

(2009) 10 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (C) No"s. 238 (SH) of 2006 and 3954 of 2004

Akbar Ali

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Assam Rifles Act, 1941 — Section 5
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 15, 19
Central Civil Services (Conduct) Rules, 1964 — Rule 3, 9
Constitution of India, 1950 — Article 311(2)

Citation : (2011) 2 GLR 592 : (2010) 1 GLT 382

Hon'ble Judges : A.C. Upadhyay, J

Bench : Single Bench

Advocate : B. Benarjee, M. Chanda and N. Monjita, for the Appellant; S.C. Shyam, for the Respondent

Final Decision : Allowed

Judgement

A.C. Upadhyay, J.—Heard Mr. M. Chanda, learned Counsel for the Petitioner as well as Mr. S.C. Shyam, learned CGC appearing for the Respondents.

2. Facts leading to the filing of this writ petition may be summarised as follows:

The Petitioner joined in the service of As-sam Rifles as Lance Naik (Writer) on 11.04.1969. Having found the service of the Petitioner satisfactory, the Respondent authority Assam Rifles promoted him to the post of Naik clerk on 25.1.74 and subsequently to the post of Havildar Clerk on 27.9.79. After serving for about 11 years in the post of Havildar Clerk, the Petitioner was suddenly demoted to the rank of Rifleman clerk by an order dated 18.8.88, on the ground of misconduct, for having failed to control the agitation launched by the employees of Assam Rifles on 6.7.98, as a senior employee.

3. In this context it has been stated by the Petitioner that many other employees of Assam Rifles who participated in the said agitation on 6.7.88, were dismissed

from service. However, the Petitioner was neither dismissed nor placed under suspension, but was demoted to the rank of Rifleman without holding any enquiry in terms of the provision of Rule 19 (ii) of CCS (CC & A) Rules, 1965. The reasons for demoting the Petitioner as reflected in the order dated 18.8.88 passed by the competent authority reads as follows:

1. Whereas some personnel of Assam Rifles have resorted to various forms of agitational approach for redress of grievances contrary to rules and order, and whereas No. C/360181 Rank Hav/Clk Name Akbar Ali of 9th Battalion. The Assam Rifles has actively participated on 6th July 1988 at Battalion Headquarters at Kimin in the unlawful activities in furtherance of said agitation in violation of the code of conduct and resorted to Hunger Strike and took out procession & shouted slogans in the unit lines and, being a responsible individual, failed to take necessary steps to normalise the situation and disperse the agitators. The above conduct and action of No. C/360181 Rank Hav/Clk Name Akbar Ali of 9th Battalion. The Assam Rifles largely contributed to the general acts of indiscipline in the 9th Battalion. The Assam Rifles on 6th July 1988 and created an atmosphere which was detrimental to good order and discipline of Assam Rifles Force No. C/360181 Rank Hav/Clk Name Akbar Ali of 9th Battalion. The Assam Rifles is thus liable to serve disciplinary action for violating of Rules 3 and 9 of the Central Civil Service (Conduct) Rules 1964 in accordance with the procedure laid down in the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

2. And whereas the undersigned after careful consideration of the facts and circumstances is of the view that a formal inquiry is not practicable for the following reasons:

(a) Consequent to the agitational approach and incitement of innocent personnel an atmosphere has been created whereby any attempt to hold a formal inquiry may lead to general indiscipline and insubordination.

(b) No. C/360181 Rank Hav/Clk Name Akbar Ali and his close associate may intimidate or terrorise witness who are likely to give evidence against him with fear or reprisal to prevent them from giving evidence.

(c) The disclosure of certain things through evidence may adverse to National Security in general and the Assam Rifles in particular.

