

**(2017) 03 MEG CK 0024**  
**In the Meghalaya High Court**  
**Case No : 58 of 2016**

Union of India & Ors

APPELLANT

Vs

Shri Jasvir Singh

RESPONDENT

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**Date of Decision :** 28-03-2017

**Acts Referred:**

[Central Civil Services \(Classification, Control and Appeal\) Rules, 1965](#), [Rule 19\(i\)](#) -  
[Assam Rifles Act, 1941](#), [Section 7](#), [Section 7\(t\)](#) - Other offe

**Citation :** (2017) 03 MEG CK 0024

**Hon'ble Judges :** Dinesh Maheshwari, Ved Prakash Vaish

**Bench :** Division Bench

**Advocate :** N Mozika, PK Roy Choudhury

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## Judgement

1. Having regard to the circumstances of the case and the issues involved, with the consent and at the request of the learned counsel for the parties,

we have heard the matter finally at this stage itself.

2. This intra-court appeal is directed against the order dated 07.10.2015 as passed in WP (C) No.53 of 2013 whereby, the learned Single Judge

of this Court has allowed the writ petition filed by the respondent of this appeal [hereinafter also referred to as "the writ petitioner"]; and, after

setting aside the order passed by the Disciplinary Authority dated 25.08.2003, has directed that a fresh enquiry be conducted against the writ

petitioner while restoring him back in service, without arrears or other benefits. The learned Single Judge has concluded on the matter as under:-

13. After considering the submissions advanced by the learned counsel for the parties and keeping in mind the facts and circumstances of the case

as discussed above and the provision of law, I am of the considered view that,

justice was not properly rendered to the petitioner and I also do not agree that, just a mere trespassing or entering the residence of the senior officer, one should face dismissal of service. Therefore, the impugned order dated 25.08.2003 (Annexure-I of the writ petition) is hereby set aside and direct the respondent to conduct a fresh enquiry giving full opportunity to the petitioner to place his case and then to take the decision in accordance with law and rules. In the meantime, the petitioner is restored back to his service as on 2003 without any arrear, salary or other benefits and if possible the enquiry should be completed within 3 (three) months from the date of receipt of a certified copy of this judgment and order. The judgment and order is to be implemented from the date of receipt of a certified copy of this judgment and order.

14. With these observations and directions, this instant writ petition stands disposed of.

3. After having heard the learned counsel for the parties and having perused the material placed on record, we have formed the opinion that the orders as said to have been passed in this matter by the Appellate and Revisional Authorities cannot be approved and in the totality of circumstances, the appeal deserves to be restored to the file of the Appellate Authority for consideration afresh and in accordance with law. In this view of the matter, dilatation on all the factual aspects and the contentious issues does not appear necessary; and only a brief reference to the relevant background aspects would suffice.

4. The relevant background aspects of the matter are that the respondent (writ petitioner) was enrolled in Assam Rifles on 28.12.1998; and was promoted to the rank of Havildar/Clerk on 13.01.2003. Thereafter, he was posted with the Assam Rifles Training Centre and School at Dimapur (Nagaland) and was working under one Major Raja Sharma of the Engineering Branch of the said Training Centre. On 03.06.2003, the writ petitioner was charged with the imputations that he allegedly trespassed into the residence of the said Major Raja Sharma in the evening at 1915 hours without authority and contrary to the existing standing orders while knowing fully well that the officer concerned was away on temporary duty to Headquarters. On the aforesaid imputations, the authority concerned ordered that the writ petitioner would be "tried by judicial

proceedings"". In the proceedings as conducted, the statement of the wife of Major Raja Sharma was recorded on 06.06.2003 and the writ

petitioner was also examined as the accused person wherein he accepted the imputations. These proceedings were concluded by the learned

Deputy Commandant and First Class Magistrate, Assam Rifles Training Centre and School, Dimpaur (Nagaland) on 06.06.2003 itself; and after

finding the writ petitioner guilty of offence under Section 7(t) of the Assam Rifles Act, 1941 ["the Act of 1941"], sentenced him to 80 days"

imprisonment in Civil Jail. The learned officer, acting as First Class Magistrate, found and ordered as under:-

.... (b) You while with Engineer Branch, Assam Rifles Training Centre and School, Dimapur (Nagaland) trespassed into the residence of Major

Raja Sharma (Quarter No.DT/SF 347) on 03 Jun 2003 at 1915 hours without authority, contrary to the existing standing orders of the Assam

Rifles Training Centre and School, Dimapur (Nagaland) and knowing fully well that the officer was away on temporary duty to Hrqs, Directorate

General, Assam Rifles, Shillong.

