
(2006) 07 GAU CK 0038
In the Gauhati High Court

Ng.Inaoton Singh

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

Date of Decision : 10-07-2006

Acts Referred:

Citation : (2006) 07 GAU CK 0038

Hon'ble Judges : M.B.K.Singh, J

Bench : Single Bench

Advocate : Th.Ibohal Singh, Kh.Tarun kumar Singh, Advocates appearing for Parties

Judgement

1. Heard Mr.Kh.Tarunkumar, learned counsel appearing on behalf of the petitioner and Mr.Th.Ibohal, learned Addl. Govt. Advocate appearing on behalf of the respondents.

2. There is no dispute in respect of the following facts:

The petitioner, who was serving as Naik of the 6th Bn. Manipur Rifle and posted at Yainangpokpi Power SubStation as a guard, was placed under suspension in contemplation of a departmental enquiry vide order dated 23.2.1997 issued by the Commandant, 6th Bn.Manipur Rifle, for missing from the said post along with uniform, service rifle and ammunition for escorting contraband Ganja from Imphal to Pannagarh, Bihar with effect from the midnight of 15/16 February, 1997 without authority. A copy of the said order is at AnnexureA/1 of the writ petition. On 23.3.1997, the Commandant, 6th Bn. MR issued a memorandum in connection with the said departmental enquiry along with the article of charge, statement of imputation of misconduct in respect of the charge, list of witnesses and list of documents, etc. The petitioner submitted his written statement of defence on 30.4.1997 to the Commandant of the 6th Bn.MR denying the charge and mentioning about rewards that he had earned. A copy of the written statement is at Annexure A/3 of the writ petition. On 7.5.1997, the Deputy Inspector General of Police (OPS), Govt. of Manipur issued an order appointing

one Radheshyam, Deputy Commandant of the 1st Bn.MR as the Enquiry Officer to conduct the departmental enquiry and directing the Commandant, 6th Bn.MR to hand over all the necessary documents to the enquiry officer. A copy of the said order of the Dy.IGP(OPS), Govt. of Manipur is at AnnexureA/4 of the writ petition. On 17.5.1999, the petitioner, after coming to know about reinstatement of the post Commander of the said Yainangpokpi power Station, submitted a representation to the Director General of Police, Manipur requesting for reinstating him also to his post of Naik of the 6th Bn.MR and the Commandant, 6th Bn. M.R. issued an order on 18.8.1999 reinstating him to his said post without prejudice to the pending departmental enquiry. A copy of the said representation is at AnnexureA/7 and a copy of the said order of the Commandant, 6th Bn. M.R. is at AnnexureA/8. The Deputy Commandant , 6th Bn.MR became the enquiry officer and the petitioner submitted his supplementary written statement of defence on 17.2.2003 The enquiry officer submitted his finding to the Commandant of the 6th Bn. M.R. on 15.3.2003 holding to the effect that the petitioner and 6 others personnel of the 6th Bn.MR had left the said post in their uniforms with their arms and ammunitions for an unauthorized purpose in the night in between 15 and 16th February, 1997 and that while the petitioner and his party were coming in a truck having fake number, they were arrested at Napetpalli Gate of Lamlai Police Station. A copy of the said enquiry report is at AnnexureA/9 of the writ petition. The petitioner was furnished with a copy of the enquiry report on 01.4.2003 and he was asked to submit his representation, if any, in respect of the enquiry report and appear before the Commandant, 6th Bn. M.R. on 15.4.2003. The petitioner appeared before the Commandant, 6th Bn. M.R. on 15.4.2003 but no written statement was submitted by him. On 15.4.2003, the Commandant of the 6th Bn. M.R. held the petitioner guilty of the grave misconduct of leaving the place of his posting in uniform along with his arms and ammunition with effect from the midnight of 15/16th February, 1997 without authority till he was arrested by Lamlai Police Station on 22.2.1997. In that connection, the Commandant ordered on 15.4.2003 for reduction of the petitioner to the lower grade of Lance Naik for a period of 5 years with postponement of his future increment in the time scale of his original post and loss of his original seniority position on getting repromotion to his original post. The pay and allowances of the petitioner for the period of suspension was also ordered to be restricted to subsistence allowance already drawn by him.

AnnexureA/11 of the writ petition is the copy of the said order of the Commandant.