3. Now, therefore, the undersigned in consideration of the gravity of the misconduct and the impracticability of holding a formal inquiry against said No. C/360181 Rank H Av/CLK Name Akbar Ali of 9th Battalion The Assam Rifles for reasons aforesaid, impose the penalty "Reduced to the Ranks" against No. C/360181 Rank Hav/Clk Name Akbar Ali of 9th Battalion. The Assam Rifles with effect from 18th Aug 88 under the provisions of Rule 19 (ii) of the Central Civil Service (Classification, Control and Appeal) Rules 1965 dispensing with the inquiry under Clause (b) of the second proviso to Article 311 (2) of the Constitution of India." The punishment aforesaid was imposed on the Petitioner,

without any detailed enquiry and without providing any opportunity of hearing, by applying the provision of Rule 19 (ii) of CCS (CCA) Rules, 1965; apparently without affording any opportunity to submit representation on the proposed punishment.

4. It is submitted on behalf of the Petitioner that no reason whatsoever was recorded for a departure from the detailed procedure of enquiry provided under Rules 14 and 15 of CCS Rules, 1965. Learned Counsel for the Petitioner pointed out that there is no indication in the disciplinary proceeding regarding satisfaction of not being reasonably practicable to hold an enquiry in the manner provided under the Rules and further pointed out that provisions of Article 311 (2) or Rule 19 (ii) of CCS (CCA) Rules, 1965, can normally be applied in exceptional situations when an enquiry cannot be held in the facts and circumstances of such exceptional nature, which has to be clearly indicated in the proceeding by the concerned authority.

5. The Petitioner was held guilty and imposed with a penalty of reduction in rank after avoiding the enquiry proceeding in the manner as aforesaid. Learned Counsel for the Petitioner submits that the Petitioner was never appointed as Rifleman under the Director General of Assam Rifles but, even then he was reduced to the rank, of Rifleman in violation of all Rules known in the service jurisprudence. The Petitioner was initially appointed in the grade of Lance Naik (Writer) on 11.4.69 and thereafter promoted to the post of Naik clerk on 25.1.79 and subsequently to the post of Hav./Clerk on 27.9.87, therefore there was no reason to impose a penalty of reduction in rank to the cadre of Rifleman, which is a lower grade post under the Director General of Assam Rifles.

6. However, on consideration of overall performance, discipline and service record, the Petitioner was once again promoted to the rank of Hav/Clerk w.e.f. 1.1.90 by the Commandant, 9th Assam Rifles. In pursuance to the promotion order aforesaid the Petitioner reported for duty as Hav/Clerk in 9th Assam Rifles, but the Petitioner was subsequently informed that his promotion was cancelled on the alleged ground that the CO. 9th Assam Rifles was not the competent authority to promote a clerk. Thus the promotion order dated 17.05.90 was cancelled vide order dated 13.6.90. In the meantime, all those employees, who were victimised for participating in the agitation of 6th July 1988 in Assam Rifles, approached the Gauhati High Court by filing writ petitions in which orders were passed by rejecting the contention of the Respondents that it was not reasonably practicable to hold departmental proceedings against the employees in the manner provided in the CCS(CCA) Rules, 1965. The Court also directed the Respondent authority to reinstate all the victimised employees. Further, penalties imposed upon the victimised personnel of the Assam Rifles were also set aside. The matter went up to the Apex Court at the instance of the Respondents, and in the Apex Court the appeals preferred by the Respondents were dismissed. As a consequence of which the employees who were victimised for participating the 6th July, 1988 agitation, were ordered to be re-instated in service by restoring

their respective seniority in service etc. But, the Petitioner, who was neither dismissed from service nor was placed under suspension allegedly continued to be victimised.

7. The learned Counsel for the Petitioner submits that allegation of misconduct against the Petitioner was for his failure to control the employees from participating in an agitation being a senior employee in the cadre. However, the Petitioner personally did not participate in the agitation and his service records have all along been "Very Good", which has been reflected by the Controlling officer in all the communications recommending his case for promotion to the rank of Hav./Clerk.