I find you guilty under Section 7 (t) of the Assam Rifles Act, 1941 beyond all reasonable doubt and on your own admission. Therefore, I hereby

convict you under Section 7 (t) of Assam Rifles Act, 1941 and sentence you 80 days rigorous imprisonment in Civil Jail.

5. At this juncture itself, it could be noticed that in the scheme of the Act of 1941, heinous offences by the Rifleman are specified in Section 6

whereas, other offences including the acts prejudicial to good order and discipline are specified in Section 7 thereof. For such "other offences"

under Section 7, the punishment provided is for a term which may extend to one year, or with fine which may extend to two hundred rupees or

both. The writ petitioner was found guilty of the offence under Clause (t) of Section 7 of the Act of 1941 that reads as under:-

7(t) neglects to obey any battalion or other orders, or commits any act or omission prejudicial to good order and discipline such act or omission

not constituting an offence under the Indian Penal Code or other Act in force in Assam."" shall be punished with imprisonment for a term which may

extend to one year, or with fine which may extend to two hundred rupees, or with both.

6. It is not in dispute that pursuant to the order aforesaid, the writ petitioner was taken in custody on 06.06.2003 to serve the sentence of

imprisonment. While the writ petitioner was serving the sentence, the said Deputy Commandant, in his capacity as the Disciplinary Authority,

served him a show cause notice dated 24.07.2003 under Rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules 1965

["CCA Rules of 1965"] proposing to impose penalty of dismissal from service because of his conviction on the criminal charge, while observing as

under:-

#### MEMORANDUM

1. WHEREAS, No.362717H Havildar/Clerk Jasvir Singh has been convicted on a criminal charge under Section 7 (t) of Assam Rifles Act, 1941

and has been awarded a sentence of 80 days rigorous imprisonment in Civil Jail.

2. AND WHEREAS, the undersigned proposes to award an appropriate penalty under Rule 19 (i) of Central Civil Service (Classification, Control

and Appeal), Rules, 1965, taking into account of the gravity of the criminal charges.

3. AND WHEREAS, before coming to a decision about the quantum of penalty to No.36271H Havildar/Clerk Jasvir Singh was given an

opportunity of personal hearing to explain the circumstances why penal action should not be taken against him in pursuance of the provisions of

Rule 19 ibid.

4. NOW THEREFORE, on a careful consideration of the inquiry report, the undersigned has provisionally come to the conclusion that Number

362717H Havildar/Clerk Jasvir Singh is not fit person to be retained in service and gravity of offence is such as to warrant the imposition of a

major penalty and accordingly proposes to impose on him the penalty of ""to be dismissed from service"".

5. NOW THEREFORE, Number 362717H Havildar/Clerk Jasvir Singh is hereby given an opportunity of making representation on the penalty

proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the undersigned. Such a

representation if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of

this Memorandum by No.362717H Havildar/Clerk Jasvir Singh.

7. The writ petitioner, of course, submitted a response to the said notice while being in detention on 02.08.2003 stating, inter alia, that he had

accepted the sentence awarded to him but the proposed penalty was highly excessive; and also submitted that the story against him was a

fabricated one. The writ petitioner, inter alia, submitted that,-

4. That Sir, matter was to hand over Newspaper to the residence of our Hon''ble Major and the remaining each and everthing was fabricated, I

was not in intoxicated at that time and only a drunken person alone is well to be framed with such unseen and unhappened miraculous charges.

These are nothing but to malign my name and fame.

5. Respected Sir, proposed penalty is more severe and all harmful please. Same may kindly be reconsidered favourably and sympathetically,

judging the fact and fabrication of charges equally sir. I further solemnly state that such an incidence has neither could happen in my civil life nor in

service life before and I have my constant confidence to give words that in no future such ill things can repeat and happening. Sir, I prefer death

than malignation of such charges and punishment.

