learned counsel has also taken this Court to the other details of the written statements/replies, and also to the recorded proceedings of the inquiry, apart from the statement of the presenting officer in the inquiry proceedings.

6. Learned counsel then submits that, after being found not culpable by the Inquiry Officer, and that the charges could not be established, the Disciplinary Authority while disagreeing with the findings, by Office Orders No. 251 and 252 both dated 10.12.2021, had noted that the reasons for disagreement was that, the views of the Chief Vigilance Officer was also obtained on the findings of the inquiry, and thereafter, imposed the major penalty of reduction to a lower stage in a time scale of pay by one stage for one year with cumulative effect. The learned counsel contends that, the disagreement to the inquiry report as reflected from the office order was on the reason that, the same was per the opinion of the Chief Vigilance Officer, and as such, the imposition of such penalty based on an opinion, the writ petitioners were not privy to, is not only illegal for being based on extraneous considerations, but also in violation of the requirements of Rules 27, 28 and 29 of the NEEPCO Conduct, Discipline and Appeal Rules. The learned counsel submits that this illegal action has also resulted in the promotion of the petitioner being kept on hold. In support of his arguments, the learned

counsel has placed reliance on the case of ***Punjab National Bank & Ors. vs. Kunj Behari Misra*** reported in (1998) 7 SCC 84, and the case of ***State Bank of India & Ors. vs. D.C. Aggarwal & Anr.*** reported in (1993) 1 SCC 13, on the points of disagreement with the inquiry report and non-supply of opinion of the Chief Vigilance Officer.

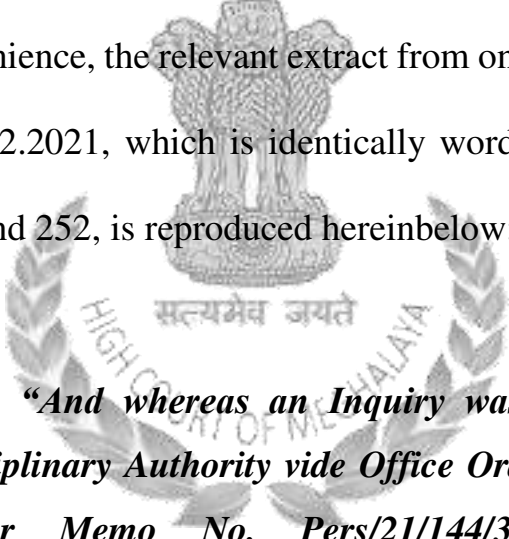
7. Mr. V.K. Jindal, learned Senior counsel assisted by Mr. V. Kumar, learned counsel for the respondent submits that, the power of the respondent No. 2 (CMD), to disagree with the findings of the Inquiry Officer is not in question, and has referred to clause 30.2 of the CDA Rules of NEEPCO, which allows the Disciplinary Authority if it disagrees with the findings of the Inquiry Authority, on any articles of charge, to record its reasons for such disagreement and to record its own findings on such charges. Learned Senior counsel submits that it is acting on this power, vested with the respondent No. 1 that, the impugned orders had been passed. He further submits that the judgment cited by the petitioner, that is, ***Punjab National Bank & Ors. vs. Kunj Behari Misra (supra)*** supports the case of the respondents, inasmuch as, the Principles of Natural Justice means to secure justice, and that, ample opportunity had been accorded to the petitioners to represent against the reasons of disagreement.

8. The learned Senior counsel further submits that, the case had arisen after extensive investigation by the Vigilance and the CBI, and that, the writ petitioners had never asked for a copy of the Chief Vigilance Officer's report or applied for the same, and that, though reply was sought from the writ petitioners on the point of disagreement, the replies were totally evasive and did not answer to the allegations. Learned Senior counsel then contends that, with the show cause being given and reply received, there is no question of the Principles of Natural Justice being violated. The findings he submits, are not based only on the CVO's views, or that there was any harm in obtaining his opinion, and he lastly submits that, there being no irregularity in the proceedings, as the writ petitioners have been given ample opportunity, and the action of the respondents being as per the CDA Rules, both the writ petitions are liable to be dismissed.

9. After considering the submissions advanced by the parties, shorn of all the other details and facts concerning the inquiry proceedings and the charges that have been levelled against the writ petitioners, what emerges are only the question as to whether due procedure established by law was adopted in the course of proceedings, and whether the writ petitioners were offered adequate opportunity to defend themselves. As has been noted earlier, major penalty was imposed, after the replies to

the reasons for disagreement were found insufficient by the Disciplinary Authority. This Court is therefore, to examine only this aspect as to whether, adequate opportunity was afforded to the petitioners at this stage.