However, on 7.5.2003, the Dy.IGP(OPS), Govt. of Manipur reviewed the matter and issued an order dismissing the petitioner from his service with immediate effect holding that the punishment awarded by the Commandant, 6th Bn. M.R. was not commensurate with the gravity of the petitioner's misconduct. AnnexureA/12 of the writ petition is the copy of the said order of Dy.IGP(OPS), Govt. of Manipur. In pursuance of the said order of the Dy.IGP(OPS), Govt. of

Manipur, the Commandant, 6th Bn. M.R. issued an order dismissing the petitioner from service with effect from 7th May, 2003. AnnexureA/13 of the writ petition is the copy of the said order of the Commandant.

3. This writ petition has been filed praying mainly for quashing /setting aside the findings of the enquiry officer, the order of the Commandant, 6th Bn.

M.R. for reduction of rank with other consequences passed on 15.4.2003 (Annexure A/11), the order of the Dy.IGP(OPS), Govt. of Manipur dated 7.5.2003 for dismissal from service (AnnexureA/12) and the order of the Commandant, 6th Bn. M.R., dated 9.5.2003 for dismissal from service (AnnexureA/13) issued in pursuance of the said order of the Dy.IGP(OPS), Govt. of Manipur. The petitioner is also praying for directing the respondents to reinstate him to his post of Naik of the 6th Bn. MR with all the consequential benefits including back wages within a stipulated period.

4. Challenging the legality of the disciplinary proceeding as well as the impugned orders dated 15.4.03, 7.5.03 and 9.5.03 (Annexures A/11, A/12 and A/13 respectively), the first point submitted by the petitioner's counsel is that neither the Commandant, 6th Bn. M.R. nor the Dy.IGP(OPS), Govt. of Manipur is the appointing authority of the petitioner from 1995 onwards and as such neither of them has any power for initiating departmental /disciplinary proceeding against the petitioner by placing him under suspension. According to the petitioner's counsel, as per order issued by the Joint Secretary, DP, Govt. of Manipur on 15.7.95 in supersession of all the previous orders, the Director General of Police, Manipur is the appointing authority for appointment to ClassIII and ClassIV posts under the Police Department, Govt. of Manipur.

5. No law to the effect that initiation of disciplinary enquiry against the petitioner, who was then serving as Naik of the 6th Bn.MR, was to be done only by the appointing authority is produced to the notice of this court. In *P.V. Srinivasa Sastry v. Comptroller and Auditor General*, (1993) 1 SCC 419, the Supreme Court in the context of Article 311(1) has held that in the absence of a rule, any superior authority who can be held to be controlling authority can initiate disciplinary proceeding and that initiation of departmental enquiry does not visit the officer concerned with any civil consequence. In *Transport Commissioner, Madras v. A. Radhakrishna Moorthy*, (1995) 1 SCC 332, the Supreme Court held that initiation of disciplinary enquiry can be done by an official subordinate to the appointing authority. On the basis of the above said decisions, one can reasonably conclude that initiation of a departmental proceeding and conducting an enquiry can be done by an authority other than the appointing authority competent to impose the proposed penalty. In *Inspector General of Police and another vs. Thavasiappan*, AIR 1996 SC 1318, the Supreme Court held that generally speaking, it is not necessary that charges should be framed by the authority competent to award the proposed penalty or the enquiry should be conducted by such authority. Article 311(1) does not in terms required that the authority empowered under that provision to dismiss or remove the official

should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed.

6. In the present case, even assuming that both the Commandant, 6th Bn. M.R. and the Dy.IGP(OPS), Govt. of Manipur were subordinate to the appointing authority of the petitioner at the relevant time, there was no illegality in the initiation of the disciplinary proceeding against the petitioner at the instance of either or both of the said two officers.

7. Further as per Article 311(1) of the Constitution of India, no person employed in civil capacity under the Union or the State is to be dismissed or removed by an authority subordinate to that by which he was appointed. In order to ascertain if there has been violation of the provisions of Article 311(1) of the Constitution of India, what is required to be determined is if the petitioner was dismissed or removed from his service by an authority subordinate to that which had appointed him regardless of subsequent changes. The petitioner nowhere pleaded as to who actually had appointed him as the Naik of the 6th Bn.MR in 1994. The onus of producing all relevant papers to show that the dismissing authority was lower in rank than the appointing authority is upon the petitioner. There is, however, no dispute that the petitioner was actually appointed as Naik in 1994 by the Commandant of the 6th Bn. M.R..