8. After receipt of the representation aforesaid, the learned Disciplinary Authority proceeded to pass the impugned order dated 25.08.2003

awarding the writ petitioner penalty of dismissal from service while observing, inter alia, as under:-

3. AND WHEREAS, No.362717H Havildar/Clerk Jasvir Singh was afforded an opportunity to show cause against the proposed action vide

ARTC&S letter No.I.136011/Discp/362717/03-A/2100 dated 24.07.2003.

4. AND WHEREAS No.36271H Havildar/Clerk Jasvir Singh has submitted his reply vide Central Jail, Dimapur letter No.CJ18/02-03/582 dated

02 Aug 2003. The same has been duly considered by the undersigned and was found unsatisfactory by the competent authority.

7. NOW THEREFORE, in exercise of the powers conferred by Rule 19 (i) of the Central Civil Service (Classification, Contrail and Appeal)

Rules, 1965, the undersigned hereby dismisses the said No.36271H Havildar/Clerk Jasvir Singh from service with effect from 25th August 2003

(Forenoon).

9. Being aggrieved of the order aforesaid, the respondent (writ petitioner) made an appeal to the Director General, Assam Rifles and, in his

extensively drawn representation-cum-memo of appeal dated 08.09.2003, narrated his own version of the entire episode as also the backdrop in

which he was sought to be implicated in the matter. This appeal was ultimately considered and disposed of by the Director General, Assam Rifles

on 07.11.2003 and the order so passed in the appeal was communicated to the writ petitioner by the Directorate General Assam Rifles on

11.11.2003. The order as passed on 07.11.2003, said to be carrying the reasons and considerations of the Appellate Authority, reads as under:-

DIRECTIONS OF THE DIRECTOR GENERAL ASSAM RIFLES, ON THE PETITION SUBMITTED BY EX NO.362717H

HAVILDAR/CLERK, JASVIR SINGH, OF ASSAM RIFLES TRAINING CENTRE AND SCHOOL, AGAINST HIS DISMISSAL FROM

SERVICE.

1) I have carefully considered the petition, dated 08.09.2003, submitted by Ex Number 362717H Havildar/Clerk Jasvir Singh, of Assam Rifles

Training Centre and School, along with relevant record and recommendations of Commanders-in-Chain of Command.

2) Ex Number 362717H, Havildar/Clerk Jasvir Singh, was tried by judicial proceedings under AR Act 1941 and the Court sentenced him to 80

days of rigorous imprisonment in civil jail for an offence ""AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE"". Later, the

petitioner was dismissed from service, after completion of his sentence in civil jail, under 19 (I) of CCS (CCA) Rules 1965. During the conduct of

trial, the petitioner was afforded full opportunities to defend himself. The judicial proceedings have been found to be sufficiently in order, wherein

the petitioner had unequivocally pleaded "Guilty" to the charge. Considering the nature and gravity of the offence, the punishment awarded to the

petitioner by the criminal court is appropriate, just and legal.

3) The issues raised by the petitioner, that he was wrongly implicated and that his trial was unjust and illegal have been found to be false and

malicious.

4) I, therefore, direct that the petition submitted by Ex Number 362717H, Havildar/Clerk Jasvir Singh, of Assam Rifles Training Centre and

School, be rejected, since it lacks merit and is devoid of substance. Station : Shillong (H.S. Kanwar) Date : 07.11.2003 Lieutenant General

Director General Assam Rifles.

10. The writ petitioner, thereafter, submitted a revision petition that was purportedly decided by the Ministry of Home Affairs on 11.11.2004 but,

the decision was communicated to him only by way of an order issued on behalf of the Director General, Assam Rifles on 02.08.2006. In this

order dated 02.08.2006, the reasons for rejection of the revision petition were spelt out as follows:-

5. Whereas, the petitioner was dismissed from service under the provision of Rules 19 (i) of CCS (CCA) Rules 1965, he was given a show cause

notice under the provisions of ibid rule and after due consideration of his reply, he was dismissed from service. Thus the procedure followed for

dismissal of the individual from service is legally in order.

