

GAHC010017692024



REPORTABLE
2026:GAU-AS:8151

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

Case No. : WP(C)/522/2024

SUSHANTA KR SARMA
S/O LATE KAMINI KANTA SARMA, PRESENTLY R/O HAFLONG, DIST-DIMA
HASAO, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE ADDITIONAL SECRETARY TO THE GOVT. OF
ASSAM, PUBLIC HEALTH ENGINEERING, DISPUR, GUWAHATI-6

2:THE SECRETARY TO THE GOVT. OF ASSAM
PUBLIC HEALTH ENGINEERING
DISPUR
GUWAHATI-6

3:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
PUBLIC HEALTH ENGINEERING
DISPUR
GUWAHATI-6

4:THE CHIEF ENGINEER PHE WATER
ASSAM
HENGRABARI
GUWAHATI-36

5:THE DISTRICT COMMISSIONER
TINSUKIA
DIST-TINSUKIA
ASSAM

6:THE EXECUTIVE ENGINEER PHE
TINSUKIA DIVISION

TINSUKIA-78612

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr S Borthakur, Sr. Adv.
Mr S U Ahmed.

Advocate for the respondent(s): Mr I Borthakur

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **04.06.2026**

Whether the pronouncement is of the :

operative part of the judgment?: **NA**

Whether the full judgment has been : **Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

(Shamima Jahan, J.)

Heard Mr. S. Borthakur, learned Senior Counsel, assisted by Mr S U Ahmed, learned counsel for the petitioner. Also heard Mr I Borthakur, learned counsel appearing for the respondents.

2. By this application filed under Article 226 of the Constitution of India, the petitioner has prayed for setting aside and quashing of the impugned order dated 20.12.2023, issued by the Additional Chief Secretary to the Government of Assam, Public Health Engineering (PHE, for short), by which the penalty of dismissal from service was imposed upon the petitioner. The petitioner has also prayed for a direction to the respondent authorities to re-instate him in service as Junior Engineer, PHE, with all consequential service benefits.

FACTS:

3. The case of the petitioner is that he was appointed in the office of the Superintendent Engineer, PHE, Nalbari Circle as a Junior Engineer on 12.01.1990, and thereafter, he was transferred to various divisions within the State. During his service tenure as Junior Engineer in the PHE Department, Tinsukia Division, an allegation was made against him that he had committed gross anomalies in payment of bills against Self Help Groups ('SHGs', for short)/Non-Governmental Organizations ('NGOs', for short), who have constructed individual household latrines under Swachh Bharat Mission (Gramin) ('SBM(G)', for short). It was further alleged that the petitioner had not paid the amounts raised by submitting the bills to the said SHGs/NGOs, but paid to some hardware stores owned by Sewali Sarma Gogoi etc. An FIR was lodged on 18.06.2019, with the aforesaid allegations and a case was registered as Tinsukia PS Case No. 864/2019, under Sections 420 and 409 of the IPC.

4. Simultaneously, a letter dated 18.06.2019 was written by the Executive Engineer (PHE), Tinsukia Division, to the Deputy Commissioner, Tinsukia District, stating, *inter alia*, that the petitioner has misappropriated a massive amount of Government money to the tune of Rs. 4.60 crores. It was further stated that the said money was allotted for construction of household latrines under SBM(G), which was to be paid to the SHGs/NGOs, but the same was transferred to the account of private persons and that in the context of the same, the FIR was lodged.

5. Thereafter, by the order dated 19th of June, 2019, the Deputy Commissioner, Tinsukia, had entrusted two officers to conduct a joint enquiry and to submit a detailed report. Thereafter, a show cause notice was issued on

8th of July, 2019, to the petitioner by the Secretary to the Government of Assam, PHE Department, by order and in the name of the Governor of Assam. By the said show cause notice, issued under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 (hereinafter, referred to as the 1964 Rules), read with Article 311 of the Constitution of India, it was intimated to the petitioner that while he was serving as Junior Engineer in the Tinsukia Division, he had misappropriated Government money violating Rule 3 of Assam Civil Services (Conduct) Rules, 1965 (hereinafter for short, 'the Conduct Rules, 1965'). It was also stated that the list of documents and witnesses proposed to be relied on were enclosed with the said show cause notice. It was further directed by the said notice that the petitioner should submit his written reply within 10 (ten) days, and if the petitioner intends to inspect documents he may write for the same to the Secretary, PHE Department within a period of 7 (seven) days, and then, submit his written reply within 10 days thereafter. He was also intimated that the petitioner would intimate the undersigned if he desires to be heard in person. The petitioner was also intimated of his other rights.

6. In pursuance to the said show cause notice, the petitioner had submitted his preliminary reply on 01.08.2019, both on the merits of the case as well as had intimated the authorities that he was not provided with the opportunity to go through/inspect the documents, materials and statements on the basis of which allegations were framed against him. The petitioner also stated in the said reply that he will file the final reply to the show cause notice, after he inspects all the documents, materials, stated above. He further stated that if the inspection is not allowed and if he is not permitted to submit his final reply, then the same would amount to violation of the principles of natural justice.