8. In *Krishnakumar vs. Divisional Assistant E.E., Central Railway*, AIR 1979 SC 1912, the Supreme Court held at para. 5 :

?Whether or not the authority is subordinate in rank to another is to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of the respondent No.1 in regard to make appointment to the post held by the appellant cannot confer upon the respondent No.1 the power to remove him. On the date of appellant's appointment as a Train Lighting Inspector, respondent No.1 had no power to make that appointment. He cannot have, therefore, the power to remove him.?

9. In view of the above position of law, in order to establish that both the Commandant, 6th Bn. M.R. and Dy.IGP(OPS), Govt. of Manipur were not having jurisdiction to pass an order of dismissal of the petitioner from his service, the petitioner is required to produce the relevant documents to prove that he had been appointed as Naik in 1994 by an authority superior to both the Commandant and the Dy.IGP(OPS). The petitioner has not done so but there is no dispute that the petitioner was appointed as Naik in 1994 by the concerned

Commandant. I am of the opinion that the said order issued by the Joint Secretary, DP, Govt. of Manipur on 5.7.95, in supersession of all previous orders, making the Director General of Police, Manipur as the appointing authority for appointment to ClassIII and ClassIV posts under the Police Department, Govt. of Manipur will not affect the power of the Commandant, who had appointed the petitioner as Naik in 1994, to dismiss the petitioner after holding enquiry as per provision of the relevant rules.

10. It is also to be noted that the portion of the said order dated 5.7.1995, issued by the Joint Secretary, DP, Govt. of Manipur making the Director General of Police, Manipur as the appointing authority in respect of ClassIII and ClassIV posts under the Police Department, Manipur, was deleted with effect from 05.7.1995 vide order being No. 16/1/91DPC/DP(Ptiii), dated 29.6.2002, issued subsequently on the ground of having found it inconsistent with the provisions of the Assam Police Manual, PartIII relating to appointing authorities of ClassIIIClassIV posts in the Police Department. A copy of the said order dated 29.6.2002 is found enclosed with the Affidavitinopposition submitted by the Commandant. The fact of issuance of the subsequent order dated 29.6.2002 is not denied by the writ petitioner.

In the above facts and circumstances, the first submission made by the petitioner's counsel has no basis and it is not accepted.

11. The second point submitted by the counsel of the petitioner is that it was illegal on the part of the Dy. IGP (OPS), Manipur to enhance the punishment imposed by the Commandant, 6th Bn.MR, Manipur on suomoto basis. According to the learned counsel of the petitioner, the Dy.IGP((OPS), Manipur was not having jurisdiction to enhance punishment on suomoto basis and thereby depriving the petitioner's right of making appeal to the Dy.IGP(OPS), Manipur against the said punishment imposed by the Commandant, 6th Bn. M.R.

12. There is no dispute that the relevant applicable provisions in respect of the proceeding drawn up against the petitioner for imposing major punishment are found in Rule 66 of Assam Police Manual, PartIII. As per ParaIV, Rule 66 of the Assam Police Manual, PartIII, the punishment prescribed in Rule 2 to the extent specified in column 4 of the Schedule to these rules may be awarded to the police officers mentioned in column 1 by the authorities mentioned in column 3 subject to appeal to the above authority mentioned in column 5. Further, as per para V Rule 66 of the Assam Police Manual, PartIII, a member of the service shall be entitled to appeal from an order imposing on him any of the penalties specified in Rule 11 for major punishment (a) if such order was passed by an authority specified in the relevant column of the schedule, to the authority specified in the last column thereof, (b) if such order was passed by an authority higher than that specified in the relevant column of the schedule, to the higher authority to whom the former authority is administratively subordinate, provided that no appeal shall lie beyond the Inspector General of Police. According to ParaX of Rule 66 of Assam Police Manual, PartIII, the authority by whom an

order imposing a penalty under Rule IV may be reversed or altered in cases in which no appeal is preferred shall be the appellate authority specified in Rule V. As per ParaXI of the said Rule, nothing in these rules shall operate to deprive any person of any right of appeal which he would have had if these rules had not been made, in respect of any order passed before they came into force. An appeal pending at the time when or preferred after, these rules come into force shall be deemed to be an appeal under these rules, the Rules VI and VII shall apply as if the appeals were against the order appealable under these rules. Further as per Rule 68 (6) , the Deputy Inspector General of Police in respect of the punishments inflicted by officers subordinate to him, and the Inspector General of Police in all cases reserve to themselves the power of revising not only all cases of flagrant irregularities but also cases of materials injustice.

