

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
ITANAGAR BENCH : NAHARLAGUN**

WP(C) 173(AP)/2014

Sh. Darshan Singh
S/o Late Atma Singh
House No.1168, Phase IX,
Sector-63, Mohali, Punjab-160062

..... Petitioner

-versus-

The State of Arunachal Pradesh
Through Chief Secretary, Govt. of Arunachal Pradesh,
Itanagar, A.P.

.....Respondent

**-BEFORE-
HON'BLE MR. JUSTICE S.SERTO**

For the petitioner : Mr. S.Pandey, Adv.
For the respondent : Ms. G. Ete, Addl. Sr. Govt. Adv.

Date of hearing
& : **01.11.2017**
Date of Judgment

JUDGMENT AND ORDER (Oral)

This writ petition is filed by a person who was Chief Engineer in the Department of Power, Government of Arunachal Pradesh, praying for issuance of writ in the nature of mandamus and or certiorari or any other appropriate writ order or direction quashing the order dated 04.10.2013, passed by the Chief Secretary, Government of Arunachal Pradesh i.e. the respondent No.1 in the writ petition, whereby the petitioner was dismissed from service with retrospective effect from 30.12.1997.

2. The facts leading to the filing of this writ petition as submitted by the learned counsel for the petitioner are as follows;

That while the petitioner was still in service as Chief Engineer in the Department of Power, Government of Arunachal Pradesh, decided to execute through reliable contractors; (a) procurement of light weight small hydel power plants and (b) laying of transmission line from Tenga-Jang and Deomali-Namgai in the State of Arunachal Pradesh.

For awarding the contract work an Advisory Board was constituted consisting of the Chief Secretary, the Commissioner (Finance), (Power) and the Chief Engineer. Thereafter, NIQ/NIT was issued, and some firms responded.

The Work Advisory Board in their sitting after having considered the credentials of the short listed firms took a decision in their meetings held on 21.02.1995 to allot the work order for procurement of light weight small hydel Power plants and for laying of transmission line from Tenga-Jang to Deomali-Namsai to the firms namely; (i) Ms. M.R. Project, (ii) Ms. Hydro Power equipment, and (iii) M/s Horizon Hi-Tech Engicon (Pvt.) Ltd., and the petitioner was directed to issue work order accordingly. Thereafter, the Government of Arunachal Pradesh, gave its approval which was conveyed by the Commissioner, Power, vide his letter dated 20.03.1995. Accordingly, the petitioner issued the work orders as per the direction of the Work Advisory Board which was approved by the Government. On 17.06.1995 the Hon'ble Chief Minister of Arunachal Pradesh, issued a note to the Chief Secretary of the State, asking him to initiate a fact finding inquiry against the petitioner.

In pursuance to the note of the Hon'ble Chief Minister, the Commissioner, Power, vide letter dated 29.06.1995, requested Commissioner Personnel for conducting fact finding enquiry. The Commissioner Personnel after conducting a preliminary inquiry submitted his report dated 16.10.1995, to the Chief Secretary, Govt. of Arunachal Pradesh. The relevant portions of the report is given here below;-

"(a). Since Executive Engineers and Superintending Engineers have miserably failed to maintain financial control and discipline, by not adhering to the instructions issued by the Department regarding purchase of stores or work orders (page 10.19/c, 24-33/c), an inquiry should be conducted by a Special Technical Committee to assess various irregularities committed at Executive Engineers and SE's levels and

(b) an order from the Govt. was required banning the payment without actual physical verification of stores etc. by a Special Technical verification of stores etc. by a Special Technical Committee. Obviously this report of Chief Engineer (Power) is found to be not materially relevant for my purpose except the fact that the power Department had become aware of the fact in Nov/96 itself that something wrong was happening if the Department as Chief Engineer (Power) vide his two recommendations dated 14.11.94 (pages 20/c to 23/c) addressed to both the Suptd. Engineers (Circle I & Circle II), had drawn their attention to alleged excess expenditure in Ziro Electrical Division and Pasighat Electrical Division. Thus, the Department has enough time to take remedial and corrective steps to ensure that financial liabilities during 1994-95 do not exceed the funds available in the budget. However, in spite of their clear cut directions from the Chief Engineer (Power) office, the liabilities did exceeded. Executive Engineers and Suptd. Engineers cannot escape from this reality. I, therefore, support the proposal of Chief Engineer (Power) to get the matter investigated thoroughly either through "Vigilance Department" or through Special Technical Committee".