8. After the judgment of the Hon^{ble} Supreme Court on 20.10.95 reinstating the dismissed employees in Civil Appeal No. 2499-2519/93, the Petitioner submitted representations on 15.9.95 and on 16.1.97 requesting the authority to review the order of reversion dated 18.08.1988 (Annexure-I) and to promote him to the post of Hav/Clerk to which he had been promoted. The Petitioner, thereafter, having failed to receive any positive response from the Respondents, approached the High Court by filing writ petition No. C.R. No. 4762 of 1998, challenging the arbitrary action of the Respondents, for imposing penalty of reduction in rank and also for cancelling promotion order aforesaid without providing any opportunity of being heard. The writ petition was disposed of vide order dated 3.12.03 by the learned single Judge of this High Court by directing the Respondent authorities as follows:

4. Unlike these employees, the Petitioner was demoted from the post of Havildar/ Clerk to that of Rifleman/Clerk. In this writ petition, the Petitioner has not made any grievance against the said order of demotion, but his grievance is confined to the order of cancellation of his subsequent order of promotion. Although he was ordered to be promoted by Annexure-A order dated 17.05.1990, but the same was cancelled before he could join the post. His representation was also disposed of by non-speaking order.

5. No affidavit in opposition has been filed controverting the fact on record. The Petitioner has not chosen to annex the copy of the order dated 18.08.1988 by which he was demoted to the rank of Rifleman/Clerk. In the aforesaid circumstances I am not inclined to grant the prayers made in the writ petition and instead I issue a direction to the Respondent No. 1 to consider the case of the Petitioner for promotion as Havildar/Clerk, which in fact, Once granted with effect from 01.01.1990 by an order dated 17.05.1990 (Annexure-A). However, the same was cancelled without assigning any reasons by an order dated 13.06.1990 (Annexure-B). Likewise, Annexure-E order dated 16.07.1997 is also a non-speaking one. In the aforesaid circumstances and in the fitness of the things, the Respondent No. 1 should now consider the case of the Petitioner in the light of the judgment of this Court eventually affirmed by the Apex Court by the judgment and order dated 20.10.1995 referred to above. This exercise shall be carried out within a period of two (2) months from the date of receipt of the

certified copy of this order. Needless to say that the case of the Petitioner shall be considered from the due date, if admissible, under the rules.

9. In pursuance of the direction issued in C. R. No. 4762/98, the Respondent No. 2 refused to extend any benefit in the light of the judgment dated 25.10.95 of the Hon'ble Supreme Court of India on the ground that the victimised employees of the Assam Rifles were reinstated as per order of the Court on certain procedural lapses and not because of the reason that they were exonerated of the offence they had committed. The Respondent No. 2, the DGAR passed the order dated 5.3.04 in terms of the direction issued by the High Court and rejected the prayer of the Petitioner by refusing to promote him and by denying him similar benefits which were given to other victimised similarly situated employees. The order passed by the Respondent No. 2, the DGAR, Assam Rifles reads as follows:

ORDER No. Rec(Adm. IV)360181/2004/02 05 March, 2004. Orders by 1C-21254L Lieutenant General U.S. Kanwar, AVSM. VSM. Director General Assam Rifles in the case of No. 360181 WO (Clk) Akbar Ali off No. 1 Construction Company Assam Rifles

1. Pursuant to the judgment of the Hon'ble High Court Guwahati Order No. 4792 dated 03 Dec. 2003 the case of No. 360181 WO (Clerk) Akbar Ali of 1 Construction Company Assam Rifles for grant of promotion has been re-examined. The individual was tried under CCS (CCA) Rules for participating in an agitation on 06th July 1988 and reduced to the rank on 18th August 1988. However, he was promoted to Hav/Clerk by Commandant 9th Assam Rifles on 01st Jan. 1990 which was not in order as the promotion of Clerks (Centrally Controlled Category) was controlled by HQ DGAR. Hence the ibid irregular promotion order was cancelled by HQ DGAR signal No. A2929 dated 13th June 1990. He was promoted to Nk/Clerk w.e.f. 22nd February 1990 according to his seniority after reduction to ranks. Thereafter, he has been getting promotions and is presently WO (Clerk) w.e.f. February 2003.

2. As far as consideration of the case in the light of judgment of Supreme Court of India dated 20th October 1995 is concerned, it is seen that the colleagues of the Petitioner who were dismissed from service were re-instated on the basis of Court Order, because of certain procedural lapses, and not, because they were exonerated of the offence they had committed. Hence he cannot be exonerated of the offence committed by him on the same grounds.