7. The petitioner, by a subsequent letter to the Enquiry Officer, Additional Chief Engineer (PHE), Tezpur Division, had intimated that he was sick and he could not travel to take part in the enquiry. He had also stated that by his preliminary reply, he had requested that inspection of documents as well as the names of the witnesses that are related to the allegations be given, but he was not apprised of any of the said request. As such, by the said letter, he requested again to provide him opportunity to inspect the documents and to ensure the availability of witnesses on a particular date, so that he can come, examine and cross-examine the same and also to file the affidavit-in-reply to the show cause notice. However, the Deputy Secretary to the Government of Assam, PHE, by letter dated 17.04.2023, had intimated the petitioner that in compliance of the departmental proceeding he had sent him a copy of the enquiry report submitted by the Enquiry Officer and requested the petitioner to submit the written representation, within a period of 15 (fifteen) days to the said authority.

It be stated here that the petitioner was placed under suspension vide order dated 04.07.2019, and upon challenge being made to the said order, this Court, vide order dated 08.11.2021, had revoked and set aside the suspension order, with the further direction to reinstate the petitioner in service. In pursuance thereof, the respondent authority, by notification dated 06.01.2022, had reinstated the petitioner in service without prejudice to the departmental proceeding, and since then, the petitioner has been serving in the said department.

8. It is the further case of the petitioner that the enquiry report was given to him and it was, *inter alia*, stated therein that as per the report of the Executive Engineer, PHE, Tinsukia Division, an enquiry was conducted and the enquiry

report was prepared. It was further stated in the said report that the petitioner was asked to attend the office of the Executive Engineer, PHE Tinsukia, on 31.05.2022, by letter dated 23.05.2022, to which the petitioner replied that he could not attend the said office due to natural calamity at Dima Hasao district. It was also stated in the enquiry report that the petitioner was asked to attend the enquiry by letter dated 22.06.2022, but the petitioner submits that he had not got the said letter. In the enquiry report, it was stated that funds were released to VWSC without any bill submitted by the NGO or the SHG and as such, it could not be ascertained as to whether the funds were properly utilized. As per Rule, it was further stated in the said enquiry report that the petitioner, the then Member Secretary released the fund which had to be released to the beneficiaries, to individuals, which is mentioned in the chart appended therein. Further, it was observed that on scrutiny of fund demand submitted by the petitioner, the names provided by the petitioner were not found. As such, it was held that the petitioner diverted the fund and made payment to unknown individuals, and in view of the same, it was decided that misappropriation of fund had taken place at the behest of the petitioner.

9. After perusal of the said Enquiry Report, the petitioner filed a written representation dated 12.05.2023, before the Deputy Secretary to the Government of Assam, PHE Department, stating *inter alia*, that higher authority had released the said amount after proper verification and scrutiny of the documents and that releasing of funds to individuals was not correct and that the same was released to the beneficiaries as per norms and guidelines. However, thereafter, on 29.12.2023, the impugned order imposing the punishment of dismissal from service was imposed upon the petitioner. In the said impugned order, it is also stated that consultation was done with the Assam

Public Service Commission, who has agreed to impose the penalty and further, that the Government of Assam was pleased to impose the said penalty under Rule 9 (10) and 7 (vii) of the 1964 Rules. It is this impugned order, which is put to challenge by the petitioner in the instant writ petition.

SUBMISSIONS:-

10. Mr S. Borthakur, learned Senior Counsel, assisted by Mr S U Ahmed, learned counsel for the petitioner, submits that the petitioner was not given the opportunity to inspect the documents, materials and statements on the basis of which, statements of allegations were prepared. The petitioner had only submitted a preliminary reply to the show cause notice and had asked for an opportunity to inspect the said materials, but the same was not adhered to by the authorities concerned. He further submits that as required under the law, the show cause notice issued to the petitioner did not contain the details of the allegations, so as to enable him to make an effective reply. He submitted that by the said show cause notice, the only offence that was intimated was that he did a massive misappropriation of Government money in violation of Rule 3 of the Conduct Rules, 1965, and that he is charged with corruption and said misappropriation of Government money. He also submits that as stated in the enquiry report, that a letter was sent to him asking him to attend the enquiry, the same was not received by him.

11. Mr. Borthakur, learned Senior Counsel further submits that he will not go into the merits of the case, but will confine his arguments on the procedure adopted by the Enquiry Officer, which was against the Rules framed for the same. In this connection, he has placed the relevant Rules provided under the 1964 Rules. He has placed Rule 9 of the said Rules which provides that the

disciplinary authority shall frame definite charges on the basis of the allegation on which enquiry is proposed to be held. He showed that there was no definite charges by placing the statements of allegations given to the petitioner. Further, he submits that the disciplinary authority shall invariably furnish to the Government Servant, a list of documents and witnesses, which again was not given to him and that the Government Servant should be permitted to inspect and take extracts of documents from the official records to defend his case and only in certain cases, the same may not be given, which is, however, not the case here, according to the learned counsel.

