
(2015) 12 MAN CK 0002
In the Manipur High Court
Case No : W.P.(C) Nos. 901 and 971 of 2015

Kam Deo Das

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 17-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 33

Citation : (2015) 12 MAN CK 0002

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : H.S. Paonam, Senior Advocate and Bipin, Advocate, for the Appellant; S. Rupachandra, ASG, for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. H.S. Paonam, learned senior counsel for the petitioner and also Mr. S. Rupachandra, learned ASG for the respondents in both the writ petitions.

As both these writ petitions are filed by the same petitioner relating to the common cause of actions, these petitions are heard and disposed of by this common judgment and order.

2. In these writ petitions, the petitioner, Shri Kam Deo Das, who is serving as a Senior Medical Officer in the rank of Deputy Commandant in the Assam Rifles, has approached this Court with certain grievances regarding the convening of the revision proceeding of the General Assam Rifles Court (GARC for short) mainly raising the plea of violation of principles of natural justice. Ordinarily, in matters relating to disciplinary proceedings, aggrieved party would be advised first to exhaust the alternative remedy by way of appeal, review, etc. provided under the service rules before the Court considers invoking jurisdiction under Article 226 of the Constitution of India. In the present case, the petitioner could have been also directed to avail the alternative remedy provided under the Assam

Rifles Act, 2006 and Rules framed thereunder for redressal of his grievances. However, the manner in which the revision proceedings of GARC was initiated and conducted as stated by the petitioner has made this Court to examine the issues rather than relegating this matter to the alternative remedy available.

3. That a General Assam Rifle Court hereinafter referred to as the "GARC" was initiated against the petitioner under Section 26(A) of the Assam Rifles Act, 2006 for "Absenting Himself Without Leave" for 606 days. The petitioner pleaded guilty to the charge and was thereafter awarded sentence of forfeiture of one year's service for the purpose of promotion by the GARC held on January, 2015. The said sentence, however, was subject to confirmation from the competent authority as provided under Section 129 of the Assam Rifles Act, 2006. Section 135 of the Assam Rifles Act, 2006 further provides that any finding or sentence of an Assam Rifle Court which requires confirmation may be once revised by order of the Confirming Authority. In the present case, the Confirming Authority instead of confirming the sentence, directed for revision of the sentence imposed upon the petitioner vide order dated 23.9.2015, which led to the initiation of the revision proceeding of the GARC which was held on 19.10.2015 whereupon the penalty of compulsory retirement from service was imposed on the petitioner and promulgated on 29.10.2015 which are subject matter of challenge in these two writ petitions.

4. Personnel serving under the Assam Rifles including the petitioner are governed by the provisions of Assam Rifles Act, 2006, hereinafter, referred to as the "Act" which is a comprehensive Act governing the service conditions of persons serving in the Assam Rifles including the disciplinary proceedings. As regards disciplinary proceedings the Act provides for constitution of 3 (three) kinds of Assam Rifles Courts, namely, (a) a General Assam Rifles Court (b) Petty Assam Rifles Court and (c) Summary Assam Rifles Court. We are concerned with the General Assam Rifles Court (GARC) as applicable in the present case. Section 94 of the Act provides that a General Assam Rifle Court has power to try any person subject to this Act for any offence punishable thereunder and to pass any sentence authorised thereby. We are not so much concerned with the finding by GARC but with the sentencing part with which the present writ petitions are concerned. Section 129 of the Act provides that no finding or sentence of General Assam Rifles Court shall be valid except so far as it may be confirmed as provided under the Act and the findings and sentence of the GARC may be confirmed by the Central Government or by any officer empowered in his behalf by warrant of the Central Government. In the present case, the Inspector General Assam Rifles (South) is the Confirming Authority, who may direct for revision of the finding or sentence of an Assam Rifles Court as provided under Section 135 of the Act.

5. The IGAR (South), the Confirming Authority passed a revisional order on 23rd September, 2015 observing that the sentence of forfeiture of one year's service for the purpose of promotion awarded to the petitioner is not commensurate with the gravity of offence of which he was convicted and directed for revision of the

sentence awarded by the GARC. On the basis of aforesaid revision order the Confirming Authority issued the order on 12th October, 2015 for holding the Revision GARC and to assemble on 19th October, 2015. The aforesaid revision proceeding was directed only for reconsidering the sentencing and as such, it may not be necessary to refer in detail about the finding arrived at by the GARC except wherever required. Significantly enough, neither the revisional order passed on 23.9.2015 nor the consequential order passed on 12.10.2015 were furnished to the petitioner prior to holding of the revision proceeding on 19.10.2015. The revisional order dated 23.9.2015 was read out to the petitioner only on the day of the proceeding on 19.10.2015 and the order dated 12.10.2015 was given to the petitioner only in the evening of 18.10.2015. In the aforesaid revision proceeding of the GARC held on 19.10.2015, after hearing the petitioner, he was awarded the penalty/sentence of compulsory retirement from service. The relevant portion of the revision proceeding is reproduced hereinbelow :

"The Accused is afforded an opportunity to make submission in respect of the Revision Order.

The Accused in his verbal submission submits that he has already given his medical documents. He further states that he did not go to Military Hospital as it is not authorized to him. Therefore, he had gone to Government Hospital. Also, the Accused states that in his 14(fourteen) years of service he has not committed any offence except this incident.

Thus, whatever documents he has already given related to his disease, the Court may consider the same.

The statement of the Accused as recorded by the Law Officer is read over to him and is confirmed by the Accused to be correct.

At this stage, the Court observes that the Accused was commissioned on 14 Feb 2003.

[Emphasis added]

ADVICE BY THE LAW OFFICER

Gentlemen, you have heard the address of the Accused. Gentlemen, I shall draw your attention to the following provisions of law, which reads as under:--

"Assam Rifles Act Section 135 - Revision of finding or sentence."

(1) Any finding or sentence on Assam Rifles Court which requires confirmation may be once revised by order of the Confirming Authority and on such revision, the Court, if directed by the Confirming Authority, may take additional evidence.

(2) The Court, on revision, shall consist of the same officer as were present when the original decision was passed unless any of those officer are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision.

"Assam Rifles Rule 113 - Confirmation and Revision."

(1) xx xx xx xx xx

(2) xx xx xx xx xx

(3) xx xx xx xx xx

(4) (a) Where the sentence alone is sent back for revision, the revision order shall be read in open court and the Accused be given an opportunity to address the court in regard to matters referred to in the revision order.

(b) The Court shall then reconsider its sentence in closed court and if it does not adhere to the sentence, revoke the same and pass sentence afresh.

(5) Where the sentence alone is sent for revision the court shall not revise the finding.

(6) After the revision, the presiding officer shall date and signed the decision of the court, and the proceedings, upon being signed by the Law Officer, if any, shall at once be transmitted for confirmation.

Gentlemen, you may now close the Court to reconsider the sentence in light of the views expressed by the Confirming Authority in the Revision Order (Exhibit VIII).

The Court is closed to reconsider their sentence.

Signed at Field this Nineteenth day of October, 2015."

6. The genesis of the problem of the petitioner seems to lie on the Revision Order dated 23.9.2015 passed by the Confirming Authority. This Court noticed certain peculiarities in the said revision order which will have a bearing on the decision of the issues raised here. Accordingly, the said revision order dated 23.09.2015 is reproduced hereinbelow:--

"CONFIDENTIAL

REVISION ORDER

Orders by IC-40760L Major General V S Sreenivas, VSM**, Inspector General Assam Rifles, Headquarters Inspector General Assam Rifles (South).

2. The General Assam Rifles Court which assembled on 13 January 2015 and subsequent days for trial of ARMC-6000004 Deputy Commandant Kamdeo Das of 46 Assam Rifles (now 7 Assam Rifles), will assemble in open court at field on 15 Oct 2015 for the purpose of reconsidering the sentence.

3. While not intending to interfere in any way with the discretion of the Court in matters of awarding a sentence I, as Confirming Officer, observe that the

sentence of forfeiture of 01 year service for the purpose of promotion awarded to the accused is not commensurate with the gravity of the offence of which he stands convicted.