3. No injustice to the individual has taken place by the said cancellation since the promotion was not permissible under the Rules.

Signed at Shillong on this 5th day of March 2004.

10. The learned Counsel for the Petitioner submitted that the order dated 5.3.04 has been passed by the DGAR, Assam Rifles mechanically without application of mind and pointed out that cancellation of the promotion order without providing

any opportunity of being heard cannot be sustained in the eye of law and cannot be legalised on the excuse that matters concerning promotions were centrally controlled, without producing any specific order or rules to that effect. The learned Counsel for the Petitioner pointed out that as the High Court as well as the Hon"ble Supreme Court of India, held non holding of departmental enquiry by the Respondent department as illegal in respect of the victimised employees of the Assam Rifles, therefore, applying the same yardstick, being similarly situated in the facts and circumstances of the case, the Petitioner also should have been extended similar benefits by protecting his status and position in the service.

11. As a matter of fact, a charge of not being able to control an agitation itself is an innocuous charge against an individual, who admittedly neither take part in any such agitation or did he incite it. Basically such a charge of failure to control an agitation, in the alternative would mean that there were certain specified modes prescribed in the code of conduct and/or the Rules to control an agitation, which the Petitioner did not follow. However, in the absence of record it is not conceivable as to how the Petitioner being a Clerk grade officer had all the skills of controlling an agitation, where even the peers have failed in the past. As a matter of fact, failure to control an agitation may sometimes occasion due to mistake of the officers who are supposed to lead from the front. To blame a clerk grade officer, for failure to control an agitation, in the facts and circumstances made available before this Court, appears to be irrational and unfair. Admittedly, the Petitioner did not join his colleagues and friends to resort to the agitations. The Petitioner, in such a situation, could gracefully resist inherent provocation and thus could keep himself aloof from the agitating colleagues was in itself an exemplary achievement, which deserved to be appreciated. Learned Counsel for the Petitioner submits that it was not designed to be so and instead of being rewarded for his conduct, the Petitioner was unfortunately punished. The learned Counsel further pointed out that honesty and devotion to duty of the Petitioner, which was apparent from his service record reflected from different communications made by the Controlling officer of the Petitioner were all buried and forgotten.

12. Mr. S. C. Shyam, learned Counsel for the Respondents, contended that the Petitioner was promoted subsequently on three occasions after imposition of punishment; therefore, he cannot be allowed to turn around and impugn an order which was issued long before. In support of his contention the learned Counsel relied on a decision in the case of Shiv Dass Vs. Union of India (UOI) and Others, wherein the Apex Court in paragraphs 9 and 10 held thus:

9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first started in K.V. Raja Lakshmiah v. State of Mysore (AIR 1967 SC 993). There is a limit to the time which can be considered reasonable for making turned down one representation on similar lines will not explain the delay. In

State of Orissa Vs. Pyarimohan Samantaray and Others, making repeated representations was not regarded as satisfactory explanation of the delay. In that the Petitioner had been dismissed for delay alone. (See State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others, also).

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit Appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

Promotion and demotion of an employee in a Government department is regulated by the service law or rule governing the employee. After demoting and/or reducing the status and rank of an employee by way of punishment, if subsequently, for better performance such employee is promoted by the authority concerned; the right to relief of the employee, against the punishments imposed against him, in terms of the Service Rules, is not extinguished on accepting such promotion.

13. The learned Counsel for the Petitioner submitted that the impugned order dated 18.8.1988 passed in terms of the provision of Rule 19 (ii) of CCS (CCA) Rules, 1965 against the Petitioner is not sustainable in the eye of law as similarly situated person have been exonerated by the orders of the High Court, which was confirmed by the Apex Court. In support of this contention learned Counsel relied on the judgment dated 22.01.92 passed in C. R. No. 1788/88 by the learned Division Bench of this High Court in which his colleagues, who were removed from service were ordered to be reinstated and also the judgment dated 20.10.95 passed in Civil Appeal No. 2499-2519/93 by the Hon"ble Supreme Court of India, affirming the order of the High Court.

