

(2025) 06 MAN CK 0277

In the Manipur High Court

Case No : Writ Petition (C) No. 539 Of 2023, 478, 479, 480 Of 2022,
Miscellaneous Case (Writ Petition (C) No. 87, 85, 86 Of 2023

Laishram Nirmal Singh & Ors.

APPELLANT

Vs

State Of Manipur & Ors.

RESPONDENT

Date of Decision : 25-06-2025

Acts Referred:

Manipur Home Guards Act, 198 — Section 11, 11(1), 11(3), 11(4)
Manipur Home Guards Rules, 1996 — Rule 9

Citation : (2025) 06 MAN CK 0277

Hon'ble Judges : A. Guneshwar Sharma, J

Bench : Single Bench

Advocate : Kh. Tarunkumar, Kh. Maria, Shyam Sharma

Final Decision : Allowed

Judgement

A. Guneshwar Sharma, J

(CAV)

[1] Heard Mr. Kh. Tarunkumar, learned senior counsel assisted by Ms. Kh. Maria, learned counsel for the petitioner and Mr. Shyam Sharma, learned G.A. for the State respondents.

[2] WP(C) Nos. 478 of 2022, 479 of 2022 and 480 of 2022 are filed by the petitioners for quashing/setting aside the impugned orders dated 30.06.2022 issued by the Commandant Home Guards (VA), Manipur Lamphelpat, Imphal and letter dated 29.06.2022 issued by the Addl. Director General of Police (HG), Manipur and directing the respondents to reinstate the petitioners to their post/rank of Divisional Commander (unpaid) within a stipulated period with all the consequential benefits including back wages. However, WP(C) No. 539 of 2023 is filed by the petitioner who is also petitioner in WP(C) No. 478 of 2022 for directing the respondents particularly respondent No. 4 to allow the petitioner to discharge his duty as Divisional Commander of Battalion-I (HQ) of the Manipur

Home Guards within a stipulated time.

[3] The petitioners were initially appointed as member of the Manipur Home Guards by giving their Home Guard Nos. 81268, 92185 and 932005 vide orders dated 13.05.1982, 28.10.1996 and 22.12.1993 issued by the Commandant Home Guards (VA), Government of Manipur. Vide orders dated 06.04.1992, 22.09.2001 and 03.03.2020, the petitioners were promoted to the rank of Company Commander. Thereafter, vide orders dated 08.12.2020, 04.04.2012 and 28.05.2017, the petitioners were again promoted to the rank of Divisional Commander in the Manipur Home Guard.

[4] A Show Cause Notice dated 23.06.2022 was issued by the Addl. DGP (HG), Government of Manipur to the petitioners wherein they were asked to submit their comments to the enquiry report submitted by the IGP (Zone-III) within 3 (three) days wherein it was found that they were allegedly involved in illegal collection of money from the Home Guard Personnel. On 25.06.2022, the petitioners submitted their reply to the Show Cause Notice dated 23.06.2022 wherein they denied the charges levelled against them and on 29.06.2022, the Addl. DGP (HG), Government of Manipur wrote a letter to the Commandant, Home Guards (VA), Manipur wherein the approval was accorded for discharge of the petitioners on the charge of their gross misconduct.

[5] In pursuance to the letter dated 29.06.2022, the Commandant, Home Guards (VA), Government of Manipur issued an order dated 30.06.2022 whereby the petitioners were called off from duties and they were struck off from the strength of the Manipur Home Guards Organization and on the same day, the Commandant, Home Guards issued another order whereby the petitioners were discharged from their duties for their gross act of misconduct. Being aggrieved by the aforesaid discharge order, the petitioners filed the present writ petitions before this Court by challenging the legality of the said discharge order.