4. Apart from pleading "Guilty" to the charge, in his statement made at the trial the accused has brought out that he was granted temporary duty to join investigation at CBI, New Delhi. The accused was suffering from typhoid with positive "widal test" and took medical opinion from hospital from various hospital like Churachandpur district Government hospital and NRS college while en route to New Delhi, and he was unable to join investigation as his health deteriorated further. Once he had recovered from his ill-health he joined the investigation and returned back to the unit. The accused claims that throughout he was in touch with the unit. On perusal of the Court of Inquiry and Summary of Evidence it has been revealed that the accused kept his communication one-way, the unit could not reach him for passing any instructions. When he was residing in his hometown, he resided at a place other than his house to avoid any contract. The medical opinion and related documents pertaining to civil medical practitioners are not admissible as any personnel of force is supposed to report to the nearest Military Hospital for his treatment whether he is on temporary duty or on leave. Also, in the first instance, when he did not join the investigation, the accused instead went to High Court to get anticipatory bail. Thus this indicates that the accused had other ulterior motives of being Absent Without Leave, which were not involuntary and certainly not for the purpose for which he was sent on temporary duty.

5. The primary obligation of Assam Rifles personnel is to maintain discipline in all aspects and discipline in fiscal matters are to be given top priority as it mirrors the image of an institution. The punishment awarded in such cases should be directly proportionate to the nature and the magnitude of the offence. The discretion vested in the judiciary by the legislature for determining appropriate sentence puts the onus on the court to exercise care and caution and arrive at a fair and impartial verdict. The sentence would either be reformatory or corrective depending on the facts and circumstances of cases. The facts and given circumstances in each case, the nature of the crime, the conduct of the accused, and all other attending circumstances are relevant facts, which would enter into the zone of consideration. "Undue Sympathy" should never creep into the mind of the court while determining the quantum of punishment as it would do more harm to the justice system and undermine the public confidence in the efficacy of law. It is the duty of the court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

6. The purpose of the prosecution of a public servant is to maintain discipline for modulation of his conduct to further the efficiency in public service. The public servant must maintain extremely high standard of discipline, always and every time. All ranks are always expected to display high sense of discipline and any breach of or aberration therein, would erode the very fibre of discipline, fair

name of the Assam Rifles and public confidence. Whenever and wherever such breaches occur, for this every reason, the military system of dispensation of justice caters for awarding more severe sentence to the offenders.

7. The statute has given a wide margin to the courts to exercise its discretion of the quantum of the punishment which should be inflicted in each case. The discretion with which the court is vested must be exercised judicially and not arbitrarily. The merits of the case should be carefully considered keeping in view that the punishment is a means available for maintenance of discipline and, while passing sentence, the interest of the discipline and good name of the service must be kept in view. The proper amount of punishment that should be inflicted is least amount by which the discipline can be effectively maintained. Extenuating circumstances, if any, must be resolved in favour of the accused, but if there are none, the human consideration should not sway the court in passing its sentence so lenient as to make the offence seem venial.

8. Keeping in mind the seriousness of the offence, the manner in which it was committed, the utter disregard displayed to the basic characteristics of an officer and, more importantly, the fact that such offence was committed with full consciousness makes it grave. It is for the court to consider as to what sentence should be awarded to the accused which should be proportionate to the nature and gravity of the proven offence and also to have its deterrent effect for the maintenance of military discipline.

9. In the light of the above observations, the court may carefully and dispassionately reconsider the sentence in the closed court. The court may either adhere to their earlier decision or may, in the event of revoking their previous sentence, further consider passing of an appropriate fresh sentence keeping in mind the seriousness and gravity of the offence of which the accused has been found guilty.

10. After the Revision Order is read out in open Court, the Court should afford the accused an opportunity to address the Court, if so desired by him. Thereafter, it becomes necessary to clarify and points raised by the accused, the Law Officer shall clarify the same.

11. The sentence on revision, if any, based thereon, shall be announced in open Court as being subject to confirmation.

12. The proceedings, after revision, shall be forwarded to Chief Law Officer, HQ DGAR (Law Branch) through this HQ.

Signed at Field on this 23rd day of Sep. 2015.

Sd/- (VS Sreenivas) Major General Inspector General Assam Rifles (South)"

[Emphasis added]

7. The petitioner has made very serious allegations of violation of principles of natural justice, which according to him, has vitiated the proceedings of the

revision GARC because of which the petitioner is seeking intervention by this Court at this stage, instead of resorting to the alternative remedy available under the Act.

The petitioner has tried to explain his unauthorised absence on the ground that he was suffering from "Typhoid Fever with widal test positive" while proceeding to join investigation at the Crime Branch Sunlight Colony, New Delhi which is stated to have been confirmed by the report of the Churachandpur District Government Hospital MOPD. He also claimed to have consulted doctors at the N.R.S. Medical College and Hospital, West Bengal on 7.12.2011 when his health condition deteriorated because of which he could not join the investigation in Delhi at that time. According to him, he kept his Assam Rifles Unit informed about his illness from time to time. It is thus the case of the petitioner that his absence was due to his illness from which the petitioner was suffering which was beyond his control and not intentional. Though he pleaded guilty before the General Assam Rifles Court (GARC) held in January, 2015, he appealed for mitigation considering his past record of service in which there was no such AWL absence except the said incident. The petitioner claims that after he had been sentenced with the penalty of forfeiture of one year's service for the purpose of promotion by the GARC, he was expecting confirmation of the same. According to the petitioner, however, to his surprise, he was informed later only on 18th October, 2015 that there will be a revision of the GARC proceeding on 19th October, 2015. The petitioner claims that he was not given any opportunity to know the reasons and the grounds for ordering revision vide order dated 23.9.2015 passed by the Confirming Authority and he was also without any access to the documents except for being furnished with a copy of the order intimating holding a revision on 18.10.2015. He contends that he was served with a copy of the said order dated 18.10.2015 in the late evening itself informing of the holding of the revision of GARC proceeding in terms of the corrigendum issued by the Headquarter IGAR (South) dated 12.10.2015 but was not given a copy of the Revision Order dated 23.9.2015. The petitioner claims that after he was informed of the holding of the revision GARC, since his case was of AWL, he requested for allowing some senior medical officer like Dr. Rajesh Kumar of 6 AR CMO or Dr. SS Tiwari of ARCH (Sukhovi) or any doctor from CPO Hospital to help him to explain the matter better. The petitioner claims that though the said Dr. Rajesh Kumar was present in the morning on the next day to assist him, since the petitioner was not appraised with the necessary information and documents, Dr. Rajesh Kumar was helpless to render any assistance to him. It was also contended that the petitioner was not allowed to make his submission properly during the revision proceeding.

8. The Assam Rifles authorities though having filed a short affidavit on 30.10.2015 and a supplementary affidavit on 4.11.2015 have not specifically controverted the specific allegations in the petition but it has been contended that all the necessary particulars were given to the petitioner to defend himself and as regards furnishing copies of documents it was contended that since he

never claimed the same, the same was not made available to him. It has been stated that on the contrary, he made an application for the documents relating to the GARC only on 31st October, 2015 which were duly furnished to him. The Assam Rifles respondents, however, have admitted that the copy of the Revision Order dated 23.9.2015 was not furnished to the petitioner prior to or at the time of holding the revision GARC, but it was read out to the petitioners at the time of Revision GARC proceeding.

It has been submitted by the Assam Rifles Respondent that in any event, the present petition is not maintainable as there is an alternative remedy available under the statute. Moreover, since the petitioner had pleaded guilty to the charge of the AWL for 606 days, the penalty of compulsory retirement imposed cannot be considered to be disproportionate and hence, the petition is liable to be summarily dismissed.

9. Mr. H.S. Paonam, learned senior counsel has submitted that as in the case of civilian administration and domestic enquiries, principles of natural justice are equally applicable to Assam Rifles in their disciplinary proceedings. Mr. H.S. Paonam, learned senior counsel in support of the aforesaid contention has relied on the decision of the Hon''ble Supreme Court in the cases of Rajiv Arora Vs. Union of India (UOI) and Others, . It has been submitted that in the said case of Rajiv Arora (supra), the Hon''ble Supreme Court had held in respect of Indian Air Force personnel that the principles of natural justice will be applicable especially where action is taken which may cause prejudice to the interest of a person, even if no specific provisions for opportunity of being heard is present. Accordingly, it has been submitted that in the case of Assam Rifles personnel, principles of natural justice will be applicable if the action taken causes prejudice. The learned senior counsel has also referred to the decision in Prakash Ratan Sinha Vs. State of Bihar and Others, to emphasise this point and also that rule of natural justice operates even in areas not covered by any law validly made.