6. Whereas, perusal of documents pertaining to processing of appeal filed by the petitioner reveals that the appeal filed by him was rejected after

due application of mind by the competent authority.

7. Whereas, Ex Number 362717H Havildar/Clerk Jasvir Singh was tried by Judicial Proceedings under Assam Rifles Act 1941 and the Court

sentenced him to Rigorous Imprisonment for 80 days in civil jail. During the trial the petitioner was given full opportunities to defend himself. The

Judicial proceedings have been found to be legally in order, wherein the petitioner had unequivocally pleaded ""Guilty"" to the charge.

8. Whereas, considering the gravity of offence, the punishment awarded to the petitioner by the criminal court is appropriate just and legal. Further

considering the fact that the individual was convicted on a criminal charge action was initiated under Rule 19 (i) of CCS (CCA) Rules, 1965 and

his further retention in the service was not considered desirable.

9. The Central Government, in view of the reasons mentioned above, has rejected the revision petition dated 22 November 2003 vide Ministry of

Home Affairs Dy No F 6025/JS(P)/2004 dated 11 November 2004 being devoid of merit and substance.

11. The aforesaid order, said to have been made on 11.11.2004 by the Revisional Authority has not been placed on record and it is the specific

case of the respondent (writ petitioner) that such an order was never supplied to him.

12. It appears that after having been informed of the rejection of his revision

petition, the respondent (writ petitioner) in the first place attempted to question the proceedings and order against him by way of a writ petition in the High Court of Delhi but the said writ petition was dismissed for want of territorial jurisdiction. Thereafter, the respondent filed a writ petition in the Gauhati High Court bearing No.4403 of 2009 that was, at one stage, transferred to the Armed Forces Tribunal (Regional Bench), Guwahati but was returned by the said Tribunal for want of jurisdiction on 16.11.2010. Later on, the said writ petition bearing No.4403 of 2009 was transferred to this High Court and was renumbered as WP (C) No.53 of 2013; and came to be decided by the learned Single Judge by the impugned order dated 07.10.2015.

13. In a comprehension of the order impugned, it appears that the learned Single Judge proceeded to allow the writ petition essentially on the view

that the charge against the writ petitioner was not that of a heinous offence; and the punishment awarded to him was disproportionate to the alleged

offence. The learned Single Judge also observed that since the Deputy Commandant had found and charged the writ petitioner under Section 7 (t)

of the Act of 1941, he could not have exceeded the punishment prescribed therein. The learned Single Judge also expressed the view that

dismissal of the writ petitioner from service was not covered under any of the offences prescribed under Section 7 of the Act of 1941. A question

was raised regarding delay in approaching the Court to which, the learned Single Judge found that the writ petitioner had earlier approached the

Delhi High Court and thereafter, the matter was taken up in the jurisdictional High Court and was not delayed as such.

14. In the conclusion, as noticed, the learned Single Judge set aside the order passed by the Disciplinary Authority and directed reinstatement of

the writ petitioner and for enquiry afresh after giving him full opportunity of hearing in accordance with law.

15. Questioning the order so passed in the writ petition, learned counsel for the appellants has strenuously argued that the learned Single Judge has

viewed the case from an altogether wrong angle and did not differentiate in the criminal trial for the offence under Section 7 (t) of the Act of 1941

and the Disciplinary Proceedings under Rule 19 of the CCA Rules of 1965. Learned counsel submitted that the learned Single Judge has

proceeded as if modifying the order of punishment for the offence under Section 7 (t) of the Act of 1941 on the consideration of proportionality

though the said order, as passed in the criminal trial, was neither questioned by the writ petitioner nor was the subject-matter of challenge in the

writ petition. According to the learned counsel, the matter being otherwise of an admission of guilt by the writ petitioner, the penalty of dismissal

from service has rightly been imposed looking to the gravity of misconduct. Learned counsel also submitted that the direction for reinstatement of

the writ petitioner after more than a decade of his dismissal is not justified, particularly when the matter relates to the para-military force and after a

long length of time, fitness of the person shall always remain in question.

