GAHC010007392016

2026:GAU-AS:16865

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

**Case No. : WP(C)/520/2016**

KISHORI SAW
S/O LT. PARMESHWAR SAW, PERMANENT R/O BORNA, P.O. ALINAGAR, DIST- LAKHISARAI, BIHAR, PIN-811106, PRESENTLY WORKING AT HEADQUARTER, OFFICER ON SPECIAL DUTY, EAST BORDER ROADS ORGANIZATION, JALUKBARI, GUWAHATI, CARE 47 BRTF, C/O 99 APO, PIN-930047

VERSUS

THE UNION OF INDIA and 2 ORS
THROUGH THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI-1

2:THE DISCIPLINARY AUTHORITY CUM UNDER SECY. TO THE GOVT. OF INDIA
MINISTRY OF DEFENCE
SENA BHAWAN
NEW DELHI-5

3:RAJIV SHARMA
SUPERINTENDING ENGINEER CIVIL
INQUIRING AUTHORITY
HQ
CHIEF
ENGINEER
PROJECT VARTAK
C/O 99 AP

**Advocate for the Petitioner** : MR. K KALITA, MR. I H SAIKIA,MR. J KEMPRAI,MR. K KALITA,MR. S A B KHABIR,MS. S KANUNGOE

**Advocate for the Respondent** : MR. C SHARMA R-3, MR. S C KEYAL,MR. A HUSSAIN (R-

3),MR. S SAIKIA (R-3),PP, ASSAM,ASSTT.S.G.I.,MR. C SHARMA (R-3),MR. J ROY(R-3)

BEFORE :

**HON'BLE MR JUSTICE NCHUMBEMO MOZHUI**

| | | |
|---|---|---|
| Advocates for the Petitioner(s) | : | Mr. I.H. Saikia |
| Advocate for the Respondent(s) | : | Mr. R.K.D. Choudhury, CGC |
| Date on which judgment is reserved | : | **12.11.2016** |
| Date of pronouncement of judgment | : | **17.11.2026** |
| Whether the pronouncement is of the operative part of the judgment | : | Full judgment. |
| Whether the full judgment has been pronounced | : | Yes. |

**JUDGEMENT & ORDER (CAV)**

Heard Mr. I.H. Saikia, Learned counsel for the Petitioners. Also heard Mr. R.K.D. Choudhury, learned CGC, for the Respondents.

**2.** The instant petition is filed under 226 of the Constitution of India for issuance of a writ in the nature of Mandamus and/or any other appropriate writ, order or direction of the like nature praying for setting aside and quashing the impugned Memorandum of Charges dated. 21.03.2012 (Annexure-1 to the writ petition), the Enquiry Report submitted by the Enquiry Officer (Annexure-5 to the writ petition), the impugned punishment order dated 27.11.2015, imposing

punishment upon the petitioner (Annexure-11 to the writ petition) and by directing/commanding respondent authorities to exonerate the petitioner from the charges by giving him all the consequential benefits of his service:

**3.** The brief fact of the case is that the petitioner was initially appointed on 10.07.2001 as Assistant Executive Engineer (Civil) and was posted at 397 Road Maintenance Platoon under 70 Road Construction Company in Himachal Pradesh. He was promoted to the post of Executive Engineer by an order dated. 01.10.2009 and was posted at Leh, Jammu and Kashmir. Thereafter, he was transferred to Simla, where he joined on 04.01.2012. Sometime in the month of February, 2014, he was transferred to Naharlagun, Arunachal Pradesh, where he was attached as Officer on Special Duty, East at Jalukbari, Guwahati, Assam vide an order dated 10.02.2015 and till date he is attached in the said capacity.

While the petitioner was posted at Jammu and Kashmir, an accident took place while he was serving as Officer Commanding, 51 Road Construction Company at Leh, Project Hiamnk, Jammu and Kashmir alleging mishandling explosive by personnel's below him. Thereafter, he was asked to show cause, by issuing a Memorandum of Charges vide letter dated. 21.03.2012, alleging mishandling of explosive by personnel below him and why appropriate disciplinary action should be initiated against him. Petitioner submitted his reply on 13.04.2012, thereby denying the allegations leveled, with a further prayer to hear him in person. On receipt of the reply, the Disciplinary Authority appointed Inquiring Authority and Presiding Officer on 07.06.2012. On conclusion of the Inquiry, the Enquiry Report was prepared and submitted by the Inquiring Authority holding the charges to be proved. The said Enquiry Report was served upon the petitioner vide letter dated 09.02.2015. Against the Inquiry Report, the petitioner submitted his detailed representation on 21.02.2015 with a prayer to

exonerate him from the charges, mentioning all the deficiencies in the entire Inquiry process. But, in clear violation of the prevailing Department of Personnel & Training Guidelines, the Disciplinary Authority concluded the Disciplinary Proceeding and passed the impugned punishment order dated 27.11.2015, holding the charged framed against the petitioner to be partially proved and imposing a penalty of withholding 3 (three) increments of the petitioner without cumulative effect. Being aggrieved, the petitioner is before this Hon'ble Court for protecting the petitioner from the arbitrary actions of the respondent authorities.