10. As regards the objection raised by the Assam Rifles that writ will not lie when alternative remedy is available, Mr. H.S. Paonam, learned senior counsel relying on the decision of the Hon''ble Supreme Court in the case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, has contended that even if alternative remedies are available under the statute or the rules, writ will lie in the event of violation of fundamental rights or infringement of fundamental rights or where there is failure of principles of natural justice or where there is lack of jurisdiction of the authority concerned. It has been contended that in the present case, there has been gross violation of the principles of natural justice, hence, these writ petitions would lie.

11. Mr. H.S. Paonam, learned senior counsel drawing attention of this Court to the sentence passed by the Revision GARC by which the Court, after having considered the view of the Confirming Authority and the whole of the proceeding, revoked its earlier sentence and passed a fresh sentence of compulsory retirement, has submitted that the Revision GARC had not at all applied their

mind independently but had mechanically endorsed the view of the Confirming Authority. According to him, the said decision of the Revision GARC clearly shows that the decision has been influenced by the view of the Confirming Authority. Mr. H.S. Paonam, learned senior counsel further submits that the aforesaid sentence clearly shows that it is a case of enhancement of penalty inasmuch as the petitioner has been now awarded harsher sentence, thus enhancing the punishment. He submits that principles of natural justice demands that before the authority proposes to enhance the penalty, the charged officer ought to have been given proper opportunity of being heard and explain his position. In the present case, it has been contended that no show-cause notice was given to the petitioner for the proposed enhancement of sentence. Accordingly, it has been submitted that the procedure adopted by the authorities in enhancing the penalty clearly amounts to violation of the principles of natural justice and in this connection, has relied on the decisions of the Hon''ble Supreme Court in the case of Oriental Bank of Commerce and Another Vs. R.K. Uppal, . Relying on the decision of the Hon''ble Supreme Court in the case of V. Sasi and others Vs. State of Kerala, it has been submitted that in the present case, neither show-cause notice was given to the petitioner as to why the earlier penalty cannot be accepted and why harsher penalty should be imposed. Hence, in absence of the show cause notice, the impugned penalty/sentence is not sustainable. Further, relying on the decision of the Hon''ble Supreme Court in the case of Paul George Vs. State, , the learned senior counsel for the petitioner has submitted that failure to assign reason, howsoever brief it may be, is fatal. It has been submitted that in the present case, no reason whatsoever has been given for enhancing the penalty but the sentencing order merely mentioned that the Court had considered the view of the Confirming Authority and the whole of the proceeding, which cannot be said to be any reason at all.

12. Mr. H.S. Paonam, learned senior counsel contends that the proceeding against the petitioner was initiated as far back as in 2012 but was completed in January, 2015 with the imposition of the sentence of loss of one year seniority for the purpose of promotion. However, it took another nine months to confirm the said sentence and instead of confirming the sentence, the Confirming Authority directed for reconsideration of the sentence by an order passed on 23.9.2015. It has been submitted that though the proceeding against the petitioner was initiated in 2012, the authorities rushed through the revision proceeding to impose a harsher penalty that too, without affording a proper opportunity of being heard to the petitioner and without giving any show-cause notice. It has been submitted that at no point of time, the petitioner was explained the reason for the revision nor given any copy of the revision order dated 23.9.2015 as to why the earlier sentence of loss of one year's seniority was not confirmed and that there should be a revision of the said sentence. According to him, the said revision order dated 23.9.2015 was not given to him even during the second revision GARC proceeding held on 19.10.2015 but the content was merely read out which effectively prevented him from defending

himself properly. He had also submitted that since the petitioner was not fully made aware of the reasons for the revision, he was not in a position to brief his Defence Assistant properly. That apart, a serious allegation was made against the authorities contending that the petitioner was not allowed to have a proper say or defence during the second GARC proceeding as he was not allowed to submit his defence. Mr. H.S. Paonam, learned senior counsel submits that the fact that the petitioner has been denied proper opportunity to defend himself and was not even allowed to submit properly before the proceeding and was subjected to various harassments is clearly evident from their conduct. To substantiate this contention the learned senior counsel has drawn the attention of this Court to the movement order issued on 5.11.2015 which contains a copy of 7 Assam Rifles Movement Order No. 11012/A/7AR/Move/2015 dated 17th October, 2015 in connection with ARMC-6000004 regarding the petitioner (Annexure-C/2). Mr. H.S. Paonam, learned senior counsel submits that the movement order dated 17th October, 2015 issued to the petitioner was meant to enable the petitioner to attend the Revision GARC on 18.10.2015. The said movement order also clearly mentioned the purpose of the journey, i.e., to attend the revision GARC and the date of departure on 17th October, 2015 and the date of SORs as 18th October, 2015. According to the petitioner, the fact that the said movement order which was to be issued on or before 17th October, 2015 was issued only on 5.11.2015 clearly shows the malafide intention of the authorities to deny him adequate opportunity to defend himself. Mr. H.S. Paonam, learned senior counsel submits that all the while the petitioner had been kept in the Rear Assam Rifles and practically in confinement without informing the reasons for movement and also denying any access to other documents as mentioned above. He also submits that the fact that after the filing of the writ petition, the petitioner was denied permission to meet his advocate as clearly indicated in the letter dated 4.11.2015 wherein it is mentioned that when the petitioner sought for permission of the authorities to attend the Court and meet his lawyer, the petitioner was directed to produce a copy of the letter written by the lawyer asking for his attendance in the High Court thus denying him to attend Court or to meet his counsel. Therefore, it has been contended by Mr. H.S. Paonam, learned senior counsel that the petitioner had been subjected to various kinds of harassment and also has been denied proper opportunity to defend himself in the Revision GARC. He has drawn attention of this Court to Rule 116(3) of the Assam Rifles Rules in which it has been clearly mentioned that where the Confirming Authority has withheld confirmation thereof, the record of the proceeding shall be sent to the Commandant of the accused and in that event, the accused shall be so informed. However, it has been submitted that in the present case, the petitioner was never informed of the withholding of the confirmation. Mr. H.S. Paonam, learned senior counsel further referred to section 139(2) of the Assam Rifles Act which provides for submission of a petition to the Central Government, or the Director General or any prescribed officer superior, after the sentence has been confirmed. It has been contended that in the present case, after the confirmation of the sentence by the Confirming Authority on 26th October, 2015, it was

promulgated soon thereafter on 29.10.2015 thereby denying any opportunity to submit any petition as provided under section 139(2) before promulgation of the sentence, thus violating principles of natural justice. Mr. H.S. Paonam, learned senior counsel also has referred to Rule 178 of the Assam Rifles Rules, 2010 which provides for allowing a person subject to the Act who has been tried by a Court to put in one petition before the confirmation to the Confirming Authority and one petition after the confirmation to a person mentioned in Section 139 of the Act. Mr. H.S. Paonam, learned senior counsel submits that in the present case, the petitioner has been denied such opportunity.

13. To sum up, the contentions of Mr. H.S. Paonam, learned senior counsel for the petitioner are that principles of natural justice are applicable in the case of Assam Rifles personnel also even if no specific provisions are provided under the Rules or the Act. He contends that even if there is no specific provision for giving show-cause notice before ordering revision of the sentence and enhancing the sentence, the principles of natural justice demand giving of such an opportunity to the petitioner which has not been done in the present case. It has been also contended that the plea of non-maintainability of the petitions on the ground of availability of alternative remedy raised by the Assam Rifles authorities cannot be accepted as there has been violation of principles of natural justice. Further, the statutory rules and provisions have been violated by the Assam Rifles authorities by denying him the opportunity to submit petition as provided under Rule 116, 178 of the Assam Rifles Rules, 2010 and Section 139 of the Assam Rifles Act. That apart, the petitioner has been subjected to various kinds of harassment and was effectively denied the opportunity to defend himself properly, which is arbitrary, a facet of injunctions of Article 14 and as such, the proceeding is liable to be interfered with.