14. In Civil Rule No. 1788 of 1988, S.K. Unnithan v. The Director General of Assam Rifles and Ors., learned Division Bench of this High Court while dealing with the question of justification of an enquiry under Rule 19 (ii) of CCS (CCA), 1965 held that Clause (b) of the second proviso to Article 311 (2) can be invoked only when the authority is satisfied from the materials placed before it that it was reasonably not practicable to hold a departmental enquiry against the delinquent. Relevant extract of the decision aforesaid reads as follows:

4. Rule 19 has been made to give effect to the second proviso to Article 311 (2) of the Constitution. In a series of decisions, the Supreme Court has, while dealing with the Clause (b) of the second proviso to Article 311 (2), held that the disciplinary authority is not expected to dispense with departmental enquiry lightly or arbitrarily. The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority.

When satisfaction of the concerned authority is question in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective factors and is not the outcome of the whim or caprice of the concerned officer. The question of practicability would depend upon the existing fact situation and other surrounding circumstances, i.e. the question of reasonably practicability must be judged in the light of the situation prevailing at the date of passing of the order. Therefore, Clause (b) of the second proviso to Article 311 (2) can be invoked only when the authority is satisfied from the materials placed before him that it was not reasonably practicable to hold a departmental enquiry. If any authority is required we may refer to the decisions of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, and *Jaswant Singh v. State of Punjab*, AIR 1991 SC 485.

15. Civil Appeal No. 2499-2519 of 1993: *Union of India and Ors. (Vs. S. K. Unnithan and Ors.* (was preferred by the Respondents before the Hon'ble Supreme Court, against the order of the Division Bench of the High Court in C. R. No. 1788 of 1988 noted above. In the said appeal referred to above, the Apex Court vide its order dated 20.10.95, upheld the order passed by the High Court, and the operative portion of which reads as follows:

It is thus, obvious that under Rule 19 (ii) of the Rules two conditions are to be satisfied before an inquiry could be dispensed with. There must exist a situation which renders the holding of the departmental inquiry "not reasonably practicable" and the disciplinary authority must record in writing the reasons in support of its satisfaction. The departmental inquiry against the Respondents was dispensed with on the following reasoning:

(a) Consequent to the agitational approach and incitement of innocent personnel an atmosphere has been created whereby any attempt to hold a formal inquiry may lead to general indiscipline and insubordination.

(b) No. C/360861 Rank NK/Clerk Name Krishna Unnithan and his close associate may intimidate or terrorise witnesses who are likely to give evidence against him with fear of reprisal to prevent them from giving evidence.

(c) The disclosure of certain things through evidence may be adverse to National Security in general and the Assam Rifles in particular.

The High Court quashed the order of dismissal on the following reasoning:

The statements made in the Affidavit in opposition is not more than mere reproduction of para 3 of the impugned order. Our attention has not been drawn to any materials existing on the date of the passing of impugned order in support of the allegations contained in Para 3 of the impugned order and therefore, no materials have been disclosed to the Court with regard to the facts existed on the date of the passing of the impugned order in order to show that the satisfaction was based on certain objection facts.

In support of its reasoning the High Court relied on the judgments of this Court

in Jaswant Singh Vs. State of Punjab and others, and Chief Security Officer and Others Vs. Singasan Rabi Das,

We have heard learned Counsel for the parties. We see no ground to interfere with the impugned judgment of the High Court. We agree with the reasoning and the conclusions reached therein. We dismiss these appeals. No costs.

16. I am in absolute agreement with the objective of the law propound by the Apex Court which underlines the scope of interference of the Court in such matters. I do not wish to burden the judgment by referring to other similar decisions, however, in W.P.(C) No. 6071/01 Kendriya Vidyalaya Sangathan and Ors. (Vs. Shri Heren Chandra Das, a Division Bench of this High Court reiterated the rigor of the provisions of Rule 19 (ii) of the CCS (CCA) Rules, 1965 and held that condition precedent for exercise of powers of dispensing with enquiry are strictly required to be adhered to, as the power of dispensing with the enquiry can only be made in exceptional situation, when it is not reasonably practicable to hold an enquiry.