[6] Respondent Nos. 2, 3 & 4 filed counter affidavit stating that as per the enquiry team report headed by the Inspector General of Police (Zone-III), Manipur and other officers, some MR/IRB personnel along with some Home Guard personnel were found to be involved in manpower mismanagement and illegal collection of money from Home Guard personnel and MR/IRB personnel. The present petitioners have been examined and heard in persons by the enquiry team and their statement have been recorded and, in their statements, they have admitted the illegal collection of money and manpower mismanagement in collusion with few personnel of Home Guards and MR/IRB. As such, exemplary actions need to be taken against them for their involvement in illegal collection of money. Thereafter, a show cause notice was served to the petitioners by giving them a reasonable opportunity for their defence as to why action should not be taken against them for their grave misconduct.

[7] It is stated that the show cause notice dated 23.06.2022 submitted by the petitioners was carefully examined and after considering the enquiry report,

statements of the Home Guard personnel, a reply to the show cause notice, etc., the Commandant General, Home Guards, Manipur has approved to discharge the petitioner from service for their gross misconduct and involvement in illegal collection of money from the Home Guard Personnel. It is also stated that the enquiry report was based on their written signed statement where they admitted the illegal collection of money. As per the Manipur Home Guards Act, 1989 (Manipur Act No. 1997), Section-11(1) the Commandant is empowered to suspend, reduce or dismiss any member of the Home Guards under his control for any breach of the discipline or misconduct and as per Section 11(3), the Commandant is empowered to discharge any member of the Home Guards at any time. It is prayed that the present writ petitions be dismissed being devoid of any merit.

[8] The petitioners filed reply affidavit to the counter affidavit filed by respondent Nos. 2, 3 & 4 wherein it is stated that the report of the spot enquiry dated 14.06.2022 was not made available to petitioners despite specific request and it was submitted in writ petition when they were summoned by the police at the police headquarter, it was found that many high ranking police officers at the IPS level were found sitting. Despite their specific denial, a typed copy was produced and forced them to put their signature as they cannot disobey their direction. It is stated that the discharge order dated 30.06.2022, nowhere mentioned that the representation submitted by the petitioners was duly considered and the said impugned discharge order was issued without holding any proper enquiry though they are entitled for the same and the same was issued in complete violation of Section 11(1) & (4) of the Manipur Home Guards Act, 1989.

[9] The relevant provisions of Section 11 of the Manipur Home Guards Act, 1989 & the Manipur Home Guards Rules 1996 are reproduced below for ready reference.

Section 11: Punishment for Neglect of Duty, etc.:

(1) The Commandant shall have the power to suspend, reduce or dismiss or to impose fine not exceeding a sum of rupees two hundred and fifty on any member of the Home Guard under his control, if such member neglects or refuses to discharge his functions and duties as a member of the Manipur Home Guards or disobeys any lawful order or direction given to him for the due performance of his functions and duties or is guilty of any breach of the discipline or misconduct.

(2) The Commandant General may in respect of any member of Home Guards appointed to a post immediately under his control, impose any penalty specified in sub-section (1) and may also dismiss any member of the Manipur Home Guards on the ground of conduct which has led to his conviction on a criminal charge.

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(4) While the Commandant General or the Commandant passes an order

suspending, reducing, dismissing or imposing fine on any member of the Manipur Home Guards, under sub-section (1) or sub-section (2), he shall do so only after due enquiry and shall record such order together with reasons therefore and no order shall be passed by the Commandant General or the Commandant unless the person concerned is given a reasonable opportunity to be heard in his defence.

Rule 9: Condition of Discharge- No member of Home Guard shall be discharged unless the Commandant or the Commandant General, in the case may be, is satisfied that such member has committed an act detrimental to the good order or welfare or discipline of the Home Guards Organisation.

[10] Mr. Kh. Tarunkumar, learned senior counsel for the petitioners refers to the following decisions of the Hon'ble Supreme Court to augment his submissions.

(i) (2023) 9 SCC 160: Amar Kumar v. State of Bihar- Termination of service of a probationer without holding an enquiry and without affording any opportunity of being heard is illegal when the alleged misconduct is the very foundation of taking action of termination.