14. It may be stated that during the pendency of W.P(C) No. 901 of 2015, the petitioner filed another writ petition being, W.P(C) No. 971 of 2015. In the said W.P(C) No. 971 of 2015, the petitioner has sought for quashing and setting aside the revision GARC and the promulgation order dated 29.10.2015 which was promulgated after the writ petition, W.P(C) No. 901 of 2015 was filed on 28.10.2015. In the subsequent writ petition, the petitioner has made serious allegations against the Assam Rifles authorities about various harassments being meted out to him, more particularly, in para No. 13, which is reproduced hereinbelow:--

"13. That it is also submitted that on 19.10.2015, when the petitioner was brought to the area where revision General Assam Rifles Court (for short GARC) was to be taken placed, petitioner met Dr. Rajesh Kumar and upon inquiry Dr. Rajesh Kumar told him that petitioner was informed at about 23.00 hrs of 18-10-2015 to be present nor 19-10-2015 early morning as a defender but the petitioner was not apprised on given any documents and as such, he would be helpless. In such circumstances, Revision General Assam Rifles Court (for short GARC) was taken up, where present petitioner was not allowed to say

something. Whenever, petitioner started to say something petitioner was asked to stop saying that everything is already over in as much as not a single opportunity including no question were also asked to Dr. Rajesh Kumar and Dr. Rajesh remained a mute spectator to the whole proceeding. In fact Revision General Assam Rifles Court (for short GARC) was more or less a Kangaroo Court. In the proceeding where petitioner was forcefully brought and made to stand while allowing the officers present to carry on their activities as chosen by them, providing of opportunity, even to say something was far cry and in such manner proceeding was closed and upon reopening, petitioner was informed that he has to go home on compulsory retirement as desired by higher authority. However, neither a copy of the proceeding nor order were provided to the petitioner so as to enable the petitioner to seek redressal in terms of the Rules and Regulation governing the Assam Rifles organisation."

[Emphasis added]

When this writ petition, W.P(C) No. 971 of 2015 was taken up on 25.11.2015, time was granted to the respondents authorities to file their affidavit-in-opposition, if they desired. However, the Assam Rifles authorities have opted not to file any affidavit-in-opposition to the said writ petition. In view of the above, Mr. H.S. Paonam, learned senior counsel submitted that since the various allegations made in the said writ petition, W.P(C) No. 971 of 2015 had not been controverted by the Assam Rifles authorities, it goes to show that the allegations of harassment and victimisation made by the petitioner against the Assam Rifles authorities had been admitted by the respondent, and accordingly, these uncontroverted allegations can be taken into account by relying on the decision of the Hon"ble Supreme Court in the case of Smt. Naseem Bano Vs. State of U.P. and others, .

15. When the matter was taken up on 7.12.2015, Mr. S. Rupachandra, learned ASG for the Assam Rifles respondent, was specifically asked to make his submission on the issues as to whether the Confirming Authority can re-appreciate the evidence and also about the observation regarding the inadmissibility of medical opinion and documents pertaining to Civil medical practitioners as reflected in Para No. 4 of the Revision Order dated 23.9.2015. In response, Mr. Rupachandra, learned ASG has submitted that there was no re-appreciation of the evidence by the Confirming Authority but the observations were merely a reflection of the evidence on record. Mr. Rupachandra, learned ASG has submitted that otherwise also, the Confirming Authority has all the power to re-appreciate the evidence in a revision proceeding by relying on the decision of the Hon"ble Supreme Court in the case of Union of India and Others Vs. Capt. A.P. Bajpai, but he also hastened to add that in the present case, the Confirming Authority has not touched upon the finding of the Court and whatever observation the Confirming Authority had made was based on the evidence already on record. Further, as regards the issue of admissibility of evidence, it has been submitted that all the serving Assam Rifles personnel are supposed to

get medical treatment from the Military or the Government hospital and as such, evidence of the Civil Medical Practitioner is not admissible. However, later on, when it was pointed out by the learned senior counsel for the petitioner that in respect of improvement of SHAPE, the Assam Rifles personnel are permitted to get opinion of a private medical practitioner, it has been submitted that such private medical practitioner must be an empanelled one. Mr. Rupachandra, learned ASG also has submitted that in the present case, the AR authorities had acted purely in accordance with the rules and as such, the question of violation of the principles of natural justice does not arise in the present case. He relied on the decision of the Hon"ble Supreme Court rendered in the case of Mehsana District Central Cooperative Bank Ltd. and Others Vs. State of Gujarat and Others, wherein the Hon"ble Supreme Court had held that the authorities are bound to act on the basis of Acts and Rules. Mr. Rupachandra, learned ASG submits that in the present case, that is exactly what the AR authorities have done. Mr. Rupachandra, learned ASG also submitted by relying on the decision of the Hon"ble Supreme Court rendered in Union of India & ors. v. Manoj Deswal & ors.; SLP No. 5015 of 2008 decided on 28.10.2015 that a person who has absented for a long time does not deserve to remain in service and the punishment of compulsory retirement for having remained absent for 606 days cannot be said to be disproportionate. Mr. Rupachandra, learned ASG has also submitted that the petitioner had been afforded all the opportunities as is clearly evident from the proceeding and he had admitted to his guilt and a proportionate penalty was imposed on him. Referring to the Revision Order dated 23.9.2015, Mr. Rupachandra submits that as clearly mentioned in Para No. 9 of the said revision order, the Confirming Authority had made it very clear that the revision court may either adhere to their decision or may revoke the previous sentence keeping in mind the seriousness/gravity of the offence. Accordingly, it has been submitted that the Confirming Authority had given all the options to the revision Court to decide the quantum of punishment.

16. Mr. Rupachandra also has submitted by relying on the decision of the Hon"ble Supreme Court in the case of S.N. Mukherjee Vs. Union of India, that confirmation order does not required any reason. Therefore, in the present case also, no detail reason was required to be recorded and the revision GARC had given a brief reasoning for altering the sentence. Mr. Rupachandra further relying on the decision of the Hon"ble Supreme Court in the case of Capt. Harish Uppal Vs. Union of India (UOI) and Others, which also dealt with disciplinary proceeding under the Army Act, has submitted that giving of opportunity of hearing before confirmation is not required. It has been submitted that the Assam Rifles Act of 2006 has been borrowed from the Army Act and the principles and procedures as applicable in the Army Act are by and large also followed in the Assam Rifles Act and as such, it cannot be said that the petitioner would be entitled to hearing before confirmation.

17. The Assam Rifles authorities have produced the relevant records concerning the initial GARC as well as the Revision GARC.

In order to appreciate the issues involved and the rival contentions from the parties, it will be necessary to recapitulate the events in chronological order even at the risk of repeating some of the facts.

By an order dated 8.7.2012, a Staff Court of Enquiry was constituted to investigate into the circumstances in which the petitioner failed to report at the Crime Branch, New Delhi and also his failure to report back to Unit. The said Court of Enquiry made the following findings:--

"FINDINGS OF THE COURT

1. A letter was received from HQ DGAR vide letter No. 12015/Offrs-Gen(Discp)/2011/637 dt. 03 Nov 2011 with a copy of Asst Commissioner of Police Special Unit, Crime Branch, Sunlight Colony, New Delhi in which AR-6000004 Dy. Comdt. (SMO) KD Das was instructed to join investigation on 07 Dec 2011 (Witness No. 1 and Exhibit-I).
2. AR-6000004 Dy. Comdt. (SMO) K D Das was served with a notice to join the investigation by Lt. Col. S.K. Tandon on 23 Nov. 2011 (Witness No. 1 and Exhibit-II)
3. HQ 27 Sector Assam Rifles took up a case with HQ DGAR vide its letter No. 12089/A/11/919 dt 21 Nov 2011 for issue of move sanction and fresh date. Witness No. 1 and Exhibit -III)
4. HQ DGAR vide its letter No. 12015/offrs-Gen/A(Discp)/2011/669 dt 30 Nov 2011 informed on 01 Dec 2011 as fresh dates for joining the investigation but AR-6000004 Dy. Comdt. (SMO) K D Das was not despatched due to non receipt of move sanction from higher formation (Witness No. 1 and Exhibit-IV)
5. AR-6000004 Dy. Comdt. (SMO) KD Das proceeded for Crime Branch, Sunlight Colony, New Delhi on 06 Dec 2011 after receipt of move sanction vide HQ 27 Sector log msg. No. 239/11 dt 05 Dec 2011 and this unit movement order No. 110046/A-Offr/Mov/20/11 dt 06 Dec 2011. AR-6000004 Dy. Comdt. (SMO) KD Das moved by unit to upto Imphal airport (Witness No. 1, 2, Exhibit-V & VI).
6. On reaching Imphal AR-6000004 Dy. Comdt. (SMO) KD Das went to IGAR(S) and from there he went to Imphal market and there after took a taxi and proceeded to Dimapur (Witness No. 2)
7. On 17 Dec 2011 46 Assam Rifles received a letter from AR-6000004 Dy. Comdt. (SMO) KD Das stating his health reasons for not joining the investigation, which was fwd to HQ 27 Sector Assam Rifles vide 46 AR letter No. 110046/A-Offr/11/696 dt 20 Dec 2011 (witness No. 1 and Exhibit -VII)
8. 46 Assam Rifles received three more letters on 05 Jan 2012, 21 Jan 2012 and 11 Feb 2012 from AR-6000004 Dy. Comdt. (SMO) KD Das every time stating his health reason for not joining the investigations and asking for extension. Copy of letter fwd to HQ 27 Sector Assam Rifles vide 46 AR letter No. 110046/A-Offr/12/019 dt 09 Jan 2012, 110046/A-Offr/12/065 dt 24 Jan 2012 and 110046/