3. After preliminary inquiry report as stated above submitted to the Hon'ble Chief Minister of Arunachal Pradesh. A Cabinet Sub-Committee for consideration of the preliminary report was constituted. The Cabinet Sub-Committee in their meeting held on 02.04.1996 recommended that departmental inquiry be conducted against all the members of the Work Advisory Board including the petitioner. In pursuance to the Cabinet Sub-Committee's recommendation, vide order dated 16.09.1996, the departmental inquiry was ordered only against the petitioner and the Commissioner, Home, Government of Arunachal Pradesh, was appointed as Inquiry Officer. After the inquiry was conducted the I.O submitted his report dated 04.08.1997, to the disciplinary authority i.e. the Chief Secretary, Government of Arunachal Pradesh. The I.O submitted his report only on three charges. As Charge No.4 was dropped at the very beginning of the inquiry. The Article of Charges and with the result or conclusion drawn by the I.O. are given here below one after the other;

"5.0 ARTICLES OF CHARGE-1;

This Article of Charge reads as follows;

"Shri. Darshan Singh, Chief Engineer (Power) (now under suspension), Govt. of Arunachal Pradesh, Itanagar while functioning as such during the period from 1.1.1994 to 24.7.1995 had committed serious irregularities in the matter of awarding contract to M/S Horizon Hi-Tech Engieon (Pvt.) Ltd., Calcutta-12 by enhancing the originally quoted rates from Rs. 28,53,76,306 (Rupees twenty eight crores fifty three lakhs seventy six thousand three hundred six) to Rs. 45,59,00,000 (Rupees forty five crores fifty nine lakhs) in respect of the work for 132 Kv-se Deomali-Namsai Transmission Line and from Rs. 28,39,55,881 (Rupees twenty eight crores thirty nine lakhs fifty five thousand eight hundred eighty one) to Rs. 34,54,21,000 (Rupees thirty four crores fifty four lakhs twenty one thousand) in respect of the work for 132 Kv-se Jang-Tenga Transmission Line vide letters No.CE/Power/WC-34/94/12358-62 dated 6.3.1995 and No. CE/Powr/WC-34/94/12353-57 dated 6.3.1995 respectively without any expenditure sanction of the competent authority. The original rates for the above mentioned works were quoted by M/s Horizon Hi Tech Engieon (Pvt.) Ltd. vide their letters No. HHE/DN/AP date 05.08.1994 and No. HHE/DN/AP/94/06 date 22.11.1994 (for Deomali-Namsai Transmission Line) and NO. HH/DN/AP/94/11 date 05.08.1994 (for Jang-Tenga Transmission Line). Thus, Shri. Darshan Singh, Chief Engineer (Power) (now under suspension) had failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant in violation of the provisions of Rule 3(1) (i)(ii)(iii) of the CCS (Conduct) Rule, 1964.

7.3. About the irregularities in the tendering out by the PO, there is some substances because the Tender Notice was effectively published in the Calcutta based Amrit Bazar Patrika only on 30/07/1994 and they were opened on 8/8/1994 itself for scrutiny. Therefore, there was hardly any publicity given. In the absence of the relevant file having not been produced, the genuiness of competitive tendering cannot be commented upon. This is very significant although the GS has simply argued that it is not a charge levelled against him. Further, in that was submitted by the GS to the WAB the comparison of the offers were made assuming the supply of ACSR conductor, steel, cement etc. free of cost by the department, and the GS's recommendation was to consider the approval of the proposal accordingly. The WAB minutes surprisingly does not make a mention of the cost of the work and it is due to this that the GS had the liberty to award the contract for an amount which has strictly not been quoted by the firm concerned. GS has argued that there is no related losses to the Government, but the records show that the firm had made a claim for the payment of higher value of advance as per the contract terms, and therefore the value of the contract with strictly speaking not known to the WAB even if, it is to be considered as the competent authority as per DW 5's statement for conveying Government approval in such cases. But definitely, in the relevant file of the Secretariat of Power vide No. PWRS/W 517/92, while contains exhibit D-32, at page 52 to 57, it appears that even after the Government approval was conveyed based on the WABs approval to the CE (Power) for awarding the contract for the work, a doubt was raised by

the Under Secretary (Power) about the propriety of the action taken and therefore the file was submitted through DW 5 to the Ministers concerned for ex-post facto approval. However, the file does not show any finality of the decision taken by the Government. Under these circumstances, the statement of DW 5 is an incontrovertible piece of evidence from the most responsible and authoritative position and it is held that the Article of Charges-1 could be substantiated by the PO on behalf of the Disciplinary Authority.

