



GAHC010107042024



REPORTABLE

2026:GAU-AS:2830

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2888/2024

MD. MIZANUL HOQUE
S/O- ABDUR RAHMAN,
VILL- AMARAGURI,
P.O.- JALAKIABORI,
P.S.- LAHORIGHAT,
DISTRICT- MORIGAON, ASSAM,
PIN- 782127.

VERSUS

STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE COMMISSIONER-SECRETARY,
HOME DEPARTMENT, DISPUR,
GUWAHATI- 781005.

2:THE INSPECTOR GENERAL OF POLICE (CR)
NAGAON
ASSAM (CAMP AT DIPHU).

3:THE SUPERINTENDENT OF POLICE
DISTRICT MORIGAON
MORIGAON ASSAM.

4:THE ENQUIRY OFFICER RELATING TO DP NO. 06/2023
C/O SUPERINTENDENT OF POLICE
MORIGAON DISTRICT- MORIGAON
ASSAM



**BEFORE
HON'BLE MR. JUSTICE RAJESH MAZUMDAR**

Advocate for the petitioner(s): Mr B Chakravarty,
Advocate for the respondent(s): Ms M Bhattacharjee,
 Addl. Sr. GA Assam.
Date on which judgment was reserved : **12.02.2026**
Date of pronouncement of judgment : **24.02.2026**
Whether the pronouncement is of the : **NA**
operative part of the judgment?
Whether the full judgment has been : **Yes**
pronounced?

JUDGMENT AND ORDER (ORAL)

Heard Mr B Chakravarty, learned counsel appearing for the petitioner. Also heard Miss M Bhattacharjee learned Additional Senior Government Advocate, Assam appearing on behalf of the respondents, who has also produced the records of the disciplinary proceedings held against the petitioner.

- 2.** The submissions of the learned counsel have been considered and the records produced have been perused.
- 3.** The writ petition has been filed challenging an order dated 26.12.2023 passed by the Superintendent of Police, Morigaon and the appellate order dated 17.04.2024, passed by the Inspector General of Police (CR) by which the order of the disciplinary authority has upheld the penalty imposed upon the petitioner.



The petitioner has also assailed the charge memo, the enquiry proceedings and the enquiry report which was served upon the petitioner by the respondent authorities.

4. The petitioner was arrested in connection with ACB Police Station Case No. 60 of 2023 under Section 120B of the IPC read with Section 7 of the Prevention of Corruption Act, 1988, on 11.8.2023 along with two other persons working in the same department. He was, thereafter, placed under suspension with effect from 11.8.2023 by an order of even date. The petitioner was released on bail by the learned Trial Court on 13.9.2023.

5. On 18.09.2023, the Superintendent of Police, Morigaon, issued the first show cause notice to the petitioner where he was required to show cause as to why any of the prescribed penalties should not be imposed on him on the charges based on statement of allegations, list of witnesses and list of documents enclosed with the show cause notice.

6. The statement of allegations indicated that the petitioner exhibited moral turpitude and failed to uphold integrity and abused his power being a police personnel of a disciplined force. It further stated that the enquiry carried out so far revealed that there is sufficient material to show the involvement of the petitioner in the offence of demanding illegal gratification. His involvement in the investigation of the Lahorighat PS case No. 190/2023 without the knowledge of the office in charge of the Lahorighat PS also exhibited his clear ill intentions. The petitioner filed his reply to the show cause notice on 22.10.2023.

7. The enquiry officer, having conducted the enquiry, had submitted the

enquiry report. By the second show cause notice dated 13.12.2023, the petitioner was served a copy of the enquiry report requiring him to show cause against the findings. The disciplinary authority had recorded that on perusal of the findings, it was noticed that the charges of gross misconduct, indiscipline act and dereliction of duty are proved and hence the petitioner was liable for punishment.

8. The petitioner, thereafter, filed his representation which was received by the disciplinary authority on 16.12.2023 and by the order dated 26.12.2023, he was dismissed from service with immediate effect.

9. An appeal was preferred to the Inspector General of Police, Central Range, Nagaon, Assam on 25.1.2024, which came to be dismissed by the order dated 17.4.2024.

10. The petitioner is now before the court with the prayers as referred to in the preceding paragraphs of this order.

11. The learned counsel for the petitioner has based his arguments on the grounds of bias and has submitted that the departmental proceedings had been conducted with a predetermined outcome regarding the guilt of the petitioner. He has submitted that such enquiry proceedings which were conducted with the intention to prove the guilt cannot sustain the scrutiny of law and is liable to be set aside and quashed.