A-Offr/12/111 dt 13 Feb 2012 (Witness No. 1, Exhibit-VII, Exhibit-VIII, Exhibit-IX and X)

9. 46 Assam Rifles also approached Mrs. Gyanti Devi W/o. AR-6000004 Dy. Comdt. (SMO) KD Das vide letter No. 110046/A-Misc/KDD/12/073 dt 27 Jan 2012 to inquire whereabouts of AR-6000004 Dy. Comdt. (SMO) KD Das but was no reply from Mrs. Gyanti Devi. The Unit also sent a telegram on 30 Jan 2012 to AR-6000004 Dy. Comdt. (SMO) KD Das at the address he corresponded, but there was no reply. (Witness No. 1, Exhibit-XI)

10. No. G/3900167 Hav/GD Dilip Singh was sent to AR-6000004 Dy. Comdt. (SMO) KD Das permanent address to find his whereabouts but AR-6000004 Dy. Comdt. (SMO) KD Das was not present at his home. (Witness No. 4)

11. No. G/3800324/Hav/GD Roshan Thapa and G/5001863 Rfn/GD RK Lohani proceeded to Office of the Asst Commissioner Crime Branch, New Delhi to join investigation where they were told by Sub Inspector PC Yadav that AR-6000004 Dy. Comdt. (SMO) KD Das has not reported to join investigation (Witness No. 5 & 6).

12. On 29 May 2012, 46 Assam Rifles despatched No. G/5010748 Rfn/GD Amar Solakni to Asst Commissioner of Police, Special Unit, Crime Branch, New Delhi to ascertain about reporting of AR-6000004 Dy. Comdt. (SMO) KD Das at their office to which it was informed that AR-6000004 Dy. Comdt. (SMO) KD Das has still not joined the investigation vide their letter No. 739 dt 04 Jun 2012 (Exhibit-XII)."

Thereafter, the Court gave the following opinion:--

"OPINION OF THE COURT

1. The court is of opinion that AR-6000004 Dy. Comdt. (SMO) KD Das was required to join investigation at office of Asst Commissioner of Police, Special Unit, Crime Branch, Sunlight Colony, New Delhi for which he proceeded but has till now not reported as evident from the letter of Asst Commissioner of police Special operation Squad, crime Branch, New Delhi.

2. AR-6000004 Dy. Comdt. (SMO) KD Das is refraining himself from joining the investigation by not disclosing his contact address or mobile number. The reason stated by AR-6000004 Dy. Comdt. (SMO) KD Das for not joining the investigation is also not found satisfactory by the court. After going through all exhibits & witnesses.

3. The court opines that AR-6000004 Dy. Comdt. (SMO) KD Das has to be declared ABSENT WITHOUT SUFFICIENT CAUSE since he has neither reported at the office of Asst Commissioner of Police Special Unit, Crime Branch, Sunlight Colony, New Delhi nor reported back to the unit."

18. On the basis of the said findings and opinion of the Staff Court of Enquiry, the Assam Rifles authorities proceeded to hold a GARC Court. A charge was

framed against the petitioner for absenting himself without leave in terms of Section 26(a) of the Assam Rifles Act. On 6th December, 2011, the petitioner was charged that he had absented himself without any information while he was to join investigation at Crime Branch, Sunlight Colony, New Delhi and voluntarily rejoined on 2nd August, 2013. The petitioner pleaded guilty to the said charge and thereafter, the GARC gave a finding that the findings of the GARC would remain the same as mentioned in the Court of Enquiry and Summary of Evidence. The petitioner, however, was allowed to submit his plea of mitigation of punishment along with necessary medical documents which he did. Thereafter, the Court imposed the sentence of forfeiture of one year service for the purpose of promotion vide order dated 13.01.2015.

As per Rules, the said sentence was subject to confirmation by the Confirming Authority as provided under section 129 of the Assam Rifles Act. The Confirming Authority by invoking the power u/s. 135, directed for revision of the aforesaid sentence by the Revision Order dated 23.9.2015. On the basis of the said Revision Order dated 23.9.2015, the Revision Proceeding of the GARC was held on 19.10.2015 and the penalty of compulsory retirement from service was imposed on the petitioner. The said sentence was confirmed on 26.10.2015 and was promulgated on 29.10.2015.

19. As already stated above, the problem of the petitioner can be traced to the decision of the Confirming Authority not to confirm the sentence and to order revision of the sentence.

Perusal of the said revision order clearly indicates that the Confirming Authority did not agree with the earlier sentence of forfeiture of one year's service for the purpose of promotion, on the ground that it was not commensurate with the gravity of the offence of which the petitioner stood convicted.

In the said revision order, the Confirming Authority goes on to examine the merit of the case by discussing the various evidences adduced in course of the trial/proceeding. The Confirming Authority makes a significant observation that the medical opinion and related documents pertaining to civil medical petitioners are not admissible as any personnel or force is supposed to report to the nearest military hospital for his treatment whether he is on any temporary duty or on leave. The Confirming Authority also makes an observation that at the first instance, the petitioner joined the investigation for which he was sent but he instead went to the High Court to get anticipatory bail which clearly indicates that the petitioner had other ulterior motives of being Absent Without Leave, which was not voluntarily and certainly for not for the purpose he was sent on duty temporary.

The Confirming Authority also makes the observation in Para No. 8 that keeping in mind the seriousness of the offence, the manner in which it was committed, the utter disregard displayed to the basic characteristics of an officer and, more importantly, the fact that such offence was committed with full consciousness

makes it grave.

20. It is, therefore, clearly evident from the aforesaid revision order that the Confirming Authority while passing the said revision order not only did not agree with the sentence but referred to the evidences and findings with respect to various aspects of the charge against the petitioner which emerged in course of the trial re-appreciates the evidences and makes his own opinion of the gravity of the offence by referring to the evidences. If the earlier sentence of forfeiture of one year service for the purpose of promotion was not confirmed on the ground that the same is not commensurate with the gravity of the offence of which the petitioner stood convicted, it goes without saying that the Confirming Authority desired a higher punishment. It is clearly apparent that the revisional order certainly was prejudicial to the interest of the petitioner. Therefore, the question which arises is when such an order is passed which prejudicially affects the right of the petitioner, is he entitled to get a copy of the same so as to defend himself properly in the reconvened revisional Court as contended by the petitioner? Of course, it is on record that the said revision order passed by the Confirming Authority on 23.9.2015 was read out to the petitioner on 19.10.2015 at the beginning of the revision proceeding by the Reconvened Court and was given an opportunity to explain himself. The Respondents also contended that the petitioner never asked for time when the GARC was reconvened on 19.10.2015. The issue therefore, is whether by reading out the said revisional order only on the day i.e., on 19.10.2015 when the revisional Court held its proceeding, can it be said to have complied with the requirement of principle of natural justice in affording him adequate opportunity to defend or explain his position before the Court?