ARTICLE OF CHARGE;-2

8.0 This Article of Charge reads as follows;-

"Shri. Darshan Singh, Chief Engineer (Power) (under suspension) while functioning in such during the period from 1/1/94 to 24/7/95 had placed a supply on M/s Hydro Power Equipments, A.T. Road, Jorhat-785001 for procurement of 30(thirty) sets of 20 KW light, Weight Mirco Hyrdo Power Plants at a total cost of Rs. 5,47,20,000 (rupees five crores forty seven lakhs twenty thousand) vide letter No. CE/Power/WC-2/93/3167-81 dated 18/8/93. In the tender for procurement of the Light, Weight Micro Hydro Power Plants floated by the Power Department under the aforesaid tender notice dated 18/8/93, M/s Steel Industries Kerala Limited was the lowest tenderer and M/s Hdel Equipments, Gauhati was the second lowest tenderer for 20 KW horizontal hydel sets.

Shri. Darshan Singh, Chief Engineer (Power) (under suspension) did not consider the lowest quotation of M/s Steel Industries Kerala Limited but accepted the second lowest tender of M/s Hydel Equipments, Gauhati without any reason and also without approval from the higher authorities. Shri. Darshan Singh did not however, make any transaction with M/s Hydel Equipments, Gauhati for entering into an ultimate agreement. He also did not make any negotiations with the lowest tenderer M/s Steel Industries Kerala Limited. Instead he had place order on M/s Hydro Power Equipments, Jorhat for procurement of the said articles arbitrarily under his own authority without obtaining the approval of the higher authority who was not a tenderer. Thus, Shri. Darshan Singh, Chief Engineer (Power) (under suspension) while functioning as such had failed to maintain established procedure in regard to the acceptance of tenders in accordance with the rules and instructions of the Government and thereby failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant in violation of Rule 3(1)(i)(ii)(iii) of the CCS (Conduct) Rules 1964."

10.7. To conclude, as far as the Article of Charge-2 is concerned, it could only be partially substantiated. The charge of arbitrariness and lack of transparency on his part of his GS while placing under with M/S Hydel Equipment, Gauhati for the supply of 10 sets of 20 KW sets could only be substantiated.

ARTICLE OF CHARGE;-3

11.0 This Article of Charge reads as follows;-

"Shri. Darshan Singh, Chief Engineer (Power) (now under suspension) while functioning as such during 1.1.94 to 21.7.97 had placed an order on M/s MR Power Project 18 Mahavir Bhawan, A.T. Road, Gauhati-781001 for supply of 10 sets of 20 KW Lighth Weight Small Hydel Sets at the rate of Rs. 18,24,000 (Rupees eighteen lac twenty four thousand), per set vide letter No. CE/Power/WC-31/94/6959-65 date 9.1.95. The order was placed by him before receipt of formal approval of the Government and without any expenditure sanction of the competent authority. In this deal M/s Steel Industries Kerala Ltd. was the lowest tenderer which quoted the rate at Rs. 4,35,900 per set if 20 KW Light Weight Small Hydel set. But without considering the lowest tender Shri. Darshan Singh, Chief Engineer (Power) (now under suspension) had placed the supply order as M/s MR Power Project for the supply of 10 sets of 20 KW Light Weight Small Hydel Sets at an exorbitant rate of Rs. 18,24,000 (Rupees eighteen lakhs twenty four thousand) per set without prior approval of the competent authority and thus caused a financial loss of Rs. 1,38,81,000 (Rupees one crore thirty eight lacs eighty one thousand) to the State exchequer compared in the rate for such item quoted by M/s Steel Industries Kerala Ltd. and thereby contravened the provisions of Rule 3(1)(i)(ii)(iii) of the CSS (Conduct) Rules, 1964."

CONCLUSION:

13.0. The inquiry is a sad comments and reflection on the working of the Power Department. The proceedings have shown that in the Department virtually there is no sense of consistency in the dealing with contractual matters. As a result, there is an ideal environment created for arbitrary functioning without any accountability. No procedures have been laid down. It would be in the fitness of thing if immediate steps are taken to issue detailed guidelines prescribing the rules and procedures to be followed by the Department.