13. Keeping in view the above mentioned relevant provisions of rules 66 and rule 68 of Assam Police Manual, PartIII and on perusal of Schedule to Para XII of rule 66 of Assam Police Manual, PartIII, one can reasonably conclude on the basis of materials before the court that the Commandant, 6th Bn. M.R. was the appointing authority of the petitioner, who was then serving as Naik in the said Battalion at the relevant time and that the Commandant, 6th Bn. M.R. was the competent authority who could impose any of the penalties specified in rule II at the relevant time. There is no dispute that the Dy.IGP (OPS), Manipur has been functioning as the appellate authority in respect of the disciplinary proceeding taken as against Assistant Inspector of Police, Head Constable and Constable including the personnel of equivalent rank of armed battalions and that Dy.IGP (OPS), Manipur is the appellate authority in respect of the said appeals in columnV of the Schedule.

As per ParaX of Rule 66 of Assam Police Manual, PartIII, if no appeal was preferred against the penalty imposed by the Commandant, 6th Bn. M.R. on 15.4.03, the appellate authority i.e., the Dy.IGP(OPS), Manipur was competent to alter or reverse the said penalty. As per records, when the Dy.IGP(OPS), Manipur altered the said penalty, vide order passed on 7.5.03, no appeal was filed against the penalty. Moreover, by virtue of para(6) of rule 68 of Assam Police Manual, PartIII, the Dy.IGP(OPS), Manipur was having power of revising the penalty imposed by the Commandant, 6th Bn. M.R. not only in cases of flagrant irregularities but also in cases of materials injustice.

14. In the above circumstances, prima facie, the Dy.IGP(OPS), Manipur was having power to alter the said penalty imposed by the Commandant, 6th Bn. M.R. as against the petitioner. By making the above said finding, this court is not concluding that the said alteration or revision by the Dy.IGP(OPS), Manipur was done properly in accordance with law. That matter is required to be examined and determined on the basis of the materials before the court.

15. No doubt, if an exercise of power of imposing penalty by an appellate authority results in denial of right of appeal available to the delinquent employee, the said exercise of the power cannot be considered as a valid one in law. In

Electronics Corporation of India v. G.Muralidhar, (2001) 10 SCC 43, the Supreme Court of India, on the basis of its earlier decision in Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank, (1995) 2 SCC 474 held to the effect that power to impose punishment was not to be exercised by an appellate authority if it resulted in denial of right of appeal to the delinquent employee.

16. In the instant case, though the Dy.IGP(OPS), Manipur exercised the power of imposing penalty against the petitioner in the guise of alteration or revision of the penalty imposed by the Commandant, 6th Bn. M.R., the petitioner was not deprived of his right of making appeal inasmuch as he could make an appeal to the higher authority to whom the Dy.IGP(OPS), Manipur was administratively subordinate i.e. to the Inspector General of Police under the provisions of ParaV(b) of rule 66 of Assam Police Manual, PartIII . In my considered opinion, the exercise of power of alteration or revision of penalty by the Dy.IGP(OPS), Manipur did not result to deprivation of the right of appeal to the petitioner inasmuch as he could make an appeal against the said penalty imposed by the Dy.IGP(OPS), Manipur to the Inspector General of Police, Manipur.

17. An important question to be considered is if the said alteration or revision of the penalty by the Dy.IGP(OPS), Manipur on suomoto was done properly in accordance with law or not.

18. The impugned order of dismissal passed by the Dy.IGP(OPS), Manipur on 7.5.03 is as follows :

GOVERNMENT OF MANIPUR POLICE DEPARTMENT

ORDERS BY THE DY. INSPECTOR GENERAL OF POLICE (OPS): MANIPUR

Imphal, the 7th May, 2003.

No.H8/OPS/PHQ/2001 (PtII) : Whereas, a Departmental Enquiry was ordered by CO 6 MR vide his order No.28/97 6MR dated 23.2.97 against NK No. 13527 Ng. Inaoton Singh for his misconduct of absence along with arms and ammn. And subsequent arrest by Police for indulging in smuggling of gangja etc.