17. The learned Counsel for the Petitioner further contended that the Petitioner was entitled to the same relief as was granted to the victimised employees of the Assam Rifles by placing his reliance in the decision of the Hon"ble Supreme Court in Lt. Governor of Delhi and others Vs. Const. Dharampal and others, wherein the Apex Court dealt with the termination and re-instatement of similarly situated police constables and held that similarly situated persons will be entitled to such relief which were made available to the Petitioners of the writ petition. The observation of the Supreme Court reads as follows:

2. The matrix of the case, in short, is that the services of the Respondents who were appointed as constables in Delhi Police in the years 1964-66 were terminated because of their participation in the agitation along with other police constables in April, 1967. In view of the public controversy and in deference to the views expressed in Parliament, a large number of agitating constables were taken back in service as fresh entrants. Later, in view of the assurance given in the Parliament by the men Home Minister, prosecutions were withdrawn and the dismissed constables were reinducted into service. Some of the dismissed constables filed Civil Writ Petition Nos. 26 of 1969 and 106 of 1970 in the High Court of Delhi and High Court by its judgment dated October 1, 1975 quashed the order of termination and the Petitioners in that case were declared to be throughout in service. The Police Administration preferred separate appeals being L. P. A. Nos. 24 and 25 of 1976. Both these appeals were dismissed as barred by time and the judgment of the High Court dated October 1, 1975 became final.

3. Subsequently, some other constables whose services were similarly terminated but were not reinstated in service even as fresh entrants, filed writ petitions in the High Court of Delhi being C. W. P. Nos. 270 and 937 of 1978. These writ petitions were heard by Anand, J., who rejected the contention raised by the Respondents in the writ petitions regarding the delay and latches in

moving the writ petitions, allowed the writ petitions quashing the impugned order of termination declaring that the Petitioners will be deemed to have been in service and would be treated as such subject to certain conditions. The Police Administration filed LPA against this judgment which was dismissed on August 29, 1983. Thereafter the Respondents herein filed the writ petitions in the High Court against the order of termination and for reinstating them in service with effect from the respective dates of their termination of services and to treat them as being in service throughout and to award them all consequential benefits. These writ petitions were subsequently transferred to the Central Administrative Tribunal, Delhi. The Tribunal while rejecting the plea of the Respondents that the Petitioners should be denied any relief because of delay and laches held that the claims of the Petitioners (Respondents in these appeals) was identical to the claim of the Petitioners in C. W. P. Nos. 270 and 937 of 1978 whose petitions were allowed by the High Court of Delhi. The Tribunal further held that the Petitioners were entitled to the same relief as was granted to the Petitioners by Anand, J. in C. W. P. Nos. 270 and 937 of 1978.

18. The learned Counsel for the Respondents submitted that the writ petition filed by the writ Petitioner is bad for delay and laches as the Petitioner has approached this Court after lapse of considerable period of time. In support of his contention the learned Counsel for the Respondents relied on the decision in A.P. Steel Re-Rolling Mill Ltd. Vs. State of Kerala and Others, wherein the Apex Court held that long delay in approaching a Court may disentitle the benefit of a judgment and it is not extended automatically, which reads as follows:

40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the Petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ Petitioner had chosen to sit over the matter and then wake up after the decision of this Court. If it is found that the Appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief.

19. In the present case, apparently in terms of the decision of the High Court in CR No. 1788/88 and subsequent appellate order passed by the Hon"ble Supreme Court in Civil Appeal No. 2499-2519/93 filed at the instance of the Respondents, the grounds set forth by the Respondents for resorting to Rule 19 (ii) of the CCS (CCA) Rules 1965, were not found to be cogent and reasonable for the purpose of doing away with a regular departmental enquiry, for holding the delinquent guilty of misconduct. Therefore, the Petitioner, who was similarly situated, could not have been punished by pressing into service similar grounds set forth and presented in respect of the agitationist, which were disapproved by the Apex Court. Therefore, impracticability of holding a regular enquiry postulated in case of the Petitioner by showing those disapproved grounds is not acceptable.