(ii) (2002) 9 SCC 700: Jaswant Singh v. State of MP- Cancellation of appointment without hearing the aggrieved person is held improper.

(iii) (2003) 2 SCC 111: Bhavnagar University v. Palitana Sugar Mills (P) Ltd.- If a statutory authority is required to do a thing in a particular manner, the same should be followed or not at all.

(iv) (2010) 13 SCC 88: Davinder Singh v. State of Punjab- Stigmatic dismissal of Home Guard volunteer (not dismissal simpliciter) without following the prescribed procedure and without granting an opportunity of being heard was held to be illegal and set aside.

(v) AIR 1963 SC 786: Udit Narayan Singh v. Board of Revenue- A tribunal that exercising a judicial or quasi-judicial function cannot decide against the rights of a party without giving him an opportunity of hearing to represent his case. If the provisions of the statute or the rules framed thereunder do not provide for it, the principles of natural justice cannot be ignored.

(vi) (2004) 1 SCC 43: Union of India v. Madhusudan Prasad-Termination without due enquiry and without giving any show cause notice is the fault of the authority and in such cases, the period of termination will be treated as in service and the employee is entitled to back wages with continuity of services. FR 54 cannot be invoked to deny back wages.

[11] Mr. Kh. Tarunkumar, learned senior counsel also draws the attention of this Court to the order dated 21.10.2024 in WP(C) No. 876 of 2023: Md. Amir Khan v. State of Manipur & 2 Ors., where this Court set aside the striking off the name of a Home Guard personnel from the roll without conducting an enquiry solely on the basis of a pending FIR, as the same was in violation of the provisions of

Section 11(4) of the Manipur Home Guards Act, 1989 and directed for his re-instatement. However, liberty was granted to the State authority to initiated any appropriate disciplinary proceedings in terms of the relevant Act and Rules. It is pointed out that the present cases are also squarely covered by the above referred case. It is prayed that the present writ petitions be allowed and the impugned discharge order dated 30.06.2022 be set aside and the petitioners be reinstated with full-service benefits, as the common discharge order was passed in violation of the provisions of Section 11(4) of the Manipur Home Guards Act, 1989 and Rule 9 of the Manipur Home Guards Rules, 1996.

[12] Per contra, Mr. Shyam Sharma and Mr. S. Niranjana, learned GAs submit that there is no illegality in passing the impugned order of discharge dated 30.06.2022. It is pointed out that there was an enquiry initiated against the petitioners and others and they were discharged from the roll of Home Guards personnel on the recommendation of a Committee led by Mr. Nishit Kumar Ujjwal, IPS, Inspector General of Police (Zone-III), Manipur and on proper examination of statements of 118 witnesses about collection of illegal money from the Home Guards personnel. The petitioners also submitted their statements in the enquiry and admitted the collection of money without any authority. It is vehemently denied that there was no enquiry and the petitioners were not given any opportunity to plead their case. It is further stated that the original record of the disciplinary proceeding has been submitted to this Court for perusal. It is prayed that the writ petitions be dismissed being devoid of any merit.

[13] This Court has perused the materials on record, the submissions made at bar and the relevant law in this regard.

[14] It is an admitted fact that the three petitioner and another person were discharged and their names were struck off from the roll of Home Guards personnel of Manipur vide the common impugned order dated 30.06.2022. It is stated that the discharge order was issued on the recommendation of the enquiry report dated 16.06.2022 conducted by a Committee headed by Mr. Nishit Kumar Ujjwal, IPS, Inspector General of Police (Zone-III), Manipur; Mr. Kabib. K, IPS, Dy. Inspector General of Police (Range-I) and Mr. Watham Basu Singh, MPS, Spl. AIG (Housing). This Court has examined minutely the sealed original file submitted by the learned GA. On perusal of the record, it is found that the Committee examined 118 Home Guard/MR/IRB personnel and other officials to ascertain the factum of collection of money by the petitioners and other. After examining all the materials on record, the Committee made three recommendations- (i) immediate detachment of approximate 85 MR/IRB personnel from the Commandant Home Guard office, (ii) discouraging any association with Home Guard Welfare Association involved in illegal collection of money, and (iii) restructuring of Home Guards and their deployment pattern. Thereafter, the four discharged personnel (including the three petitioners) were issued with similar show cause notices all dated 23.06.2023 to submit their