12. The learned counsel also submits that by Sub-Rule (5) of Rule 9 of the 1964 Rules, it is provided that the disciplinary authority may nominate a person to present the case in support of the charges before the authority and that the Government Servant may submit his case by assistance of Government Servant's, but not by a Legal Practitioner unless the person nominated by the disciplinary authority is also a legal practitioner. He further placed Sub-Rule (6) of the said Rule to exemplify the requirement that in course of the enquiry, the enquiring authority shall consider documentary evidence as well as take oral evidence, which are relevant to the charge and the Government Servant should be allowed to cross-examine the witnesses in his defence and to give evidence in person and also to adduce documentary and oral evidence. The other procedures are also laid down in the said Rule. He, as such, submits that the said procedures were not followed by the enquiring authority, inasmuch, as the charges were not definite, the petitioner was not allowed to inspect the documents, the disciplinary authority had not nominated the Presenting Officer, the enquiring authority had not considered any documentary evidence, neither had taken any oral evidence, in support of the charges and the enquiring

authority has also not prepared the enquiry report by recording its findings on each of the charges. He had further placed Sub-Rule (8) of Rule 9 of the 1964 Rules, which provides that the record of enquiry shall include the charges framed against the Government Servant, the written statement of defence, the oral evidence, the documentary evidence etc. He, as such submits that in the enquiry report, it is crystal clear that the entire report was prepared on the basis of the record from the Executive Engineer, PHE, Tinsukia Division, which is not the mandate of law, in view of the entire procedure given in Rule 9 of the 1964 Rules. To substantiate his arguments, he has placed the decisions as mentioned hereinbelow:-

i) ***M P State Agro Industries Development Corporation Limited & Another -vs- Jahan Khan***, reported in **(2007) 10 SCC 88**, by which the Hon'ble Supreme Court had held that although an alternative remedy is available to the petitioner concerned, but in an appropriate case, a writ Court will exercise its jurisdiction specifically in case of three contingencies:- (a) when enforcement of fundamental rights is invoked, (b) in case of failure of principles of natural justice and (c) in case of orders or proceedings passed without jurisdiction.

ii) ***Anant R Kulkarni -vs- V P Education Society and Others -vs- Y P Education Society***; reported in **(2013) 6 SCC 515**, by which the Hon'ble Apex Court had held that charges have to be definite and cannot be vague and that the charges should give a clear picture to the delinquent so as to enable him to make an effective reply.

iii) ***Anil Gilurker -Vs – Bilaspur Raipur Kshetriya Gramin Bank***; reported in **(2011) 14 SCC 379**, by which the Hon'ble Supreme Court had

held that the allegations against the Government Servant should be in details and should be in particular displaying as to what offence has been made out against the delinquent officer.

iv) ***Satyendra Singh -vs- State of Uttar Pradesh;*** reported in **2024 SCC OnLine SC 3325**, by which the Hon'ble Supreme Court has held that even in case of *ex parte* enquiry, it is required to record the evidence of the witnesses for proving the charges.

13. These are the submissions of learned counsel for the petitioner.

14. On the other hand, Mr. I. Borthakur, learned Counsel for the PHE Department has submitted a written argument and by relying on the said written argument has argued that the contentions raised by the learned Counsel for the petitioner that charges are vague and not definite is not correct. He states that the same is not in the pleadings of the instant case. Further, he submitted that the petitioner understood the charges and had filed his detailed written reply after receiving the show cause notice which shows that the petitioner is not prejudiced by any stretch.

15. To substantiate his argument, he has placed a judgment of ***Biecco Lowrie Limited and Anr. Vs State of West Bengal and Anr;*** reported in **(2009) 10 SCC 32**, by which the Hon'ble Supreme Court has held that the explanation furnished by the respondent by which the respondent had clearly denied all the charges shows that the delinquent has understood the charges laid down in the show cause notice.

16. The learned counsel further submits that the petitioner was asked in the show cause notice dated 08.07.2019, that if he want to inspect any documents,

he may write to the undersigned i.e. the Secretary to the Government of Assam, PHE Department within seven days of the receipt of the show cause notice but the petitioner gave his reply on 01.08.2019 on the merit of the case and therein he had stated that he was not given the opportunity to inspect the documents. However, the petitioner had never communicated as to what documents he wanted to inspect and in absence of the same, the contention of the petitioner that he had asked for inspection of the documents and was denied is incorrect.

17. The learned Counsel further argued that the contention raised by the petitioner's counsel is that there were no witnesses examined during the enquiry, and with regard to the same, he states that in the preliminary enquiry conducted before the issuance of the show cause notice, witnesses were examined as can be seen from the preliminary enquiry report and the petitioner was also called to answer to his charges. He further submits that petitioner's appearance was fixed on several dates but he failed to appear on all the occasions. The learned Counsel also submitted that the disciplinary authority is not required to give his own findings and reasons while accepting the findings of the Enquiry Officer and that in the instant case, it can be seen from the impugned order that the disciplinary authority had accepted the findings reached by the Enquiry Officer. He has relied on a judgment passed by the Hon'ble Supreme Court in State Bank of India and Ors. Vs. Ramadhar Sao reported in 2025 INSC 1010 by which the Apex Court had held that disciplinary authority is not required to record reasons in detail if report of the Enquiry Officer is accepted.

18. The learned Counsel for the PHE Department further argued on the point that even if the Court interferes with the impugned order, the reinstatement of the petitioner should not be allowed, in view of the law laid down by the

Hon'ble Supreme Court in a number of judgments. He has placed one such judgment rendered by the Hon'ble Supreme Court in the ***Inspector of Panchayats and District Collector, Salem Vs. S. Arichandran and Ors***, in Civil Appeal No. 6776 of 2022 by which it was held after referring to other judgments of the Hon'ble Supreme Court that in case the punishment is found to be wrong on the grounds of violation of natural justice, the case may be remanded back from the stage where there is violation of natural justice and that the delinquent employee may not be reinstated.