16. Per contra, learned counsel for the respondent (writ petitioner) has strenuously argued that the writ petitioner received unfair treatment and

rather a raw deal at the hand of the authorities concerned where he was neither afforded any opportunity of hearing nor his version was taken into

consideration by any one. According to the learned counsel, even if the respondent (writ petitioner) had stated his admission as regards the

allegation concerning Section 7 (t) of the Act of 1941 that, by itself, could not have been taken as decisive for the purpose of the departmental

enquiry. According to the learned counsel, proper enquiry having not been made and the contentions of the writ petitioner having not been properly

considered, the order passed by the learned Single Judge cannot be said to be unjustified. Learned counsel has also referred to the decision of the

Hon"ble Supreme Court in the case of Divisional Forest Officer, Kothagudem and others v. Madhusudhan Rao: (2008) 3 SCC 469 to submit that

the orders as passed by the Appellate and Revisional Authorities are required to be based on reasons and, for no specific reasons having been

assigned by the said authorities, the impugned orders cannot be sustained.

17. As observed, in an overall comprehension of the matter, we find it just and proper that the appeal be reconsidered on merits by the Appellate

Authority.

18. In the first place, we may dispose of a hyper technical objection on behalf of the appellants as regards delay on the part of the writ petitioner in

approaching the Court. In our view, the writ petitioner was not guilty of any unnecessary delay in the matter. On the contrary, it appears that the

appellants themselves had not taken appropriate steps at the appropriate time and the order said to have been made on 11.11.2004 in relation to

the revision petition was never communicated to the writ petitioner; and even while giving him the information by way of communication dated

02.08.2006, the appellants never took care to supply a copy of the order dated 11.11.2004 to the writ petitioner. After receiving the

communication dated 02.08.2006, the writ petitioner approached the High Court of Delhi in the year 2007 and when the said High Court declined

to entertain the writ petition for want of territorial jurisdiction, filed the writ petition in the then jurisdictional High Court i.e., Gauhati High Court in

the year 2009. The said writ petition was ultimately transferred to this High Court and renumbered as WP (C) No.53 of 2013. In the overall facts

and circumstances of the case, the writ petitioner could not have been declined the relief in the writ jurisdiction only on the ground of delay.

Equally, the factor of passage of time in the Court proceedings cannot, by itself operate prejudicial to the right of the writ petitioner for a fair and

appropriate consideration of his submissions. Thus, the contentions as urged on behalf of the appellants regarding the alleged delay or passage of

time stand rejected. However, the other submissions on behalf of the appellants do carry substance and we find it difficult to fully endorse the order

impugned on merits.

19. We do not find incorrect the basic submissions of learned counsel for the appellants that independent status of the enquiry proceedings, away

and apart from the criminal trial, appear to have not gone into consideration of the learned Single Judge while passing the order impugned. The

Learned Single Judge has referred to the punishment as awarded for the offence under Section 7 (t) of the Act of 1941 and has, only on that basis,

recorded the conclusion that the penalty of dismissal from service had been disproportionate to the misconduct.

20. It appears that the learned Single Judge only considered the submissions to the limited extent that according to the writ petitioner, it had been a

matter of alleged trespassing and hence, an extreme penalty of dismissal from service should not have been awarded.

21. It appears that the relevant factors had escaped the attention of the learned Single Judge that the matter relating to the offence of trespass

stood concluded with the awarding of sentence to the writ petitioner but, the proceedings in question in the writ petition were different, being essentially the disciplinary proceedings, of course, under the special provisions contained in Rule 19 of the CCA Rules of 1965. The different nature of proceedings and implications having not gone into consideration, we find it difficult to endorse the views as expressed in the order impugned as regards validity of the proceedings.

22. Even when we are not endorsing the views as expressed in the order impugned as such, the question still remains as to whether the proceedings had rightly been adopted under Rule 19 of the CCA Rules of 1965 and as to whether the basic requirements of law were taken care of and met by the appellants. In an overall comprehension of the matter, we are clearly of the view that the manner in which the orders have been passed against the writ petitioner by the appellants cannot be appreciated and the matter does require reconsideration at the appropriate level.