Whereas, following the Enquiry CO 6 MR awarded him the punishment of reduction of rank (i.e. from Naik to L/Naik) vide his order No. B5/2/916MR dt. 15.4.2003.

Whereas, the undersigned reviewed the enquiry papers and came to the conclusion that the punishment awarded to the delinquent Nk. No.13527 Ng. Inaoton Singh is not commensurate with the gravity of his misconduct and nothing less than dismissal from service will meet the ends of justice.

Now therefore, I.D. Mishra, IPS, DIG (Ops) under the authority vested in me by the relevant provisions of A.P. Manual PartIII hereby order that the impugned order of CO 6 MR is quashed and the delinquent is awarded the punishment of dismissal from service.

The CO 6 MR will issue the order immediately under intimation to all concerned.

(D. MISHRA) IPS

Dy. Inspector General of Police (Ops).

Manipur, Imphal.?

19. As per impugned order dated 7.5.03, on reviewing the enquiry papers, the Dy.IGP(OPS), Manipur came to the conclusion that the punishment awarded to the petitioner by the Commandant, 6th Bn. M.R. was not commensurate with the gravity of his misconduct and that nothing less than dismissal from service would meet the ends of justice. Nothing is produced to show that the petitioner was given an opportunity of hearing before alteration or revision of the said penalty of reduction in rank to one for dismissal from service. It is ascertained that the said revision or alteration was done suomoto by the Dy.IGP(OPS), Manipur without giving any opportunity of hearing to the petitioner. No relevant procedure required to be followed by the concerned authority while making such alteration or revision of a penalty is brought to my notice. There is no express provisions in Assam Police Manual requiring giving of opportunity of hearing to the concerned delinquent employee before alteration or revision of a penalty imposed as against him as done in the present case. It is to be noted that while making alteration of the punishment, vide the impugned order dated 7.5.03, the Dy.IGP(OPS), Manipur never considered if the facts on which punishment imposed by the Commandant, 6th Bn. M.R. was passed had been established or not. No consideration was also made if the established facts afforded sufficient ground for taking action.

20. In the instant case, on the basis of findings in the departmental enquiry and having regards to the facts and circumstances of the case, the Commandant, 6th Bn. M.R., who was the disciplinary authority, imposed the penalty of reduction of rank against the petitioner vide order passed on 15.4.03. As per records, the findings of the departmental enquiry were duly informed to the petitioner. Before the expiry of the period within which an appeal could be filed against the said penalty imposed by the Commandant, 6th Bn. M.R., the Dy.IGP(OPS), Manipur exercised his power of alteration or revision of the said penalty on suomoto basis and passed the impugned dismissal order dated 7.5.03 without giving any opportunity of hearing to the petitioner. Even though there is nothing to show that the Dy.IGP(OPS), Manipur considered if the facts on which Commandant, 6th Bn. M.R. imposed the penalty had been established or not, he, purportedly, proceeded on the assumption that the said facts had been established inasmuch as the findings of the enquiry officer regarding the said facts had not been disagreed or interfered with by the Commandant/disciplinary authority .

21. In the absence of any express provision in the relevant rules requiring the Dy.IGP(OPS), Manipur to give information to the concerned delinquent employee/petitioner before exercising his power of alteration or revision of the penalty imposed by the disciplinary authority , prima facie, no illegality was committed on

account of his failure to give an opportunity of hearing to the petitioner before passing the impugned dismissal order. No doubt, it is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislature and statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand, a statutory provision, either specifically or by necessary implication, excludes the application of any or of the principles of natural justice, then the court cannot ignore the mandate of the legislature or statutory authority and read into the concerned provisions the principles of natural justices.

22. Keeping the above said well settled position of law, it is to be noted that by altering or revising the penalty of reduction in rank to one dismissal from service, the Dy.IGP(OPS), Manipur was imposing a penalty which he considered as commensurate with the gravity of misconduct in exercise of his power given by the relevant rules and by doing so, he was not giving a finding regarding the misconduct of the petitioner contrary to the findings which had been made by both the enquiry officer and the disciplinary authority. Consequent upon the said alteration and revision made by the Dy.IGP(OPS), Manipur, the punishment awarded against the petitioner became dismissal from service for the misconduct committed by him.