**4.** Mr. I.H. Saikia, learned counsel for the petitioner submits that the entire process of Departmental/Disciplinary Proceeding is vitiated by law in the ground that since the petitioner was appointed through competitive exam conducted by the Union Public Service Commission (hereinafter referred to as UPSC), and the incident happened while he was serving as Executive Engineer in the capacity of Officer Commanding, 51 Road Construction Company at Leh, Project Hiamnk, Jammu and Kashmir under the Ministry of Road Transport and Highway, the manner by which the entire Departmental/Disciplinary Proceedings was conducted is in contravention to Department of Personnel & Training (DOP&T) guidelines issued vide Office Memorandum dated 10.05.2011, whereby the Government has provided that after Enquiry Report is submitted by the Inquiring Authority together with the representation submitted by the charged officer, it should be sent to the UPSC, addressing the points raised by the Charged Officer in his reply. Further, as per the Department of Personnel & Training Guideline issued vide Office Memorandum dated 05.03.2014, whereby on receipt of Commission's advice, a copy of the advice may be provided to the Government Servant, who may be allowed to submit his representation, if any,

on the Commission's advice within 15 days. The Disciplinary Authority will consider the Inquiry Report, advice of the Commission and the representation(s) of the Government Servant before arriving at a final decision. However, in the instant case the respondent authorities have not followed the guideline and as such the whole Departmental proceeding and the penalty imposed are bad in law and liable to be interfered by this Hon'ble Court.

**5.** The learned counsel for the petitioner further submits that the penalty was imposed upon the petitioner to the extent of withholding 3 (three) increments without cumulative effect consequent upon a disciplinary proceeding drawn against him. The penalty so imposed upon the petitioner is in gross violation of the provisions of Rule 16 of the CCS (CCA) Rules 1965. Rule 16(e) mandates that no order imposing on a government servant any of that penalties specified in clauses (i) to (iv) of Rule 11 shall be made except after consulting the UPSC, where such consultation is necessary. It was the contention of the petitioner that withholding of increments of pay is a minor penalty under Rule 11(iv) of the CCS (CCA) Rules 1965, and hence, consultation with the UPSC prior to imposition of penalty was mandatory. It was the further contention of the petitioner that he being a civilian in the Border Roads Organization will be governed by the provisions of CCA(CCA) Rules, 1965. In this connection the petitioner has also relied upon the decision rendered by the Hon'ble Supreme Court in the case of ***R. Viswan & Ors -Vs- Union of India & Ors*** reported in ***(1983) 3 SCC 401***.

**6.** Mr. R.K.D. Choudhury, learned CGC for the respondents submits that under Regulation 5(2) of the UPSC (Exemption from Consultation) Regulations, 1958 issued vide Notification No. G.S.R.789 dated 01.09.1958 by the Ministry of Home Affairs, Government of India, which reads as "*It shall not be necessary to*

*consult the Commission in regard to any disciplinary matter affecting a person belonging to a Defence service (Civilian)".*

**7.** It is further contented by the respondent's counsel that the issue of consultation with UPSC in disciplinary matters in respect of serving GREF Civilian Officers of Border Roads Organisation, has been clarified by the Ministry of Defence vide OM dated 24.10.2019, by holding that the provisions of Clause 5(2) of the UPSC (Exemption from Consultation) Regulations, 1958 will apply in respect of serving GREF Officers of BRO in the matters of disciplinary proceeding under CCS (CCA) Rules, 1965.

**8.** The learned counsel for the respondents further submits that all matters relating to Border Roads Development Board and Border Roads Organisation, which was earlier under the Ministry Of Road Transport was brought under the Ministry of Defence by the Cabinet Secretariat Notification dated 09.01.2025.

**9.** In support of his contentions above, the counsel relies in the case of *R. Viswan (Supra)*, wherein the Hon'ble Apex Court has held that the Civilian Members of the BRO are members of the Armed Forces within the meaning of Article 33 of the Constitution of India. The counsel further contents that the previously mentioned decision was rendered way back in 1983, whereas, the BRO came under the Ministry of Defence only 2015. In that view of the matter the provision of Regulation Clause 5(2) of the UPSC (Exemption from Consultation) Regulations, 1958 squarely applies to the petitioner and there is no necessity for consultation with the UPSC.

**10.** The counsel further reiterates that in the case of *R. Viswan (Supra)*, the Hon'ble Apex Court has also held that the GREF/BRO has dual disciplinary authority, namely the authority as prescribed under the Army Act as also under the CCS (CCA) Rules, 1965. The said proposition laid down in the

aforementioned case has also been reiterated in the case of ***Mohammed Ansari -Vs- Union of India*** reported in ***(2017) 3 SCC 740***. The counsel also relies on the decision followed by a co-ordinate bench of this Hon'ble Court in the judgment and order dated 14.07.2026 in WP(C) No. 4861/2024 (Randhir Kumar & Ors -Vs-Union of India & 5 Ors) on the same proposition.