13.1. On merits of the inquiry, it has been a startling revelation. The hostility shown by the prosecution witnesses produced and the non production of other important prosecution witnesses listed and some officials who should have been made the prosecution witnesses shows the weakness of the prosecution's case. The appearance of DW 5 as a defence witness is also very preposterous prima facie, and points towards the inherent weakness of the whole case. There was also many factual inconsistencies in the chargesheets and not all relevant documents could be produced by the prosecution. The absence of relevant files, documents etc turned out to be a handicap for the GS also in presenting his defence in some instances as brought out by the inquiry.

13.2 Despite these insufficiencies, the PO and the GS have done their best in assisting the Inquiry Authority in arriving at a finding on each Article of Charge based on objective facts derived from the statement of the witnesses and documents produced.

14.0. The summary of the above findings are as follows;

ARTICLES OF CHARGE-1; The charge could not be substantiated.

ARTICLES OF CHARGE-3 : *The charge could only be partially substantiated.*

ARTICLES OF CHARGE-3; *The Charge could only be partially substantiated.*

ARTICLES OF CHARGE-4 : *Dropped.*

Sd/- R.Chandra Mohan

Inquiry Authority

4th August 1997".

4. On receipt of the inquiry report, the disciplinary authority i.e. the Chief Secretary of the State Government, under Rule 15(4) of CSS (Classification Control and Appeal) Rules, 1965, sought for advice of the Arunachal Pradesh Public Service Commission, on the quantum of punishment to be awarded to the petitioner. In response to the request, the Arunachal Pradesh Public Service Commission gave its advice which was conveyed by the Secretary of the Commission, vide his letter dated 29.12.1997. The advice of the Commission given in the letter is as follows;-

"8. In view of what has been stated above, although Govt. is competent to award any penalty to the Govt. servant, the penalty under Rule 11(viii) or 11(ix) appears to be more than the gravity of the offence supposed to have been committed. In his seniority report, the inquiry officer has not conclusively proved that Shri. Darshan Singh was entirely responsible for the charges levelled against him. The benefit of doubt will certainly go to the accused.

9. Therefore, the Commissioner would advice the Govt. that it may impose a penalty on the Govt. servant which is not excessive in relation to the gravity of the offence committed by him. Therefore, any major penalty under Rule 11(v) to 11(vii) may meet the ends of justice, even though the Govt. is competent to impose any major penalty listed under Rule 11 of CCS CCA Rules.

Govt. may now take action accordingly in view of the advice of the Commission conveyed above."

5. The disciplinary authority on receipt of the advice of the Arunachal Pradesh Public Service Commission, conveyed by its Secretary, passed the order dated 30.12.1997, wherein the petitioner was dismissed from service ignoring the advice given by the Arunachal Pradesh Public Service Commission. Being aggrieved, the petitioner approached the statutory appellate authority but, the same was dismissed on 08.09.1999. Not satisfied, the petitioner approached this

Court by filing a writ petition, W.P.(C) No. 49(AP) 2000. The same was dismissed by order dated 19.08.2005, of the Single Bench. Thereafter, the petitioner once again filed an appeal in this High Court which was registered as W.A No. 36(AP) 2007. The W.A was disposed vide order dated 14.02.2013. The operative portion of the judgment and order is reproduced here below;-

"For the reasons discussed above, the impugned final order dated 30.12.1997 is liable to be interfered with and is accordingly, quashed and set aside and consequently, as a corollary, the order of the appellate authority dated 8th April, 1999 is also set aside and the authorities would be at liberty to proceed with the matter afresh by passing a fresh final order in accordance with the law by furnishing a copy of the advice tendered by the Arunachal Pradesh Public Service Commission to the petitioner. Since this matter has been pending for a long time, it is expected that the respondent authorities would proceed with the matter and pass appropriate order in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a certified copy of this order. As a result, the impugned order dated 09.08.2005 passed by the learned Single Judge in W.P.(C) No. 49(AP)/2000 is also set aside for the reasons stated above.

24. This Writ appeal is accordingly allowed".

6. After the dismissal order was quashed and set aside by the order dated 14.02.2013, by the Division Bench of this High Court as stated above, the disciplinary authority passed the impugned order dated 04.10.2013, confirming the dismissal order of the petitioner from service with retrospective effect from 30.12.1997. For easy reference, the contents of the impugned order is reproduced here below;-

**"GOVERNMENT OF ARUNACHAL PRADESH
POWER DEPARTMENT :: ITANAGAR**

No. PWRSE-2382/2013/5042

Dated Itanagar the 4th October, 2013.