These are the submissions of the learned counsels appearing for all the parties.

ANALYSIS AND FINDINGS:

19. At the very outset, this Court would like to deal with the issue of preliminary enquiry in the instant case since the same finds mention both in the impugned order dated 20.12.2023, as well as in the submissions of the learned counsel for the Department. It is no longer *res integra* that preliminary enquiry is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer. It does not form any foundation for passing the order. The said enquiry is conducted only to find out the *prima facie* grounds for holding a disciplinary enquiry and, therefore, before the authority makes up his mind he either himself investigates or directs his subordinates to investigate into the matter and it is only after he receives the result of this investigation, he decides whether to conduct the regular disciplinary action or not.

20. In ***Champaklal Chimanlal Shah -vs- Union of India***; reported in **AIR 1964 SC 1854**, the Constitution Bench of the Apex Court had succinctly

delineated the purpose of a preliminary enquiry albeit in the context of Government employee in the following words:-

13. Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason. Therefore when a preliminary enquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the Rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary Under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even as such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major

punishments that the government servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that Article. That is why this Court emphasised in Parshotam Lal Dhingra case [MANU/SC/0126/1957 : 1957:INSC:96 : (1958) SCR 828] and in Shyam Lal v. State of Uttar Pradesh [MANU/SC/0134/1954 : 1954:INSC:34 : (1955) 1 SCR 26] that the 'motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service Rule is irrelevant'.

21. Thereafter, the Apex Court, again by a judgment delivered in ***Krishna Chandra Tandon -vs- Union of India; (1974) 4 SCC 374***, held that although there is no requirement to furnish a preliminary enquiry report, but when the enquiry officer relies upon the same, then it is required to be supplied to the delinquent. The relevant passage reads as under:-

16. ... It is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent. It is not the case here that either the Enquiry Officer or the CIT relied on the report of Shri R.N. Srivastava or any other officer for his finding against the Appellant. Therefore, there is no substance in this submission.

22. In the instant case, the Executive Engineer (PHE) Tinsukia Division, by a letter dated 18.06.2019, addressed to the Deputy Commissioner, Tinsukia district, had intimated the alleged case of misappropriation of Government money by the petitioner and in pursuance thereof, by order dated 19.06.2019, the Deputy Commissioner, Tinsukia, had entrusted two officers to conduct the joint enquiry into the matter of misappropriation of Government money and to submit a detailed report to him with specific views and comments within 10 (ten) days from the date of the order. The said entrustment to hold the enquiry was intimated to the Secretary to the Government of Assam, PHE Department, by the Deputy Commissioner, Tinsukia, by letter dated 19th of June, 2019. Thereafter, show cause notice was issued to the petitioner and on completion of the enquiry, the impugned order was issued. It is seen that the disciplinary authority, while passing the impugned dismissal order had, in the very first paragraph of the order, stated in the following terms:-

“Whereas, an initial enquiry report was submitted by the then Deputy Commissioner, Tinsukia, regarding misappropriation of Government money under SBM (G) by Sri Sushanta Kumar Sharma, the then JE (PHE), Habjang Section, Tinsukia”

23. The disciplinary authority further stated in the next paragraph of the said order that based on the report of the Deputy Commissioner, the departmental proceeding was initiated against the petitioner. Further, the learned counsel for the Department had argued that during the preliminary enquiry, witnesses such as, joint signatories of GWSC Bank Accounts were called to appear before the Enquiry Officer and that some of them appeared whose statements were recorded. The preliminary enquiry report was prepared on 02.09.2019 and a copy of the same was annexed in the affidavit-in-opposition filed by the respondent No. 3, i.e., the Deputy Secretary to the Government of Assam,

Public Health Engineering Department. A bare perusal of the said report makes it clear that five numbers of joint signatories appeared before the Enquiry Officers and their statements were recorded and relied upon. It can also be seen that the petitioner was also asked to appear before the Enquiry Officers on 22.08.2019 and to furnish his written statement, but the petitioner could not appear on that date and it was re-fixed on 26.08.2019, however, on the next day, the wife of the petitioner informed that the petitioner was seriously ill and a surgery was contemplated and that no further communication was received by the Enquiry Officers from the petitioner side. In the said preliminary enquiry, it is also noticed that a number of documents were examined and were relied upon by the officers. The documents are sample cheques, audit reports, the copies of demands etc. Further, on the contention made by the learned counsel for the petitioner that no witnesses were examined during the regular enquiry, the learned counsel for the Department submitted that witnesses were examined in the preliminary enquiry and that documents were also examined and as such, the rigours were fulfilled.

24. The concept of a preliminary enquiry and its ramifications have been neatly summed up in ***Chandrama Tiwari -Vs- Union of India***; reported in **1987 Suppl. SCC 518**, and it was held as under:-

4. We have given our anxious consideration to the submissions made on behalf of the Appellant and we have further considered the aforesaid authorities referred to by the learned Counsel for the Appellant but we do not find any merit in the Appellant's submissions to justify interference with the High Court's judgment. Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance

*with the Rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the Appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer. ****

9. It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the

statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case.