Before proceeding to deal with this issue, we may examine as to whether there are rules which require furnishing of a copy of the revisional order before the convening of the Revisional court. As regards this, the Assam Rifles Act, 2006 and the rules framed thereunder are silent. On the contrary, it is the case of the Assam Rifles authority that as provided under Rule 113(4)(a) where the sentence alone is sent back for revision, the revision order shall be read in open court and the accused to be given an opportunity to address the court in regard to matters referred to in the revision order which is reproduced hereinbelow :

"Rule 113(4)(a). Where the sentence alone is sent back for revision, the revision order shall be read in open court and the accused be given an opportunity to address the court in regard to matters referred to in the revision order."

Rule 140 provides that every Assam Rifles person tried by a Assam Rifles Court shall be entitled to obtain on demand, at anytime after the confirmation of the finding and sentence which is reproduced hereinbelow:--

"Rule 140. Right of person tried to copies of proceedings.--Every Assam Rifles person tried by a Assam Rifles Court shall be entitled to obtain on demand, at anytime after the confirmation of the finding and sentence, when such

confirmation is required and in case of Summary Assam Rifles Court after the same is signed by the officer holding the trial, and before the proceedings are destroyed, from the Chief Law Officer or the Court, a copy thereof within a reasonable time and free of cost, including the proceedings upon a revision, if any."

There is also Rule 187 which provides that a person subject to the Act against whom the court of inquiry has given an opinion or who is being tried by a Force Court on a charge relating to matter investigated by the court of inquiry, shall be entitled to copies of the proceedings of the court of inquiry except the findings and opinion thereon, unless the Director General for reasons recorded by him orders otherwise which is reproduced hereinbelow:--

"Rule 187. Copies of court of inquiry proceedings.--A person subject to the Act against whom the court of inquiry has given an opinion or who is being tried by a Force Court on a charge relating to matter investigated by the court of inquiry, shall be entitled to copies of the proceedings of the court of inquiry except the findings and opinion thereon, unless the Director-General for reasons recorded by him orders otherwise."

21. It is the case of the Assam Rifles that since the petitioner had not demanded any copy, the same was not furnished to him. In any event, since there is no provision under the Act to furnish a copy of the revision order before the convening of the revision Court and which requires only reading out the same at the time of the court proceeding, the petitioner has no vested right to get a copy of the revision order prior to the proceeding. The question, which therefore, arises is, if the statute is silent in providing a copy of the revision order before the proceeding actually starts, can the Court read into the statute the requirement of furnishing the revision order before the convening of the Court so as to afford the charged officer an adequate opportunity to defend himself? It is now well settled law that principles of natural justice are important facets of Article 14 of the Constitution of India which is perhaps one of the most important fundamental rights guaranteed under the Constitution of India. As regards applicability of fundamental rights to any member of the armed forces it has been provided under Article 33 of the Constitution of India that the Parliament may, by law, determine to what extent any of the rights conferred by Part III shall, in their application to the members of the Armed Forces or the members of the Forces charged with the maintenance of public order, etc. be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Therefore, as provided under Article 33 of the Constitution of India if any fundamental right as Article 14 which also includes the principles of natural justice, is specifically restricted or abrogated in any proceeding in respect of any member of the Armed Forces, no claim can be made before this Court that the person belonging to the Armed personnel had been deprived of the principles of natural justice or any such fundamental right. In that context, we may refer to the provisions of the Assam Rifles Act, 2006 and

the Rules framed thereunder to examine whether any such right has been specifically restricted or abrogated. Perusal of the various provisions of the Assam Rifles Act will show that the Act does not specifically provide that a charged officer will not be entitled to revision order or the order which on the basis of which the revision has been directed by the Confirming Authority. A reading of Section 135 of the Act does not indicate any such specific abrogation or restriction to the right of a charge officer to receive a copy of the revision order. It has been admitted by the Assam Rifles authorities that copy of the revisional order dated 23.09.2015 was not given to the charged officer before the revision proceeding. What Rule 113(4)(a) as mentioned above provides is that where the sentence alone is sent back for revision, the revision order shall be read in open Court and the accused is to be given an opportunity to address the Court in regard to matters referred to in the revision order. The Assam Rifles authority would contend that by implication there is no need to furnish a copy of the revision order as the rule is silent on it and it will suffice if the revision order is read out in the open Court and the accused given an opportunity to address the Court, which in the present case has been done. Therefore, it has been contended that there is no violation of the rules or principles of natural justice. The issue, therefore, is if the revision order is read out in open court and the charged officer was provided an opportunity to explain, does this meet the requirement of the principles of natural justice that the person charged must be given an adequate opportunity to explain and defend himself against the charge. Principles of natural justice cannot be put in a strait jacket and its applicability must depend on facts and circumstances of each case. Therefore, when the rules or the Statute are silent on the requirement of giving any such revision order or adverse order in advance, this Court has to examine the context and circumstances of the case to come to the conclusion that such requirement or furnishing of such order prior to the proceeding is mandatory and cannot be reduced to a mere formality. If necessary, such a requirement must be read into the rules.

22. What Section 121 of the Assam Rifles Act provides is that no finding of a Court shall be valid till it is confirmed by the appropriate authority as provided under the Act. Section 135 of the Act provides that if any finding or sentence of Assam Rifles Court requires confirmation, the same may be revised by order of the Confirming Authority. The aforesaid provision therefore, make it clear that where only the finding or the sentence of the Assam Rifles is to be confirmed or not under Section 129, is left to the discretion of the Confirming Authority. The Confirming Authority may confirm the finding but may not confirm the sentence or the Confirming Authority may not confirm either the finding or the sentence or the Confirming Authority may confirm both the finding and sentence. In the present case, from the record it is clearly evident that the Confirming Authority confirmed the finding of the Assam Rifles Court but did not confirm the sentence imposed upon the petitioner and directed revision of the sentence. However, the aforesaid decision of the Confirming Authority confirming only the finding and not

the sentence and directing for revision, was never communicated to the petitioner at any time prior to the holding of the revision Court except being read out on the day of the proceeding on 19.10.2015. Therefore, whether the finding and sentence imposed by the Court at the first instance was indeed confirmed or not by the Confirming Authority, the petitioner had no clue till 19.10.2015. He could not have any idea that only the finding had been confirmed and not the sentence and that only the sentence required revision. This Court has also noted that when the petitioner was informed about the reconvening of the revision court on the late evening of 18.10.2015 at around 2040 hrs, he was not informed of the reason for reconvening, neither, was informed the contents of the revisional order. The said communication issued on 18.10.2015 and served to the petitioner reads as follows :

"HQ 27 Sect. Assam Rifles PIN- 932527 c/o 99 APO.

12056/A-KDD/15/626

18 Oct 2015

ARMC- 6000004 Dy Comdt. (SMO) Kamdeo Das 7 Assam Rifles PIN - 932007 c/o 99 APO

REVISION OF GARD PROCEEDINGS IN RESPECT OF ARMC-6000004 DY COMDT. KAMDEO DAS OF 7 AR

1. Ref corrigendum issued by HQ IGAR(S) dated 12 Oct 2015 (Copy enclosed.
2. IC-72183X Maj Satyajeet Poddar, 6 AR has been appointed as the defending officer in your revision GARC.
3. In case of any objection to the said defending officer, you may info the same.
4. Please acknowledge.

Sd/- (Asem Ojit Singh) Capt. SO3(A) for Cdr

Encl:-- As above.

Thanks sir for giving Me Prevalage to choose defending officer and point is that:--

- 1) My c of 1 Matter for AWL
- 2) I have produced all Medical certificate regarding AWL
- 3) I inform unit regarding My illness time to time.
- 4) My defending related thing is related to Medical Certificate. So, I would request if Senior Medical Officer of Assam Rifles like Dr. Rajesh."

By the said communication dated 18.10.2015 the petitioner was furnished with a copy of the corrigendum of the HQ IGAR(S) dated 12.10.2015 which reads as under:

"FORM TO CONVENE FORCE COURT

Form of order for the assembly of a General Assam Rifles Court under the Assam Rifles Act, 2006.

ORDERS BY IC-40760L MAJOR GENERAL V S SREENIVAS, VSM*, INSPECTOR GENERAL, HEADQUARTERS INSPECTOR GENERAL ASSAM RIFLES (SOUTH)

Place : Field

Dated : 12 Oct 2015

CORRIGENDUM

1. Ref Convening order dated 18 Dec 2014, Corrigendum dated 03 Jan 2015 and 11 Jan 2015 for General Assam Rifles Court in respect of ARMC-6000004 Deputy Commandant (SMO) Kamdeo Das of 7 Assam Rifles.