ORDER

Whereas, an enquiry under Rule 14 of Central Civil Services (Classification Control and Appeal) Rules 1965 has been held against Shri. Darshan Singh, the then Chief engineer (Power) (Under suspension).

Whereas, Shri. R. Chandra Mohan, Commissioner (Home), Government of Arunachal Pradesh was appointed Enquiry Authority to enquire into the charges against Shri. Darshan Singh vide order N. PWRS/E-75/95-96/Pt. (III) dated 16th

August, 1996 and whereas, Shri. R. Chandra Mohan submitted his enquiry report vide CMHR/INQ/1/96 on 4th August 1997.

Whereas, a copy of the enquiry report was forwarded to Shri. Darshan Singh and whereas Shri. Darshan Singh submitted his written submission vide his letter dated 16th September, 1997.

Whereas, the Competent Authority, after considering the report of the Enquiry Authority and the representation of Shri. Darshan Singh thereon, decided to disagree with the findings of the Enquiry Authority with regard to charges I, II and III.

Whereas, Shri. Darshan Singh submitted his representation dated 15th December, 1997 on he reasons of disagreement by the Competent Authority with the report of the Enquiry Authority.

Whereas, the Competent Authority considered the facts of the case on the basis of the report of the Enquiry Authority, materials evidence adduced to during the course of enquiry and the representations of the charged officer and inferred that the charges framed had been proved and therefore deemed the penalty of dismissal from service as appropriate.

Whereas, the competent Authority, in compliance with the requirement of Rule 15(4) of the Central Civil Service (Classification Control and Appeal) Rules, 1965 consulted the Arunachal Pradesh Service Commission (APPSC).

Whereas, the Arunachal Pradesh Public Service Commission rendered their advice their No. PSC-D/40/97 dated 29th December, 1997.

Whereas, Shri. Darshan Singh was dismissed vide Govt. Order No. PWRS/E-75/95-96/PT-(III) dated Itanagar the 30th Dec. 1997.

Whereas, Shri. Darshan Singh approached the Hon. Gauhati High Court vide writ appeal No. 36(AP) 2007 and the Hon. Court vide order dated 14/02/2013 quashed and set aside the order dated 30/12/1997 of Govt. of Arunachal Pradesh.

Whereas, the Hon. Court has observed as under;

"The authorities would be at liberty to proceed with the matter afresh by passing a fresh final order in accordance with law by furnishing a copy of the advice tendered by the Arunachal Pradesh Public Service Commission to the petitioner."

Whereas, the competent authority has again gone through the order dated 30/12/1997, order of Hon. Gauhati High Court dated 14/02/2013 and all the materials against Shri. Darshan Singh and agrees to the order dated 30/12/1997.

Whereas, the competent authority agrees with the findings and decisions issued vide order dated 30/12/1997.

Therefore, the Competent Authority, in exercise of the powers conferred vide Rule 15 of the Central Civil Services (Classification Control and Appeal) Rules has decided to dismiss Shri. Darshan Singh from service with retrospective effect i.e. from 30.12.1997. This dismissed from service shall ordinarily be a disqualification for further employment under the Government.

Annex I : Reasons for disagreement with the findings of Enquiry officer.

Annex II : Advice of APPSC dtd 29/12/1977.

Annex III : Reason for disagreement with the advice of APPSC.

*Sd/- (HARI KRISHNA)
Chief Secretary
Govt. of Arunachal Pradesh".*

7. Feeling aggrieved by the above given order of dismissal, the petitioner has once again approached this Court by filing the instant writ petition challenging the same on the ground as submitted by his learned counsel which are given here below;

That disciplinary authority while passing the impugned order had not taken into consideration the advice given by the Arunachal Pradesh Public Service Commission which is mandatory. It is contended by Mr. S. Pandey, learned counsel for the petitioner that once such advice is sought from the Public Service Commission, it is incumbent upon the Disciplinary Authority to consider the advice given and if it disagrees with the advice reason for disagreement should be given.

In support of his submissions, he referred to Rule-15, 17 and 32 of CCS (CCA) Rules, 1965, which read as follows:-

"Rule 15. Action on the inquiry report.

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the

Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(2-A) The Disciplinary Authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub- rules (3) and (4).

(3). If the Disciplinary Authority having regard to its findings on all or any of the articles of charges is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clause (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant".