20. In view of the above discussion, I am of the considered view that the representation submitted by the Petitioner was disposed of by the Respondent

No. 2 after a long time and in the meantime the proceedings as against other similarly situated victim employees of the incident, where the Petitioner was also a victim, continued at different levels, for a long time in the High Court as well as in the Supreme Court. The Petitioner approached the Respondent authority immediately after similarly circumstanced employees were given relief by the Respondents in view of the Hon''ble Supreme Courts order. The relief of reduction in rank was not taken up for consideration by the Court in C. R. 4762/98, per se did not deprive of the Petitioner of his right to reagitate for relief legitimately due to him in terms of the order passed in favour of the similarly situated employees. Therefore, this is not a case where the Petitioner approached the Court after along delay to disentitle him to obtain a discretionary relief. The situation and circumstances in this case are not similar to the decision referred to by the counsel for the Respondents.

21. The learned Counsel for the Petitioner submits that if the punishment imposed on the Petitioner is not set aside, there would be disparity in the punishment awarded to similarly situated employees of the same department, which is not permissible under law and equity. In support of his contention, the learned Counsel relied on a decision of the Hon''ble Supreme Court of Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shaileshkumar Harshadbhai Shah, Anand Regional Coop. Oil Seedgrowers'' Union Ltd. v. Shaileshkumar Harshadbhai Shah wherein the Hon''ble Supreme Court at paragraphs 27, 28 and 29 held as follows:

27. There is, however, another aspect of the matter which cannot be lost sight of Identical allegations were made against seven people. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

28. The first Respondent might not have opted therefore. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated on a similar footing. In view of the fact that the first Respondent succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31.1.03 as affirmed by the High Court is substituted by a direction that the first Respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof.

29. The impugned judgment is modified to the aforementioned extent. This appeal is allowed in part and to the extent mentioned hereinbefore. There shall be no order as to costs.

22. The Petitioner, being similarly situated employee of the Assam Rifle like the Respondents in Civil Appeal No. 2499-2599 of 1993, cannot be discriminated by imposing penalty of reduction of rank when all other victims of the same episode

were rehabilitated and reinstated following the judgments of the Gauhati High Court, which was upheld by the Hon''ble Supreme Court. However, the Petitioner, who was neither dismissed from service nor was placed under suspension, was apparently discriminated for his alleged incapacity to control the agitation and the discrimination continued to rule the field.

23. The learned Counsel for the Petitioner pointed out an important issue by drawing attention of this Court to the provision of Rule 11 (vi) of CCS (CCA) Rules, 1965 and submitted that in terms of the Rules aforesaid the Petitioner could not have been reduced to any lower rank to which he was not initially appointed.

24. Hon''ble Supreme Court in Nyadar Singh Vs. Union of India (UOI) and Others, held that reduction in rank to a post lower than the post to which the direct recruit initially was holding, is not permissible under Rule 11 (vi) of Central Civil Services (Classification Control & Appeal) Rules, 1965, the observations made by the Hon''ble Supreme Court in Nayadar Singh (supra) reads as follows:

24. As to whether a person initially recruited to a higher time scale, grade or service or post can be reduced by way of punishment, held before, the statutory language authorizing the imposition of penalty does not, it is true, by itself impose any limitations. The question is whether the interpretative factors relevant to the provision, impart any such limitation. On a consideration of the relevant factors to which " we will presently refer we must hold that they do.

25. Though the idea of reduction may not be fully equivalent with "reversion", there are certain assumptions basic to service law which bring in the limitations of the latter on the former. The penalty of reduction in rank of a government servant initially recruited to a higher time scale, grade, service or post to a lower time scale, grade, service or post virtually amounts to his removal from the higher post and the substitution of his recruitment to lower post, affecting the policy of recruitment itself.