12. To evaluate and appreciate the arguments made on behalf of the petitioner, this Court, with the assistance of the learned counsel appearing for the contesting parties, has thoroughly perused the records of the departmental proceedings initiated against the petitioner.

13. A perusal of the show cause notice would reflect that instead of requiring him to show cause as to why he should not be held guilty of the allegations levelled upon him, the notice required the petitioner to show cause as to why any of the prescribed penalties should not be imposed upon the petitioner on the charges levelled.

14. In ***Kumaon Mandal Vikas Nigam Limited -versus- Girija Shankar Pant and others***; reported in **(2001) 1 SCC 182**, the Apex Court was dealing with a show cause notice issued to an employee. The court made the following observations by referring to the language in the show cause notice:

“25. Upon consideration of the language in the show-cause notice- cum-charge-sheet, it has been very strongly contended that it is clear that the Officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete.”

“The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom -- in the event, however, the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained”

15. In ***Oryx fisheries Private Limited -versus- Union of India and others***; reported in **(2010) 13 SCC 427**, the Apex Court had held as follows;

“31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show- cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi- judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. *Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.*

33. *The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."*

16. In ***Shri Hiramohan Doley -versus- The State of Assam & others***, reported in **2017 (3) GLJ 714**, where similar language was employed in the show cause notice, this Court had held that such a language indeed reflects the pre-conceived mind of a disciplinary authority. It was held when the delinquent was asked to show cause as to why disciplinary action should not be taken against him as per Assam Municipal Act, 1956 even before hearing his version, the respondents had already formed the opinion that he had remained willingly absent from duty. It appeared that the show cause notice was issued with a pre-determined mindset and was a mere formality adopted by the respondents to terminate the services of the petitioner.

17. In the present case, it is noticed that the disciplinary authority had while furnishing the first notice itself used language such as your above act amount to gross misconduct, act of indiscipline and dereliction of duty and you have exhibited absolute lack of integrity. Going by the language used in the first notice itself, this Court is of the considered opinion that the law laid down by this Court and also the Apex Court as referred hereinabove clearly apply to the circumstances of the present case and therefore the very initiation of the disciplinary proceeding against the petitioner by the first show notice itself cannot stand the scrutiny of law.

18. The records also reveal that though the allegation is that the petitioner exhibited moral turpitude and failed to uphold the integrity and abused power, it has not been specified as to in what manner he had exhibited the aforesaid attributes. The very fact of his arrest in connection with the ACB PS case has been projected to be a charge, which, in law, cannot be so done. The co-accused with him in the ACB PS case, namely the Sub-Inspector of Police and the other constable were named as witnesses against the petitioner, which again cannot be done. Such procedure is unheard of in law, where a prime accused in a criminal trial who is also a senior officer, can be made a witness against a junior co-accused in a departmental proceeding on the same issue. In the opinion of this Court, when both the senior officer and the junior had been found to be involved in the same criminal case with allegations of corruption, at best both could have been made to suffer a common disciplinary proceeding, but allowing the disciplinary authority to make one a witness against the other and not to put the senior officer to face any proceedings would be preposterous proposition, which cannot stand to reasonableness.

19. The records do not reveal that the petitioner was informed about his right to engage a defence assistant and in the opinion of this Court, in the absence of any information or proposal from the disciplinary authority to allow the petitioner to engage a defence assistant as required in law, the petitioner suffered prejudice. The Court finds support in this proposition from the law laid down in ***Chand Mohammad Ali -Versus- State of Assam***, reported in **2016 (4) GLT 277**.

20. This Court has further noticed that while seven witnesses were named in the list of witnesses provided to the petitioner, only three had been called in

the enquiry and as many as eight other witnesses, who were not named in the list of witnesses and of whom the petitioner had no notice, had been called during the enquiry proceeding. It is a settled position in law that when unlisted witnesses are called for in an enquiry, it is incumbent upon the accused/delinquent officer has to be given notice of the intention to call for such witness and also has to be informed as to by whom such witnesses has been proposed and what was the requirement for calling such witnesses into the enquiry.

21. There is nothing on record to show that the request has been made by the presenting officer or by the disciplinary authority to the enquiry officer to call for the additional witnesses. In the absence of such request, it has to be presumed that the enquiry officer had taken it himself to call for such witnesses as being necessary to prove the allegations imputed against the petitioner. The learned counsel for the petitioner has submitted that the witnesses who has been called for during the enquiry proceedings included independent witnesses, which were not informed prior to their summon into the enquiry to the petition. This Court finds force in such submission.