"Rule 17. Communication of Orders

Orders made by the Disciplinary Authority shall be communicated to the Government servant who shall also be supplied with a copy of its finding on each article of charge, or where the Disciplinary Authority is not the Inquiring Authority, a statement of the findings of the Disciplinary Authority together with brief reasons for its disagreement, if any, given with the findings of the Inquiring Authority and also a copy of the advice, if any, given by the Commission, and Authority where the Disciplinary Authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance."

"Rule 32. Supply of copy of Commission's advice

Whenever the Commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted, also a brief statement of the reasons for such non-acceptance, shall be furnished to the Government servant concerned along with a copy of the order passed in the case, by the authority making the order."

Secondly, Mr. S. Pandey submitted that as per the Rule-17 of CCS (CCA) Rules, the petitioner should have been given a copy of the commission's advice so as to enable him to submit a representation on the quantum of the punishment proposed to be awarded against him. However, the petitioner was not given the same and thereby he has been deprived of his right to make effective representation as provided under Rule-17 of the CCS (CCA) Rules.

Mr. S. Pandey also submitted that the punishment meted out to the petitioner is too harsh taking into consideration of the charges levelled against him which were also not substantiated properly by evidence. The learned counsel further submitted that this is a clear case of victimization and discrimination as the petitioner was not the only person who was responsible in awarding the work order. In fact, he was the junior most among the members of the Work Advisory Board on whose direction he issued the work order.

8. Ms. G.Ete, learned Addl. Sr. Government Advocate submitted that if the Court is of the opinion that provisions of Rule-15, 17 & 32 of CCS (CCA) Rules and the direction of the Division Bench of this High Court have not been followed while passing the impugned order by the disciplinary authority, the case may be remanded back to the disciplinary authority to decide the quantum of punishment to be awarded to the petitioner as per rule. At this, Mr. S. Pandey submitted that the petitioner is now 77 years old and he has been through a number of litigations on this, therefore, the respondents may be directed to award any of the punishments as per advice of the Arunachal Pradesh Public Service Commission conveyed by the commission Secretary.

9. I have gone through the entire record of the case and the proceeding of the inquiry as led by both the learned counsels. It is quite clear from the impugned order that the same was passed in a hast without considering the relevant rule of CCS & CCA Rules, 1965, that too in spite of the direction given in the judgment of the Division Bench.

It is settled principle of law that when a thing is required by law to be done in a certain manner it should be done only in that manner. On the mere cursory of Rule 15, 17 & 32 of CCS (CCA) Rules, 1965, it would be clear that the advice of the Public Service Commission has to be considered while deciding on the quantum of punishment to be awarded to the Delinquent Officer. The words used in Rule 15 is "shall consider" which denotes that it is mandatory. However, the impugned order did not even whisper a word that the Commission's advice was considered. The Disciplinary Authority act as quasi judicial authority, therefore, its orders or decisions has to be base on discernible and cogent reasons which are the hallmark of decision making process in judicial proceedings. In fact, the judgment and order of the Division Bench has said much on that and was left no room for any doubt. But the impugned order shows no reason for the decision arrived at. The very purpose for having left the door open on the quantum of punishment by the Division Bench was for taking into consideration the recommendation or advice of the Commission. But as already stated above, it appears from the impugned order that the same has been totally brushed aside or ignored, otherwise reason for not accepting it or deferring from it would have been given. It appears that disciplinary authority though had asked for advice of the Arunachal Pradesh Public Service Commission as required by law did not take the same into consideration at all. The Arunachal Pradesh Public Service Commission being an authority on the service matters of the State Government servants, advice given by it should not be taken lightly and brushed aside, specially when the same has been asked for as per requirement of law. I agree with the learned Addl. Sr. Government Advocate that it is a case for remand but taking into consideration that the petitioner has been compelled to go through all the litigations as indicated above for so many years that too for reasons of which he alone was not responsible, I am not incline to simply remand the case. Every citizen is given the right to speedy trial. And every litigation must also attained its finality. Specially in service matters the litigation must come to an end at least during a reasonable period of time. Here in this case, the

petitioner was dismissed from service in 1997 and he is 77 years old. In the facts and circumstances of the case and for the reasons stated, I am of the view that the ends of justice would be met if the disciplinary authority awards the punishment as advice by the Arunachal Pradesh Public Service Commission. After all, the Commission after having considered all the facts and circumstances of the case in their wisdom have arrived at such conclusion.

Accordingly, the impugned order is quashed and set aside and the disciplinary authority is directed to award appropriate punishment as advice by the Arunachal Pradesh Public Service Commission.

With this, the writ petition is disposed.

JUDGE

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