23. The considerations adopted by the respective authorities are discernible from the passages reproduced hereinbefore from the respective orders. As noticed, the principal order by the Revisional Authority on 11.11.2004 has neither been supplied to the respondent nor placed on record by the appellants. The communication/order dated 02.08.2006 purportedly indicating the reasons for rejection of the revision petition hardly carries any reason at all.

24. Unfortunately, in this matter not only the revision was disposed of in a cursory manner, even the Appellate Authority did not examine the matter on the relevant issues and points arising for determination. From the impugned order dated 07.11.2003, it is difficult to make out as to how the particular contentions by the respondent (writ petitioner) were examined and what had been the findings of the Appellate Authority thereupon? The Hon''ble Supreme Court in Madhusudhan Rao's case (supra) has indicated the principles that even when the Appellate and Revisional Authority are not required to give detailed reasons, the delinquent officer is entitled to know at least the mind of the Appellate or Revisional Authority and thus, some brief reasons need to be indicated while affirming the order. What to say of brief reasons, we are unable to find any reason at all in the order as passed by the Appellate Authority in the present matter.

25. Of course, no specific reasons are forthcoming even in the order as passed by the Disciplinary Authority but then, we find that the

representation as made before the Disciplinary Authority in response to the show cause notice was itself not carrying all the grounds with

particulars and specifications. However, such want of particulars and specifications in the initial show cause filed by the writ petitioner is not

decisive of the matter for the reason that at the relevant point of time, while filing such show cause in response to the notice dated 24.07.2003, the

writ petitioner was in custody and was serving out the sentence awarded on 06.06.2003.

26. A reference to the detailed and specific representation-cum-memo of appeal makes it clear that the writ petitioner, after serving the civil

imprisonment, drew up the appeal with all his submissions and presented the matter for consideration of the Appellate Authority. In the totality of

circumstances of the case, it was definitely expected of the Appellate Authority that the submissions as made in the memo of appeal were duly

taken into consideration; and if necessary, the writ petitioner could have been afforded an opportunity of personal hearing too. In our view, when

the matter relating to enquiry is otherwise left to be taken care of by the departmental authorities, every authority concerned is expected to deal

with the matter in fair and transparent manner while adhering to the principles of natural justice. Assigning of reasons for any particular decision is

one of the basic requirements of the principles of natural justice and the authorities like those of the appellants cannot avoid the necessity of

recording specific and cogent reasons in support of their decision. Moreover, when the appellants had chosen to invoke the special procedure

under Rule 19 of the CCA Rules of 1965 in displacement of the provisions relating to regular enquiry, it was required that the submissions made by

the writ petitioner were deeply and properly examined and the matter was dealt with by way of a speaking order. In the present case, the

Appellate Authority having not taken care to comply with the requirements of the principles of natural justice, the orders as passed in appeal and

revision deserve to be set aside and the appeal deserves to be restored for appropriate consideration of the Appellate Authority in accordance

with law.

27. Hence, we deem it appropriate to modify the order passed by the learned Single Judge in the manner that the impugned order dated

11.11.2004, said to have been passed by the Revisional Authority, with its communication order dated 02.08.2006 as also the order dated

07.11.2003 as passed by the Appellate Authority, with its communication order dated 11.11.2003 are set aside. The appeal as filed by the

present respondent shall stand restored for reconsideration of the Appellate Authority strictly in accordance with law.

28. Having regard to the circumstances of the case, we are also of the view that the respondent (writ petitioner) ought to be afforded an

opportunity of personal hearing by the Appellate Authority before taking final decision in this matter. Accordingly, it is directed that the respondent

(writ petitioner) shall remain present before the Appellate Authority i.e., Director General, Assam Rifles on 02.05.2017, who shall afford him an

opportunity of hearing and, after examining the complete record, shall take appropriate decision in the matter in accordance with law.

29. In the interest of justice, it is made clear that we have not pronounced on the merits of the case either way, and it shall be expected of the

Appellate Authority to deal with the matter with reference to the contentions of the respondent (writ petitioner) dispassionately and objectively, of

course, in accordance with law.

30. This appeal stands disposed of with the observations and requirements foregoing. No costs.