23. So far as imposition of penalty is concerned, the principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to Clause 2 of Article 311, there is no scope for reintroducing it by a side door to provide opportunity of hearing or of making representation which the constitutional provision has expressly prohibited. There cannot be any question of causing undue prejudice to the petitioner by the said alteration or revision without giving any opportunity of hearing or representation to him inasmuch as despite the said enhancement, he could file an appeal challenging the enhancement.

24. In the light of the above considerations, the second point submitted by the learned counsel appearing on behalf of the petitioner is not also accepted.

25. The third point submitted by the petitioner's counsel is that the departmental enquiry against the petitioner was not proceeded in accordance with the relevant rules /procedures and as such, the impugned penalty of reduction in rank as well as impugned penalty of dismissal from service, which were passed on the findings in the enquiry, are not sustainable in the eye of law. According to the petitioner's counsel, the petitioner was not provided with defence assistant nor given chance of producing his defence witnesses in the enquiry. Further according to the petitioner's counsel, no presenting officer was also appointed in respect of the said enquiry.

26. It is already ascertained that no appeal was filed to the concerned Inspector General of Police challenging the said alteration or revision of penalty as well as

the findings in the said enquiry. Instead of proceeding as provided in Part V(b) of rule 66, Assam Police Manual, PartIII, the petitioner is said to have submitted a representation on 23.5.2003 in the form of appeal to the Director General of Police, Govt. of Manipur requesting for setting aside the impugned orders. According to the petitioner, the said representation has not been disposed of and this fact is not denied by the respondents. As per provisions of PartV (b) of rule 66, Assam Police Manual, PartIII, no appeal is to be filed beyond the Inspector General of Police and as such, the said representation filed by the petitioner on 23.5.03 to the Director General of Police cannot be considered as an appeal made in accordance with law. In the absence of any pending appeal, it will be proper and just to proceed with the consideration of the third point submitted on behalf of the petitioner. This court has jurisdiction to review the manner in which the findings in the enquiry were arrived. In case of finding deficiency in the decision making process, the impugned penalty passed on the findings of the said enquiry will not be sustainable in the eye of law.

27. On perusal of the records of the departmental enquiry, it is ascertained that no presenting officer was appointed by the concerned authority during the enquiry. A Division Bench of this court, while disposing of Writ Appeal No. 267 of 2002 and many other appeals on 18.4.2005, held : ? An enquiry officer cannot assume the role of a Judge and also the prosecutor. Even though there is no such provisions under Rule 66 (of PartIII of Assam Police Manual) for appointment of the presenting officer, the simple question is that, who is to present the case of the department when there is no any presenting officer , therefore, absence of a presenting officer will make the enquiry totally vitiated as the enquiry officer cannot assume the role of a Judge as well as the Prosecutor.?

28. It is also ascertained that no defence assistant was appointed to represent the petitioner. There is nothing to show that the enquiry officer informed the petitioner about his right to appoint a defence assistant to defend his case. None of the witnesses produced to substantiate the charge was crossexamined by or on behalf of the petitioner. There cannot be any doubt that the petitioner was prejudiced in making his defence. Although rule 16 of PartIII of Assam Police Manual is silent about the appointment of the defence assistant, the rule of natural justice requires that the petitioner ought to have been allowed to be defended by a defence assistant before the enquiry officer. The petitioner was only a Naik at the relevant time and he being in the lower rung of Manipur Rifle, one cannot reasonably think that he must be knowing about the relevant rules of the departmental enquiry and also about the proper steps required to be taken for his defence. In his written statement of defence submitted to the Commandant, 6th Bn. M.R. on 30.4.1997, apart from denying the articles of charge totally, the petitioner is found to have stated that he wanted to be provided with an officer for conducting crossexamination of the PWs on his behalf.

At the same time, the petitioner made a request in the said written statement for allowing him to produce his defence witnesses, if necessary, in the course of

enquiry. Despite the above said request for providing an officer for conducting the crossexamination of the PWs, the concerned enquiry officer proceeded with the examination of witnesses on 5.12.97 as well as on 8.12.97 without either providing any defence assistant to the petitioner or passing any formal order regarding the request of the petitioner for providing defence assistant. It would have been fair and just on the part of the concerned authority to pass an appropriate order so that a defence assistant was made available for defence of the petitioner during the enquiry. Apparently, not knowing the effect or consequence of statements of witnesses produced on behalf of the authority when they were not subjected to crossexamination, the petitioner did not crossexamine any of the witnesses examined on the above said dates. Thereafter, the departmental enquiry did not proceed for some years.