comments/defence to the alleged misconduct of illegal collection of money from Home Guard personnel as found by the Committee and as admitted in their written statements. The petitioners submitted separate and similar replies all dated 25.06.2022 to the show cause notices denying the allegation of illegal collection of money from serving Home Guards personnel. It is also requested to furnish a copy of the alleged enquiry report and the written statements allegedly submitted by the petitioners. It has been prayed for dropping them from the charge. Vide letter dated 29.06.2022, Addl. Director General of Police (HG), Manipur informed the Commandant, Home Guards (VA), Manipur about the approval of discharge of four Home Guards personnel (including the three petitioners) from service for their gross misconduct. Thereafter, the Commandant, Home Guards (VA), Manipur issued the impugned order dated 30.06.2022 calling off the four personnel from duty and their names were stuck off from the strength of Manipur Home Guards organisation with immediate effect in public interest.

[15] It is seen that the discharge order was purportedly issued on the recommendation of the Committee's report dated 16.06.2022 and suggested three recommendations for reforms. However, on minute examination of the report, it does not suggest for the discharge of the four personnel (including the petitioners), even though some other persons were also named in the report. In the discharge order, it has been mentioned as issued in public interest, whereas the approval by Addl. DGP (HG) was for gross misconduct. The discharge order has not considered the replies submitted by the petitioners to the show cause notices. No charge was framed against the petitioners, nor was any opportunity given to them to answer to the allegation of illegal collection of money. This Court is of the considered view that the alleged enquiry proceedings and the discharge order violate the principles laid down in Section 11(4) of the Manipur Home Guards Act, 1989 and Rule 9 of the Manipur Home Guards Rules, 1996. The Act and Rule contemplate a full-fledged enquiry, where the order of dismissal ought to be issued by recording reasons thereof and by affording a reasonable opportunity of being heard the personnel in their defence. Only after following all these mandatory steps, an order awarding punishment can be passed.

[16] In the present case, the State respondents have given a go-by to the mandatory provisions of Section 11 of the Act of 1989 and Rule 9 of the Rule of 1996. The basic tenets of the principles of natural justice have been flouted and the same cannot be ignored even if the statute is silent. In the case in hand, the statute stipulates availing of the opportunity of defending. Surprisingly, no memorandum of charge has been furnished to the petitioners and they have been discharged without affording any opportunity of presenting their case.

[17] In short, the order of discharge has been issued flouting the mandate of statute. This Court has no hesitation in setting aside the impugned discharge order dated 30.06.2022 issued by the Commandant, Home Guards (VA), Manipur with respect to the three petitioners. The respondents are directed to re-instate

the petitioners to their service with full-service benefits, as the discharge order was issued in violation of the mandatory provisions of Section 11(4) of the Manipur Home Guards Act, 1989 and Rule 9 of the Manipur Home Guards Rules, 1996. However, the respondents have liberty to initiate appropriate proceedings against the petitioners as per rule, if so desired. It is made clear that this Court does not express any opinion on the merit of the case specially with respect to the allegation of misconduct against the petitioners.

[18] Writ petitions are allowed and disposed of. Pending applications are accordingly disposed of. Interim orders stand merged with the final order.

[19] Return the original files to the learned Government Advocate under endorsement of due receipt.

[20] Send a copy of this order to the Commandant, Home Guards (VA), Manipur for information and necessary compliance.