25. On consideration of the aforesaid decisions, as well as other decisions on this point, the Apex Court by a subsequent decision, rendered in ***K. Prabhakar Hegde -vs- Bank of Baroda***; reported in AIR 1925 SC 3908, had held in the following terms:-

25. The upshot of the aforesaid decisions is that:

i. A preliminary inquiry is conducted for the purposes of determining whether regular disciplinary proceedings are called for or not;

ii. A preliminary inquiry report is an internal document;

iii. A preliminary inquiry report or the findings therein cannot be used to come to conclusions recorded in the report of inquiry if such preliminary inquiry report/findings are based on oral and/or documentary evidence which are obtained

behind the back of the charged employee and such oral/documentary evidence are not presented in the inquiry in the presence of such employee;

iv. If a preliminary inquiry report or the findings therein are sought to be relied on, the witnesses whose evidence was relied on in preparing the same ought to be brought before the inquiry officer and the charged officer afforded an opportunity to cross-examine them;

v. If a preliminary inquiry report is sought to be relied upon in the inquiry report, then such preliminary inquiry report must be provided to the delinquent employee;

vi. Once a chargesheet is drawn up and has been provided to the charged officer detailing the charges, the preliminary inquiry report is of no consequence and need not be provided to him."

26. It is, therefore, noticed that a preliminary enquiry is conducted only to find out as to whether the authority would proceed with the regular enquiry or not. It is also seen that a preliminary enquiry report is an internal report and further, it is noticed that if any oral or documentary evidences are recorded during the preliminary enquiry, the same should be provided to the delinquent employee. It is also provided that the delinquent may not be examined during the preliminary enquiry, but if witnesses are brought before the same and the statements were relied upon, then those witnesses should be brought before the Enquiry Officer during the regular enquiry and the charged officer should be given an opportunity to cross-examine them.

27. It is seen in the instant case that signatories of bank accounts were examined and their statements were relied upon, but those witnesses were not brought before the Enquiry Officer during the regular enquiry. Same analogy will also be applied in case of documents placed during the preliminary enquiry. It is

further seen in the enquiry report furnished to the petitioner by letter dated 13.03.2023, that the same was based entirely on the report from the Executive Engineer, PHE, Tinsukia Division. It be stated here that it was the Executive Engineer, PHE, Tinsukia Division, who had first intimidated the Deputy Commissioner about the alleged misappropriation done by the petitioner. A further perusal of the Enquiry Report shows that records were looked into and the order was passed. No witnesses were examined, neither any particular document was looked into. Furthermore, the statements of the witnesses recorded during the preliminary enquiry and the documents examined by the two officers as mentioned above were not given to the petitioner. It is not required that the said documents should be given, but in case, the same are relied on as has been done in the instant case, those are required to be furnished to the petitioner.

28. It is also seen that the petitioner was called to attend the preliminary enquiry on 22.08.2019, on which date, he did not appear and that the date was re-fixed on 26.08.2019, on the next date on which the wife of the petitioner intimated that the petitioner was seriously ill, requiring a surgery. Therefore, it can be deduced that the petitioner was not keeping good health. It is surprising enough to find out that show cause notice to the petitioner was issued on 8th of July, 2019. That means, it was issued before the preliminary enquiry or during the same. As has been stated above, a preliminary enquiry is held only to see whether the authorities would start the departmental enquiry and the departmental enquiry starts with issuance of show cause notice. Here, it is seen that preliminary enquiry report was submitted on 02.09.2019, whereas, show cause notice was issued much before that. As such, the procedure is totally incorrect and the dictum of Supreme Court is not followed.

29. In the said show cause notice dated 8th of July, 2019, the petitioner was asked to submit his reply within 10 (ten) days with the rider that if he wants to inspect documents, he will have to inform the authorities within 7 (seven) days and that after expiry thereof, he is allowed to file his written explanation within 10 (ten) days. It is seen that during the said juncture, the preliminary enquiry was going on and the petitioner was stated to be ill. The department had stated that petitioner had submitted his reply to the show cause notice late, but from the said facts, it can be seen that during that time, he was facing both the preliminary enquiry as well as the charges stated in the show cause notice. The petitioner took time in making his replies to the show cause notice, i.e., on 01.08.2019, wherein he stated that he was not given the opportunity to inspect the documents, materials, and statements on the basis of which, the statement of allegations were prepared. It is also noticed that the said reply was only a preliminary reply to the show cause notice. Thereafter, on 4th of January, 2020, the petitioner, by a letter to the Enquiry Officer -cum- Additional Chief Engineer (PHE), Tezpur, intimated that by his preliminary reply as stated above, he asked for the documents along with statements and others, but till that date, he was not given any of those. By the said letter, he requested that he had nominated one person to represent and that the documents be supplied to him, as well as the presence of witnesses be intimated to him, i.e., on what date, they will present themselves, so that the required procedures can be followed. By the said letter, he also intimated that he had heart problem. However, it is seen that on 13th of March, 2023, the enquiry report was furnished to the petitioner, wherein it was stated that the petitioner was asked to attend the office of Executive Engineer (PHE), Tinsukia, on 31.05.2022, but the petitioner intimated that he cannot appear on the said date, due to natural calamity at Dima Hasao

district. It was also stated in the enquiry report that he was asked again to appear on 02.06.2022, but he did not appear and that he had not communicated any letters to that effect, and as stated above, as per the record, the enquiry officer had returned the finding that misappropriation of fund was done by the petitioner during his service tenure from 01.01.2015 to 15.08.2019.