22. Referring to the procedure adopted by the enquiry officer, the learned counsel for the petitioner has submitted that the enquiry report itself would illustrate that the petitioner has been cross-examined after each of the witnesses has made their statements before the enquiry officer. Such a procedure was unheard of. The petitioner had been put to disadvantage when instead of being allowed to cross examine the witness, the petitioner has been cross-examined by the enquiry officer. The counsel for the petitioner has also brought to the notice of the Court that a perusal of the cross examination of the

petitioner after the statement of each of the witnesses had been recorded would show that the same questions and answers were repeated after every of the statements recorded for the disciplinary authority.

23. The role of an enquiry officer has been extensively discussed in the case of ***Union of India –Vs- Ram Lakhan Sharma***, reported in **(2018) 7 SCC 670**, wherein it has been held as follows:

“ 28. Xxxx As far as position in law is concerned, it is common ground that if the Inquiring Authority plays the role of a Prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. But the question for consideration in this case is : Whether the Inquiry Officer did so ? It is also settled law that an Inquiring Authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long the delinquent employee is permitted to cross-examine the witnesses after the Inquiring Authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair.”

35. Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High court giving rise to Civil Appeal No.2608 of 2012.”

24. In the case in hand, though a presenting officer has been appointed, the enquiry proceedings reveal that presenting officer was a mere spectator and the entire proceeding was conducted at the instance of the enquiry officer. Neither any of the witnesses has introduced any documents during the enquiry procedures nor any document has been exhibited by any of the witnesses. It is

apparent from the records, that while finalizing his opinion on the guilt of the petitioner, the enquiry officer has neither required the presenting officer to present a presenting officers brief nor required the petitioner herein to present a defence brief. Therefore, on the facts recorded in the disciplinary proceedings, there is no doubt in the mind of the Court that the enquiry officer has played the role of a presenting officer also, thereby vitiating the entire proceedings.

25. The second Show cause notice issued to the petitioner on 13.12.2023 now deserves a closer look by this Court. It is revealed therefrom that the disciplinary authority has already made up his mind regarding the guilt of the petitioner and has already framed a mind that the petitioner was liable for punishment. It is only through the second show cause notice that the petitioner was for the first time put to notice about the findings of the departmental proceeding and therefore it is apparent that the enquiry report has been provided to the petitioner after the disciplinary authority had already accepted the report and held the petitioner liable for punishment. The opportunity, if it can be so-called, to the petitioner to frame a reply to the enquiry report, was a mere formality. Such empty formalities would vitiate the enquiry proceedings and therefore any action or decision on the basis of such a proceeding suffer serious infirmities and in the present case, would render the order dated 26.12.2023, dismissing the petitioner from service with immediate effect unworthy of being sustained in law and deserving an interference of the writ Court.

26. When the charge sheet, the enquiry proceedings and the impugned order passed by the disciplinary authority suffers from illegalities, the appellate order rising out of the aforesaid procedure also cannot be sustained in law and

has to be necessarily interfered with.

27. As a consequence of the findings and observations made herein above, this Court has no option but to hold the first show cause notice dated 18.09.2023, the enquiry proceedings which culminated in a biased report, the second show cause notice dated 13.12.2023, the order dated 26.12.2023 by which the services of the petitioner has been terminated as well the orders passed by the appellate authority to be beyond the contours of law as understood in service jurisprudence, deserving to be declared null and void. It is accordingly declared.

28. On the setting aside of the order of termination dated 26.12.2023, the petitioner shall now be entitled for a reinstatement in his services. Since the case substantially complies with the conditions laid down in ***Deepali Gundu Surwase -Versus- Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others;*** reported in **(2013) 10 SCC 324**, upon reinstatement of his service, the petitioner shall file an affidavit regarding his employment or otherwise in the interregnum and unless the respondents find that the petitioner was gainfully engaged during the period, the petitioner shall be entitled to the arrears of salary which could have accrued to him, but for the illegal termination, however, without entitlement to the allowances which are connected to the actual discharge of duty. The period of absence from the date of termination till the date of reinstatement shall, in any case, be taken up as a continued service for all purposes including seniority and pension etc. Since the allegations levelled are indicative of corruption, the disciplinary authority would be at liberty to post the petitioner, upon reinstatement, to such duties as may be deemed fit.

29. The fate of the criminal trial initiated against the petitioner has not been



divulged to this Court. In such circumstances, it is clarified that the Trial shall not be influenced by this judgment and order and further, in the event the Trial concludes adversely to the petitioner, the disciplinary authority would be at liberty to proceed in accordance with law on the basis of the conviction recorded, if any, against the petitioner.

30. Records submitted by Ms M Bhattacharjee, learned Senior Government Advocate, Assam be returned to her forthwith with proper receipt.

31. Writ petition accordingly stands disposed of.

32. No cost(s).

JUDGE

Comparing Assistant