2. Revision of GARC proceedings in respect of ARMC-6000004 Deputy Commandant (SMO) Kamdeo Das of 7 Assam Rifles will assemble at HQ 27 Sect AR on 19 Oct 2015.

3. Please amend to read the following in the Convening Order:--

(a) Law Officer

For - IC-42483K Col B.B. Sharma, Addl. Law Officer, HQ IGAR(S). Read - SS-44817M Capt Priyanka Singh, Dy CLO, HQ DGAR.

(b) Defending Officer

For - AR-189 Comdt. S.S. Guleria, Comdt. (Adm.), HQ 27 Sect AR. Read - IC-72183X Maj Satyajeet Poddar, 6 A.R.

(c) Prosecutor

For - AR-252 Dy Comdt. S Bandopadhyay, 34 A.R. Read - SS- 42886K Maj. Satendra Singh Negi, 26 AR.

4. Rest no change.

Sd/- (V.S. Srenivas) Maj Gen IG AR (S)."

In the said communication dated 18.10.2015, only the corrigendum dated 12.10.2015 has been mentioned which is about the order issued by the Inspector General HQ for reconvening of the GARC but indicating nothing of the purpose and reason for reconvening. In other words, at no point of time, prior to the convening of the Court, the petitioner was informed of the reason for convening the Revision GARC nor was he afforded with a copy of the revision order informing of the contents of the revision order which requires revision of the sentence only.

23. As regards the decision of the Hon''ble Supreme Court in Capt. Harish Uppal

(supra), relied upon by the respondents, the Hon"ble Supreme Court was also dealing with the similar provisions relating to power of Confirming Authority to direct revision of sentence under the Army Act, 1950. In the said case, the Hon"ble Supreme Court did not accept the plea that the Confirming Authority should have heard the appellant before he directed revision of the sentence passed on him as the requirement of principles of natural justice. In the said case, it was also noted that the appellant therein though was given the opportunity to address the Court, declined to do so and accordingly, the Hon"ble Supreme Court observed that having failed to avail himself of the opportunity accorded to him, the petitioner cannot claim that he was not given any opportunity before the Confirming Authority before he directed revision. Though at the first instance, the said decision seems to be in favour of the Assam Rifles authorities in this case. However, a close examination of the said decision would reveal that the issue whether the charged officer/person should be given a copy of the order of revision which directed reconsideration of the sentence was not dealt with and decided as can be seen from Para No. 2 of the said decision. The plea of the petitioner therein was that the Confirming Authority should have given a hearing to the affected party before confirmation and the officer who finally confirmed the sentence on the petitioner should also have heard the petitioner. This Court does not wish to enter upon the aforesaid issue as the issue raised here is whether the petitioner herein was entitled to a copy of the revision order dated 23.9.2015 in advance before holding the revision GARC. Even though the Rules provide that the revision order would be read out in course of the proceeding, this Court is of the view that itself may not fully satisfy requirement of principles of natural justice. This Court is of the view that even if the petitioner is not entitled to being heard before the said revision order was issued, definitely he had the right to be furnished with a copy of the said revision order so as to defend himself properly before the Revision GARC as the said Revision order contains many aspects which are prejudicial to the petitioner. If the said revision order had been furnished to the petitioner in advance, that would have enabled him to prepare his defence properly. The rules of the Assam Rifles do not prohibit furnishing of copy of the revision order in advance prior to the holding of the Revision GARC. If that is so, this Court is of the view that it can be read into the Rules to afford him a copy of the said revision order so as to enable him to prepare his defence properly which in the present has not been done. This Court finds difficulty in accepting the view that it will be sufficient if the said order is read out in course of the proceeding and asked him to explain the position.

The Supreme Court in *Lakshmiratan Cotton Mills Co. Ltd. Vs. Its Workmen*, held that when notice is required to be given it cannot be a mere idle formality and it must be meaningful and purposeful and it cannot be reduced to useless formality as also observed in *Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others*, . Therefore, merely reading out the Revision Order at the time of proceeding cannot be said to be a proper opportunity of being heard or being afforded notice of the Revision Order. This

Court is of the view that the charged officer must be given a copy of the Revision Order in advance before the revision proceeding so as to enable him to prepare his defence properly and effectively. To this extent, the submission of the Learned senior counsel for the petitioner can be accepted.

24. It may be also contended by the Respondents that the revision was only for the purpose of consideration of the sentence and did not involve the merit of the case, but nevertheless, sentence also can vary according to the mitigating circumstances brought out to the notice of the Court. As to what are the mitigating circumstances can be only pleaded by the charged officer. That also would mean that the charged officer should be allowed to have access to all the records of the case and draw attention of the Court to the mitigating circumstances with the supporting evidences which are already on the record and also by dispelling the misgivings raised by the Confirming Authority. In the present case, it has been admitted by the Assam Rifles authorities that the records of the initial GARC were not made available to the petitioner on the plea that these cannot be given unless asked for. In the present case, it has been observed that the observations of the Confirming Authority were based entirely on the previous records. The decision of the Revision GARC was also based on the views of the Confirming Authority and the records of the previous proceeding. In that event, non-furnishing of these documents to the petitioner cannot be said to be not necessary, as otherwise, it would be a one sided consideration.

25. As regards the Revision Order, this Court is of the view that the Confirming Authority was within its jurisdiction to comment on the evidences which have emerged in course of the trial and also make its own observation but these must be in conformity with the findings arrived at by the Court as any other observation beyond the findings will not be permissible, more so in the present case, the Confirming Authority decided not to revise the finding of the Court but only the sentence imposed by the Court. To that extent, the observation of the Confirming Authority that the accused had other ulterior motive of absent without leave cannot be said to be proper unless such finding was recorded either by the State Court of Inquiry or by the GARC. There is no such finding arrived at by the Court of Enquiry or the initial GARC. This Court finds it difficult to accept the observation of the Confirming Authority that medical opinion and related documents pertaining to civil medical practitioner are not admissible. Whether the opinion or documents will be admissible as evidence in law or not, is a question of law which will be governed by the provisions of the Indian Evidence Act. Even if the provisions of Indian Evidence Act may not wholly applicable in the proceeding before the GARC, the principles cannot be given a go by. Therefore, unless there are specific provisions under the Act and Rules stating that medical opinion and related documents pertaining to civil medical practitioner are not admissible in a proceeding under the Assam Rifles Act, such an opinion or observation made by the Confirming Authority cannot be considered to be correct. Whether such medical opinion or related documents

could be relied upon or not is altogether a different matter but if the Confirming Authority makes an observation that such opinion and related documents are not admissible, this Court is of the view that such an opinion cannot be sustained. In this particular case, since the matter essentially relates to absence without leave, which, according to the petitioner, was occasioned due to illness or medical grounds, if the medical opinion and related documents pertaining to civil medical practitioner are held to be inadmissible, that may nullify the plea of the petitioner for mitigation. As per records, most of the medical opinion and documents relied upon by the petitioner pertain to civil medical practitioners. It is, of course, a different matter whether the disciplinary authority or the GARC considers these to be not reliable or credible and also the revision GARC was well within its authority to weigh or appreciate the evidence relating to medical opinion and the documents of the civil medical practitioner. However, if the Confirming Authority holds that these are not admissible and if the revision Court decides not to look into these evidences, such a decision would be vitiated on account of ignoring relevant materials.

The Confirming Authority has also observed in the revision order that the fact that the petitioner did not join investigation and instead went to High Court to get anticipatory bail clearly indicates that the petitioner had other ulterior motive of being absent which are not voluntary. But such a finding on the motive was neither arrived at by the Staff Court of Inquiry nor by the initial GARC. Since the revision was only for the purpose of re-examining the sentence and not for re-appraisal of the evidence or for re-formulation of the finding of the Court, this Court is also of the view that such an observation of the Confirming Authority regarding findings which was not made by the Staff Court of Inquiry or by the initial GARC cannot be said to be proper. This Court is of the view that since the revision was only in respect of the sentence and not of the findings, if the Confirming Authority had made any observation of certain facts or motives which were not there before the Court of Staff Inquiry or the initial GARC, the principles of natural justice would demand that the concerned charged officer be made fully aware of such an observation and such re-appreciation of evidences by the Confirming Authority so that the charged officer could effectively explain such prejudicial observation, which, however, has not been done in the present case. Though the Confirming Authority may comment on the evidences and findings to justify revision of the sentence, if such comments are adverse to the petitioner, justice would require that such comments and observations are made known to the petitioner in order to effectively reply to these. It will not suffice, if such a revision order containing the observations are merely read out only during the proceeding. Such an action would amount to a mere lip service without any meaningful and effective aid to the petitioner to prepare for his defence. The opportunity to defend must be effective and meaningful and not fleeting.