29. Then, on 23.1.2003, an order was issued by the Commandant, 6th Bn. M.R. stating that the ends of justice would not be served in case the departmental enquiry was conducted without giving the charged officer (petitioner) opportunity to have defence assistant and directing Shri A.Kundo Singh, Deputy Commandant (OPS), 6th Bn.MR, who was newly appointed as the enquiry officer, to start the enquiry against the petitioner afresh from the stage of examination of PWs.

However, no defence assistant was made available before the start of the enquiry afresh. Apparently after getting the said order, the petitioner submitted his supplementary written statement of defence on 17.2.03 denying the charge made against him. As per records of the departmental enquiry , on 4.3.03, i.e., before the submission of the above supplementary written statement, the petitioner submitted an application to the Commandant, 6th Bn. M.R. stating to the effect that in stead of appointing a defence assistant , he be allowed to represent himself in the enquiry and that no DW was required to be examined. It is not known at whose advice, the petitioner submitted the above said application. The petitioner is also found to have given his statement on 4.3.2003 before the enquiry officer when preliminary hearing was made. The enquiry was proceeded by examining the witnesses again on 18.2.03 and 7.3.2003 without appoint any defence assistant for the defence of the petitioner.

As done on earlier occasion, none of the said witnesses was crossexamined by or on behalf of the petitioner in the said subsequent fresh proceeding of the enquiry.

30. In view of the inconsistency on the part of the petitioner about the need for providing or appointing a defence assistant for his defence, having regards to the seriousness of the charges, likely penalty he would be facing in case of proving the charge and his lowly rank, the enquiry officer ought to have proceeded cautiously and ascertained if he was requesting for not appointing or providing a defence assistant under the influence of any person or due to the assurance given by any official. Since the Commandant, 6th Bn. M.R. ordered for proceeding with the enquiry afresh from the stage of examination of witnesses on the ground of having found the earlier examination of witnesses to have been

made without appointing or providing a defence assistant, despite the specific prayer in that regard in the written statement of the petitioner, it would have been fair and just on the part of the enquiry officer to ascertain the truth with the object of doing justice.

31. In the facts and circumstances, the enquiry officer ought to have proceeded cautiously before proceeding and acting on the basis of the subsequent statement of the petitioner about not providing or appointing a defence assistant contrary to his earlier request for providing a defence assistant. The object underlying the rule of natural justice is to prevent miscarriage of justice and secure fair play in action. The fact that the statements of witnesses were not crossexamined by the petitioner clearly shows that despite his denial of the charges against him, he was not knowing the effect of not crossexamining the said witnesses. At the same time, despite his denial of the charges and the assertion made in his written objection and supplementary written objection, he did not take any steps for producing his DWs.

32. In my opinion, the petitioner was immensely prejudiced in his defence as a result of not appointing a defence assistant for his defence.

33. The findings in the said departmental enquiry were made on the basis of the statements of witnesses who were never crossexamined. No defence assistant was appointed for the defence of the petitioner. No presenting officer was appointed by the authority in connection with the enquiry. In my opinion, the petitioner was not given reasonable opportunity of defending himself in the said departmental enquiry and as such, the said findings are not sustainable in the eye of law. The said findings in the enquiry were not arrived properly and under due process of law and as such, the said findings are hereby quashed. At the same time, the impugned orders, which were based on the said findings, are also hereby set aside/quashed.

34. Since the findings of the enquiry and the impugned dismissal order are not quashed on the ground that the charges against the petitioners are not made out but on the finding that the proceedings have not been made under the relevant law and rules, nothing prevents the concerned authority from initiating a fresh enquiry against the petitioner in respect of the charges in accordance with the provisions of the relevant law and rules within a reasonable time, which is not to be more than four months from today. If fresh departmental enquiry is held against the petitioner, he shall be treated as under suspension from the date of his first suspension and he shall be paid the suspension allowances according to rules. The suspension allowances so far due shall be paid within a period of 3 (three) months from today if not paid earlier. If no such enquiry is initiated within the period prescribed, the petitioner is to be reinstated in his services with all the consequential benefits.

35. With this order and directions, this writ petition stands disposed of.