30. The petitioner had replied to the said enquiry report by representation dated 12th of May, 2023, wherein he stated that he did not get the second letter sent by the authorities on 02.06.2022, and further stated that it was the superior authority who released the amount, after proper verification and that the allegation that he had released it to individuals was not correct. On consideration of the enquiry report as well as the reply filed by the petitioner, the impugned order was passed, as stated above.

31. It is stated in the enquiry report that on receipt of the report from the Executive Engineer (PHE), Tinsukia Division, dated 09.03.2023, the final report of enquiry was prepared, and further in the said enquiry report, record was also stated to have been seen without however, specifying as to what records were seen. It is a settled position of law that if any document is relied on by the Enquiry Officer, the same should be furnished to the delinquent. The Apex Court in ***State Bank of India and Others -vs- D C Agarwal and Others; reported in (1993) 1 SCC 13***, had held that non-service of CVC recommendation to the delinquent officer was considered as a flaw on the part of the authorities. The relevant portion is quoted hereinbelow:-

None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked

into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the Appointing Authority deals with the recommendation to the CVC which is considered sufficient'. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that the reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. No supply of the Vigilance report was one of the ground taken in appeal. But that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority.

As such, the non-furnishing of the report of the Executive Engineer as well as the alleged records had vitiated the enquiry proceeding conducted by the Department.

32. Further, under Rule 9 of the 1964 Rules, a detailed procedure of enquiry is provided for and the same is quoted hereinbelow:-

9. Procedure for imposing penalties.

(1) Without prejudice to the provisions of the Public Servant; (Inquiry) Act, 1850, no order imposing on a Government servant any of the penalties specified in rule 7 shall be passed except after an inquiry, held as far as may be, in the manner hereinafter provided.

(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with a statement of the allegation on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement of his defence and also to state whether he desires to be heard in person. [(2.1) At the time of delivering the charges, the Disciplinary Authority shall invariably furnish to the Government servant a list of documents and witnesses by which each article of charges is proposed to be sustained.] [Inserted vide Notification No. ABP/295/75/70, Dated 17.02.1978] Explanation. - In this sub-rule and in sub-rule (3), the expression "the Disciplinary Authority" shall include the authority competent under these rules to impose upon the Government servant any of the penalties specified in rule 7.

(3) The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto:

Provided that when a Government servant is permitted to inspect and take extracts from official records due care shall be taken against tampering removal or destruction of records.

(4) On receipt of the written statement of defence, or if no such statement is received within the time specified, the Disciplinary Authority may itself inquire into such of the charge

as are not admitted or, if it considers it necessary so to do, appoint for the purpose a Board of inquiry or an Inquiring Officer.

(5)The Disciplinary Authority may nominate any person to present the case in support of the charges before the Authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case so permits.

(6)The Inquiring Authority shall, in the course of the inquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitle to cross-examine witnesses examined in support of the charges and to give evidence in person, and to adduce documentary and oral evidence in his defence. The person presenting the case in support of the charges shall be entitled to cross-examine the Government servant and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness or to admit any document in evidence on the ground that his evidence or such document is not relevant or material, it shall record its reasons in writing.

(7)At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons thereof. [Explanations. - If in the opinion of the enquiring authority the proceedings of the enquiry establish any article of charge different from the original article of the charge it may record it findings on such article of charge. Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has a reasonable opportunity of defending himself against such article of charge.] [Inserted vide Amendment No. ABP./189/77/3, dated 10/07/1977]

(8)The record of the inquiry shall include-

(i) the charges framed against the Government servant and the statement of allegations furnished to him under sub-rule (2);

(ii) His written statement of defence, if any;

(iii) The oral evidence taken in the course of the inquiry;

(iv) The documentary evidence considered in the course of the inquiry;

(v) The orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry; and

(vi) A report setting out the findings on each charge and the reasons therefore.

(9) The Disciplinary Authority shall, if it is not the Inquiring Authority, consider the record of the inquiry and record its finding on each charge.

(10) [Major Penalties. - If the Disciplinary Authority having regard to its findings on the charges and on the basis of evidence adduced during the inquiry, is of the opinion that any of the penalties specified in Clauses (iv) to (vii) of rule 7 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.] [Sustituted vide notificaton No. ABP. 1/11/80/1, dated 28/03/1980]

(11) Minor Penalties. - If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clause (i) to (iii) of Rule 7 should be imposed, it shall, pass appropriate orders and in every case in which it is necessary to consult the Commission, shall do so, after consulting the Commission.

(12)(a) Notwithstanding anything contained in this rule, it shall not be necessary to follow the procedure laid down in the preceding sub-rules in cases where it appears to the authority competent to impose the penalty at the initial stage of the proceedings that the penalty of censure would be adequate, but if at any later stage it is proposed to impose any other penalty specified in Rule 7, the procedure laid down in the said rules shall be followed.

(b) The order imposing the penalty of censure shall however be passed, except after-
(i) The Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation he may wish to make; and (ii) Such representation, if any, is taken into consideration by the Disciplinary Authority.