26. It may be also stated that in the second revision GARC proceeding, it has been recorded that the statement made by the accused(petitioner) was read over and was confirmed by the petitioner. However, when this Court specifically

asked the counsel of the respondents to produce the said statement of the petitioner recorded, it has been submitted that no such statement is available in the record. This Court also has gone through the entire records of the revision GARC proceeding and was unable to find a copy of the said statement of the petitioner which was stated to be read over and confirmed by the petitioner as mentioned in the revision GARC proceeding. This Court has also noted that the revision GARC while imposing a fresh penalty of compulsory retirement, has recorded that the Court had considered the view of the Confirming Authority and the whole of the proceeding. When enquired from the counsel of the Assam Rifles, it has been clarified that the whole proceeding also includes the earlier proceeding of the GARC as well as the Staff Court of Inquiry. However, it has been also admitted by the counsel for the Assam Rifles authorities that whole of these records were not made available to the petitioner at the time of second revision GARC. This Court also has noted that the revision GARC while passing the new sentence of compulsory retirement did not mention in that order that they had also considered the view of the petitioner though, under the normal circumstances, they ought to have done so. These shortcomings in the proceedings, in the opinion of the Court, would vitiate the proceedings.

27. Imposition of sentence of compulsory retirement from service for absence of 606 days at the first glance seems to be quite reasonable and proportionate, unless there are mitigating circumstances. If there are mitigating circumstances, the authorities would well be within their jurisdiction to impose any other punishments or in fact, could also reiterate the earlier lighter punishment as clearly mentioned in Para No. 9 of the Revision Order dated 23.9.2015. Therefore, whether the sentence was proportionate or not would depend on the mitigating circumstances which in turn would depend entirely on the evidence on record and submission of the petitioner. The petitioner, though admittedly remained absent for 606 days, has claimed that he remained absent because of his illness for which he relied on certain documents and evidences. However, if some of these documents are held to be inadmissible, as observed by the Confirming Authority, he certainly will not be able to rely on these evidences. The contention of the petitioner that he was not allowed to make his submission properly in course of the Revision GARC, which he had clearly made in the second writ petition being W.P(C) No. 971 of 2015 has not been controverted by the respondent authorities has led credence to the allegation of the petitioner that he was not given proper opportunity to defend himself. Further, the fact that the statement which the petitioner had given before the revision Court is also not available in the record and does not form a part of the proceedings of the record, also has led credence to his allegation that he has not been fairly treated. In absence of examination of the statement given by the petitioner in course of the proceeding and revision proceeding, this Court cannot give a definite conclusion that he was indeed given a fair trial which he claims, was denied by the respondents, which he emphasised in the second writ petition, contents of which were not denied by the Assam Rifles authorities. Therefore, these peculiar facts

and circumstances create a creeping doubt in the mind of this Court that the petitioner was not given a fair trial by denying him the opportunity to explain his position as regards the mitigating circumstances before the revision Court.

28. Though giving a detailed reason for the sentence imposed by the Court may not be necessary, in the present case what has happened is that a fresh sentence was awarded by revoking the earlier sentence imposed by the initial GARC. The Revision GARC was within its authority and competency to award a harsher penalty. It is clearly mentioned in the sentencing order that the Court had attentively considered the view of the Confirming Authority and whole of the proceeding and thereafter revoked the earlier sentence and imposed a new sentence of compulsory retirement. However, it did not advert to any of the submissions made by the petitioner. In the peculiar facts and circumstances of the case, this Court is of the view that non-reference to any of the submissions made by the petitioner for mitigating sentence, the proceeding of the Revision GARC cannot be said to have stood the test of non-arbitrariness or reasonableness.

This Court has also taken note of the contention of the petitioner that Section 139(2) of the Assam Rifles Act provides for presenting a petition to the Central Government, Director General or in the prescribed officer superior in command to the one who confirms the said finding of the sentence. The said opportunity was virtually denied inasmuch as the sentence was confirmed by the authority on 26th October, 2015 and was promulgated soon thereafter on 29.10.2015 and all the while the petitioner was virtually kept under confinement without having any access to the documents or the records, as claimed by him and not controverted by the Respondents.

29. In conclusion, this Court is of the view that though there is a no specific provision under the Assam Rifles Act and Rules framed therein for giving a copy of the revision order, if such revision order contains any observation which may be prejudicial to the charged officer, a copy of such revision order must be given to the charged officer in advance and it will not suffice and meet the requirement of principles of natural justice if it is read out only on the day of the proceeding. Non-furnishing of such revision order will prejudicially affect the charged officer for not enabling him to prepare his defence properly. Of course, no prior hearing will be required before the Confirming Authority decides to order to revise the sentence yet, the charged officer will be required to be informed of the grounds and reasons and observations, if any, which are prejudicial to the charged officer, for ordering revision of the sentence so as to enable him to effectively submit his case before the Revision Court. Having not done so in the present case, this Court is of the view that this has caused prejudice to the petitioner. Though prima facie there cannot be any issue as regards the proportionality of the sentence of compulsory retirement imposed on the charge of absence of 606 days, if there is a possibility of the Revision Court to award a different and lesser sentence, if there be adequate mitigating circumstances, it goes without saying

that if the petitioner has been prevented from putting forth clearly the mitigating circumstances cogently before the Revision Court because of lack of access to the documents because of which the revision authority did not properly apply their minds on the mitigating circumstances, it cannot be said that such a sentence, even if apparently seems to be proportionate, can be upheld. It may be observed that inevitability of any particular penalty cannot be a ground for sacrificing the lofty principles of natural justice which permeates over jurisprudence and if clear and cogent case has been made out that there has been flagrant violation of the principles of natural justice this Court would intervene. The Hon"ble Supreme Court in the case of Public Services Tribunal Bar Association Vs. State of U.P. and Another, has held that in extreme and rare case where the order is passed malafide or without following the procedure under the law, the employee can certainly approach the High Court under Article 226 of the Constitution for interim relief and the High Court can stay the operation of the said order. This Court has already held that giving a copy of the Revision Order in advance before the Revision proceeding is held, though not specifically provided under the rules would form part of the procedure. Therefore, denial of this would amount to violation of procedure under law. Hence, invoking the service principles, the final order can be also passed setting aside the GARC Revision Proceedings.

This Court has also noted the serious allegations of arbitrariness and harassment which have gone uncontroverted. This Court has also noted with concern that though the Corrigendum was issued on 12.10.2015 whereby reconvening of the GARC was ordered on 19.10.2015 yet it was communicated to the petitioner only on the late evening of 18.10.2015, the previous day only. This Court is not able to understand the reason for not communicating to the petitioner well in advance.

This Court has also noted the contention of the petitioner that the movement order dated 17.10.2015 for attending the Revision GARC was communicated to the petitioner only on 5.11.2015 after the Revision GARC was well over.

In the facts and circumstances as narrated above, this Court is of the view that there has been gross violation of the principles of natural justice and the petitioner has not been fairly treated which would vitiate the Revision GARC proceeding. The alternative remedy available, therefore, will not come in the way of these petitions.

30. In the result, for the reasons discussed above, the Revision GARC proceeding held on 19.10.2015 is set aside. Resultantly, the consequential actions of confirmation and promulgation of the sentence on 26th October, 2015 and 29th October, 2015 respectively are also set aside. The authorities are directed to hold a fresh Revision GARC by furnishing copies of the Revision Order dated 23.9.2015 and initial GARC held on 13th January, 2015 and other records referred to by the Revision GARC so that the petitioner is given an effective opportunity to present his case as regards the sentence to be imposed on him.

With the above observations and directions, these writ petitions stand allowed.