10. A compelling point, has been raised by the petitioners that, the Disciplinary Authority while disagreeing with the findings of the Inquiry Authority, had based one of the reasons for disagreement on the views of the CVO, a copy of which was never supplied to them. For the sake of convenience, the relevant extract from one of the impugned orders dated 10.12.2021, which is identically worded in both Office Orders No. 251 and 252, is reproduced hereinbelow;



“And whereas an Inquiry was ordered by the Disciplinary Authority vide Office Order No. 69 issued under Memo No. Pers/21/144/3304-3308 dated 03.02.2020 in exercise of the powers conferred under Rule 29 of the NEEPCO Conduct Discipline and Appeal Rules. And whereas extension of period of inquiry was accorded vide office order 101 dated 21.08.2020 and office order no. 131 dated 26.03.2021.

And whereas, the Inquiry Officer had submitted the Inquiry Report dated 11.06.2021, containing 26 (twenty-six) pages, recording his findings against the

charges levelled against the charged officer according to which the charges were “Not Proved”. The views of the CVO were obtained on the findings of the Inquiry Officer. After careful consideration of the Inquiry report and the views of the CVO, the undersigned being the Disciplinary Authority and after application of mind communicated to Shri. Hemanta Choudhury, Dy. General Manager (C), NEEPCO Ltd., Guwahati Vide letter No. No./Pers/21/144/10189 dated 10.08.2021 the disagreement with the findings of the Inquiry Officer on the following grounds and directed him submit his response within 7 (seven) days from receipt of this communication.”

11. The fact that, the Disciplinary Authority relied upon the views of the CVO cannot be denied by the respondents, as also the fact that, the views of the CVO were never communicated to the petitioners. Though arguments has been forwarded by the learned Senior counsel for the respondents, that even the Rules did not provide for the same, however, in the opinion of this Court, once the views of the CVO have been taken into consideration, the same will constitute crucial materials which were used against the petitioners, to which they were not privy to. This will in effect, amount to the violation of the Principles of Natural Justice, which no doubt vitiates the proceedings. The judgments cited in this regard, are of relevance on the point discussed

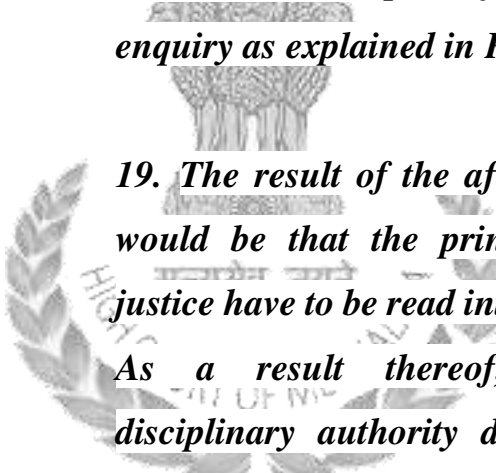
above. On the non-supply of the CVO's views or recommendations, the Supreme Court in the judgment of *State Bank of India & Ors. vs. D.C. Aggarwal & Anr. (supra)* at Para – 4 has held as follows;

“4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment in writ jurisdiction, but we propose to confine ourselves only to the question of effect of non-supply of CVC recommendations and if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settled from a series of decisions of this Court that it leaves one bewildered at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself.”

12. Similarly, on the point of disagreement with the Inquiry Authority and Natural Justice, the case of *Punjab National Bank & Ors. vs. Kunj Behari Misra (supra)*, at Para – 18 and 19 has also held as follows;

“18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are

deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.



19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to

accept the favorable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

13. In view of the stated position as discussed hereinabove, and also the settled law on these aspects, this Court holds that the petitioners were deprived of adequate opportunity to defend themselves due to the non-supply of the views of the CVO, which had been relied upon by the Disciplinary Authority, in disagreeing with the findings of the Inquiry Authority. The proceedings before the Disciplinary Authority being vitiated are therefore set aside, as also the impugned Office Orders No. 251 and 252 both dated 10.12.2021 and the order of the Appellate Authority dated 20.06.2022.

14. Needless to add, the Disciplinary Authority, if it deems fit, will be at liberty to re-commence the proceedings by first providing the views of the CVO, and affording full opportunity to the petitioners to reply to all the reasons for disagreement.

15. These writ petitions accordingly are allowed.
16. No order as to costs.

Judge

Meghalaya
24.02.2023
"D. Thabakh-PS"