28. There are, therefore, certain considerations of policy that might militate against such a wide meaning to be given to the power. In conceivable cases, the government servant may not have the qualifications requisite for the post which may require and involve different, though not necessarily higher, skills and attainments. Here enter considerations of the recruitment policy. The rule must be read in consonance with the general principles and so construed the expression "reduction" in it would not admit of a wider connotation. The power should, of course, be available to reduce a civil servant to any lower time scale, grade, service or post from which he had subsequently earned his promotion.

(Emphasis supplied)

25. The learned Counsel for the Respondents submits that in terms of the definition incorporated in Section 5 of the Assam Rifles Act, 1941, the Petitioner is deemed to be a Rifleman. However, on perusal of Section 5 of the Assam Rifles

Act, 1941, it appears that in the class and rank category Lance Naik is in serial No. VIII and Rifleman is in serial No. IX of the Table which depicts the classes of Rifleman specified therein in the combatant category. Therefore, from the provisions of Section 5 itself, it is apparent that L/Nk is one grade senior to a Rifleman. Therefore, a Rifleman and L/Nk cannot be categorised to be in the same cadre in view of the above classification. Even if the argument advanced by the learned Counsel for the Respondents is taken to be true, no reason whatsoever has been contended on behalf of the Respondents as to why the Petitioner was not reduced to the rank of Lance Naik Writer, in which he was originally appointed.

26. In the instant case, the disciplinary authority by the impugned order imposed a penalty of reduction in rank by reducing the rank of the employee from the post of LNK/Clerk, to which he was originally appointed, to the post of Rifleman (Clerk). This is apparently illegal and untenable in law in view of the Hon'ble Supreme Court's decision in Shri Nayadar Singh (supra).

27. The learned Counsel for the Petitioner, indicating the irregularities in demoting the Petitioner by cancelling his promotion order by the Respondent authority, submitted that the promotion once granted, even if by mistake, cannot be cancelled or recalled without providing an opportunity of being heard to the promotee. The learned Counsel also submitted that cancellation of the promotion order by the Respondent authority is in violation of the principle of natural justice. In support of his contention, he relied on the decision of the Hon'ble Supreme Court of India reported in Ram Ujarey Vs. Union of India, wherein their lordship held as follows:

17. There is yet another infirmity in the impugned order of reversion. The Appellant had been allowed the benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the Appellant had passed and was, therefore, promoted to the posts of Semi-skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the Respondents ought to have first given an opportunity of hearing to the Appellant. The Appellant having earned two promotions after having passed the tests, could not have been legally reverted two steps below and brought back to the post of Khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and therefore the promotion orders would be cancelled. In a situation of this nature, it was not open to the Respondents to have made up their mind unilaterally on facts which could have been shown by the Appellant to be not correct but this chance never came as the Appellant, at no stage, was informed of the action which the Respondents intended to take against him.

(Emphasis supplied)

28. After having notified formal promotion of the Petitioner to Hav/Clerk, by a subsequent notification, the promotion order was cancelled on the pretext of the promotion order being void ab initio. The learned Counsel for the Respondents submitted that the Petitioner was wrongly promoted to Hav/Clerk by the Commandant of 9th Assam Rifles as he was not competent to do so. Although there is no scope to analyse on the promotion policy of the Respondent Department, however, Rules relating to power of promotion of the DGAR, Assam Rifles should have been placed on record by the Respondents. In any view of the matter even if the order of promotion was issued by the Respondent authority due to mistake, an opportunity of hearing to the writ Petitioner should have afforded before cancelling or annulling such order of his promotion. A reasoned order for having committed such a mistake of promoting an officer should have been passed and a copy thereof should have been made available to the Petitioner. Unfortunately this was not done in the case of the Petitioner.

29. Therefore, in view of the decision of the Hon''ble Supreme Court cited above i.e. *Ram Ujarey v. Union of India* (supra), the impugned order cancelling the promotion order of the Petitioner is also not tenable in law.

30. In the light of the discussion noted above, after having given thoughtful consideration on the entire aspects of the matter, I am of the considered view that the Petitioner in this case deserves to be given his legitimate promotion, including seniority with all other consequential service benefits, by quashing and setting aside the impugned orders. Accordingly, the writ petition is allowed and the impugned orders are hereby set aside and quashed.