33. It is, therefore, seen from the aforesaid Rule that the disciplinary authority shall frame definite charges on the basis of allegations and serve the same to the delinquent and ask for a reply, along with the intimation that if the delinquent wants to be heard in person he may say so. It is also provided that along with the charges, a list of documents and witnesses should also be accompanied. Furthermore, under Sub-Rule (3) of the said Rules, the delinquent should be allowed to inspect and take extracts from official records to defend his case and on receiving the written statement, an Enquiry Officer be appointed and along with him, a Presenting Officer may also be appointed. It is further mandated that the Enquiry Officer, in the course of enquiry, should consider the documentary evidence and should also take oral evidence with regard to the charges and the delinquent should be allowed to cross-examine the said witnesses.

In the instant case, it is noticed that during the enquiry proceeding, no witness was examined nor it was mentioned as to what documents were verified. It was simply written that as per record, fund was released under the

scheme without bills submitted and that the petitioner released the funds to the individuals. The word used in Sub-Rule (6) of Rule 9 of the 1964 Rules, is 'shall', i.e., the enquiring authority shall take oral evidence as may be relevant to the charges, whereas, in the present case, no oral evidence was recorded. However, in the preliminary enquiry, witnesses were called and their statements were recorded, which were again not served upon the petitioner. Further, it is not stated by the respondent authorities, as to what steps were taken to call the petitioner in the enquiry after 02.06.2022, and further, as to whether any endeavour was made to allow the petitioner to inspect the documents. However finally, the enquiry report was furnished to the petitioner by letter dated 13.03.2023. It is an admitted fact that the petitioner was not physically well and as such, there was some delay on his part to make his replies as well as to appear in the proceedings.

34. Before the impugned order was issued, there was a meeting held on 23rd of June, 2023, in the office chamber of Additional Chief Secretary to the Government of Assam, PHED, regarding departmental proceeding against officers of the PHE Department and one of such officers was the petitioner. In the said meeting, the Additional Chief Secretary to the Government of Assam, PHE Department was the Chairman and there were 5 (five) other members and amongst the members, the enquiry officer was one of them. The contents of the meeting shows that the Superintending Engineer (PHE), Dibrugarh Circle, i.e., the Enquiry Officer had placed the facts and records before the Chairman and the members, and explained that the petitioner submitted fund demand without bills and released the same to individuals and in the process, the petitioner misappropriated an amount of Rs. 4,60, 70,739/- (Rupees Four Crores Sixty Lacs Seventy Thousand Seven Hundred and Thirty Nine) only. It was further

stated that based on the said facts, the Chairman consulted with the members and decided that a major penalty leading to dismissal of service, should be imposed upon the petitioner. It is as such, seen that the decision of the committee was based on the reports, the facts narrated by the Enquiry Officer, which culminated in passing of the impugned order, signed by the Additional Chief Secretary to the Government of Assam, PHED, issued in the name of the Governor of Assam.

35. Apart from the said irregularities, one more irregularity is seen in the copy of the memorandum of charges furnished upon the petitioner. It is a settled position of law that the memo of charge should give a clear picture of the offence to the delinquent, so that he will be aware of the exact nature of the allegations against him and that he can make out an effective defence. In the instant case, the charge given in the show cause is as follows:-

“i) That while you were serving as Junior Engineer at EE (PHE), Tinsukia Division. You did a massive misappropriation of Government money under SBM (G), Tinsukia Division due to which objective of Swachh Bharat Mission (Gramin) has suffered, which violates Rule 3 of the Assam Civil Service (Conduct) Rules, 1965. You are, therefore, charged with corruption and misappropriation of Government money.”

36. The statement of allegation based on which, the show cause notice was issued was also similarly worded. The statement of allegation is quoted hereunder:-

“That, while you were serving as Junior Engineer at EE (PHE), Tinsukia Division. You did a serious misappropriation of Government money under your, which are meant for the implementation of Swachh Bharat Mission (Gramin), under jurisdiction of

Tinsukia Division, due to which, objective of Gol's Top Priority Programme Swachh Bharat Mission (Gramin), which violates Rule 3 of the Assam Civil Service (Conduct) Rules, 1965. You are, therefore, charged with corruption and misappropriation of Government money. This appears to be a serious dereliction of duties and violation of Rule 3 of Assam Civil Service (Conduct) Rules, 1965, on the part of a responsible Government Servant, and so, it is liable for disciplinary action."

It is therefore, noticed in the statement of allegation as well as in memo of charge that the petitioner was only intimated that he is involved in corruption and misappropriation of Government money, the utilization of which was meant for *Swachh Bharat Mission (Gramin)* and that the same had violated the rules provided under the Conduct Rules, 1965. It is not apprised as to, in what way the petitioner had misappropriated the funds or in what way, it had affected the mission as stated above. It is provided that the charge has to be clear, specific and definite. The charges should not be vague for the reason that there must be fair play in action, particularly, in respect of an order involved in adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of acquisition. The charges should be specific, definite and should give details of the incident, which formed the basis of charges. In the instant case, no details were recorded in the memo of charge or the statement of allegations. In ***Surath Chandra Chakraborty -vs- State of West Bengal***; reported in ***AIR 1971 SC 752***, the Apex Court had observed as follows:-

"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the

specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

37. Therefore, without the details being explained in the memo of charge, the same vitiates the enquiry proceeding, as has been done in the instant case.

38. Further, in the statement of allegations, the list of documents and the list of witness were mentioned and in the list of documents, the report from EE (PHE), Tinsukia Division received through DC, Tinsukia, was stated and in the list of witnesses, DC, Tinsukia, and EE, PHE, Tinsukia Division, was mentioned, but it is noticed as stated above that none of the listed witnesses were examined during the enquiry. However, the document was relied upon which again was not served upon the delinquent. Further in **Anant R Kulkarni (supra)**, the Apex Court held as follows:-

"Thus, nowhere should a delinquent be served a charge sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.

39. As such, in absence of details in the statement of allegations and the memo of charges and on non-examination of witnesses the enquiry is vitiated in the eyes of law.

40. There is yet another point that has to be looked into in the instant case and that is the enquiry was conducted *ex parte*. Although the authorities can proceed *ex parte* but only on ground that notice was served upon the delinquent and that he knew the date of enquiry and still did not appear. It is held in ***State of Uttar Pradesh and others -vs- Saroj Kumar Sinha; reported in (2010) 2 SCC 772***, by the Supreme Court that the Enquiry Officer can proceed with the enquiry without the participation of the Government Servant, but still the Enquiry Officer has to prove the charges by necessary evidence. It is observed as under:-

26. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official

to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.<mpara>

27. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

*28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of *Shaughnessy v. United States* 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."*

41. It is, as such, clear from the aforesaid ruling of the Apex Court that even in absence of the Government Servant, it is mandatory that the Enquiry Officer should record the statement of witnesses mentioned in the list. It is the duty of the Enquiry Officer to examine the evidence in order to see as to whether the un rebutted evidence is sufficient to hold the charges as proved. In the instant case, the aforesaid procedure has not been observed. No oral evidence has been recorded and the documents have not been proved and on the said facts,

no conclusions can be arrived that the charges have been proved against the petitioner. Further, it is noticed that the petitioner was not keeping well and he, by his reply to the show cause notice as well as by subsequent letter, had intimated the authorities to allow him to inspect the documents as well as to furnish the dates on which the witnesses would appear, but he was not apprised by the authority concerned, as is revealed in the facts of the case as well as in the affidavit filed by the respondent. In a subsequent decision, by the Hon'ble Apex Court in ***State of Uttar Pradesh through Principal Secretary, Department of Panchayati Raj, Lucknow -vs- Ram Prakash Singh;*** reported in **2025 INSC 555**, the aforesaid legal requirement in case of *ex parte* enquiry was reiterated.

42. Further under Article 311 of the Constitution of India, the Government servant should be afforded reasonable opportunity of defence before any major punishment such as dismissal from his service is awarded. Principle of natural justice embodied in Article 311 of Constitution of India, requires that copy of each document relied upon by the party should be given to the delinquent employee and opportunity to cross-examine the witnesses should also be afforded to him. In ***K. Prabhakar Hegde (Supra)***, the Apex Court had held as follows:

"Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the Rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses

and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the Appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer."

It is noticed in the instant case that the documents i.e. the report of the Executive Engineer, PHE, Tinsukia, Division as well as the records which have been relied on by the Enquiry Officer were not served upon the petitioner. Further, the petitioner was not given enough opportunity to participate in the said enquiry proceeding by taking into account the health condition of the petitioner. Furthermore, the documents relied on by the authorities during the preliminary enquiry were also not served upon the petitioner. Although the same is not required but since the preliminary enquiry report was relied on as

stated above, the said documents should have been supplied to the petitioner. The same analogy is also applicable with regard to the statement of the witnesses recorded during the preliminary enquiry. As such, there is flagrant violation of the Article 311 of the Constitution of India in the instant case.

43. There is a further contention made by the learned counsel for the Department that in case, the enquiry is found to be defective or found to be in violation of the principles of natural justice, reinstatement is not the normal consequence and that proper course is to remit the matter to the disciplinary authority from the stage where the defect had occurred. Although the said position is held to be the law by the Apex Court, but the same cannot be made applicable in the instant case. In the present case, it is noticed that before conclusion of the preliminary enquiry, rather much before the said conclusion, i.e., years, the show cause notice, along with the statement of allegation was issued to the petitioner, which is against the law laid down by the Apex Court. The issuance of the show cause notice on 8th of July, 2019, was itself illegal, moreso in view of the preliminary enquiry report dated 02.09.2019. Since the commencement of disciplinary proceeding begins with the issuance of show cause notice, the commencement being itself illegal, remanding the case from the stage of, where the enquiry is found to be defective, does not arise in the present case. Even the preliminary enquiry report was vitiated inasmuch, as the statement of the witnesses were not furnished to the petitioner since the same was relied on by the counsel appearing for the Department. Further the preliminary enquiry report was also not furnished. If, at all, the case is remanded back, it has to be remanded from the stage when the Executive Engineer, PHE, Tinsukia Division, by letter dated 18.06.2019, had intimated the Deputy Commissioner about the alleged misappropriation of Government money

by the petitioner, which, however, is not contemplated by the Apex Court. In view of the same, this Court finds it fit that the petitioner be directed to be reinstated in service. Further, this Court quashes the impugned order dated 20.12.2023, by which the petitioner was dismissed from his service. The petitioner be reinstated to his service as Junior Engineer, Public Health Engineering (PHE) in the office of the Executive Engineer, Public Health Engineering Department (PHED), Tinsukia Division. The observations made in the instant order will not, however, debar the authorities from starting any action against the petitioner afresh for any alleged misconduct.

44. The petition is allowed and is disposed of.

JUDGE

Comparing Assistant