**11.** The counsel therefore submits that in view of the settled position of law as stated above, there is no legal infirmity with the departmental proceeding and the punishment imposed upon the petitioner by the disciplinary authority.

**12.** Per contra, the learned counsel for the petitioner submits that the incident occurred when the petitioner was posted at Jammu and Kashmir and the memorandum of charges was issued on 21.03.2012 and the entire disciplinary proceedings, whereby the petitioner has replied to the memorandum of charges including the submission of the Enquiry Report and the submission of the representation by the petitioner occurred, when the petitioner was serving Officer Commanding, 51 Road Construction Company at Leh, Project Hiamnk, Jammu and Kashmir under the Ministry of Road Transport and Highway.

**13.** The counsel further submits that under such circumstances, the Department of Personnel & Training (DOP&T) guidelines issued vide Office Memorandum dated 10.05.2011 ought to have been followed for the fact that the subsequent Notifications dated 09.01.2015 and Office Memorandum dated 24.10.2019 being adopted only thereafter the proceeding had already been initiated.

**14.** Heard the parties at length and the decisions relied upon.

**15.** The Department of Personnel & Training (DOP&T) guidelines issued vide Office Memorandum dated 10.05.2011 being statutory in nature, the compliance

of which are mandatory in nature. Further, the provisions of the Office Memorandum dated 05.03.2014 mandates that the Enquiry Report along with the representation of the petitioner should have been forwarded to the UPSC for advice. Thereafter, on receipt of UPSC advice the same ought to have been furnished to the petitioner to allow him to submit his representation. The guidelines also further stipulated that the disciplinary committee as mandated shall consider the inquiry report, advice of the UPSC and representation before arriving to any decision.

**16.** A perusal of the records will reveal that Office Memorandum dated 24.10.2019 has been issued by the Ministry of Defence, Government of India is reproduced herein below for ready reference: -

*"F. No. BRDB/02(09)/2015-GE.II(Pt)*
*Government of India*
*Ministry of Defence*
*D(Vigilance-MES & BRO)*
*******

*Room No.138,Kashmir House,*
*New Delhi, dated 24th October, 2019*

***OFFICE MEMORANDUM***

***SUBJECT: Consultation with UPSC in disciplinary matters in respect of serving GREF Civilian Officers of Border Roads Organization - clarifications regarding***

*Undersigned is directed to state that the issue regarding need for consultation with UPSC in disciplinary matters in respect of serving General Reserve Engineer Force (GREF) Officers of Border Roads Organization (BRO), has been under consideration of the Ministry of Defence, in consultation with DoPT and UPSC.*

*2. With the approval of Competent Authority, of Ministry of Defence, it has*

*been decided as under:*

> *The provisions of* ***Clause 5(2) of UPSC (Exemption for Consultation) Regulations, 1958,*** *will apply in respect of serving GREF officers of BRO in the matters of disciplinary proceedings, under CCS (CCA) Rules, 1965.*

*3. The disciplinary, cases in respect of GREF Officers, may be processed accordingly.*

*Sd/*

***24/10/19***

*(S. Khajuria)*

*Deputy Secretary to the Government of India*

*Ph: 23793245*

*1. Directorate General Border Roads*

***(Lt. Gen. Harpal Singh, PVSM, VSM)***

*Seema Sadak Bhawan, Ring Road, Delhi Cantt*

*NEW DELHI-110010*

*2. Joint Secretary(BR)*

*South Block, New Delhi*

*3. Department of Personnel & Training*

*(Shri Rajbir Singh, US (Estt.B-1)*

*North Block, New Delhi*

*w.r.t their ID Note No.39018/03/2016-Estt.B dated 21.08.2019."*

**17.** However, in the present proceedings, there is no dispute that the petitioner is not regular members of the armed forces or the army. No doubt the army authorities are also the controlling authorities insofar as BRO and GREF is concerned, however, in the facts of the present proceedings, the authority merely recommended initiation of departmental proceedings against the petitioner. There was no recommendation for court-martial proceedings against

the writ petitioner as per the procedure prescribed under the Army Act read with the rules. Such proceedings perhaps were not initiated as the petitioner was civilian personnel and not regular army personnel. The Inquiry therefore recommended departmental proceedings to be initiated against the petitioners under CCS(CCA) Rules.

**18.** Moreover, as per letter dated 24.10.2019 issued by the Ministry of Defence, Government of India, it reveals that consultation with the UPSC in the disciplinary proceeding against the petitioner belonging to Defence Service (Civilian), has been clarified with the approval of the competent authority in the ministry as per Office Memorandum of even dated 24.10.2019.

As such, that the petitioner being a Civilian Members of the BRO, is also members of the Armed Forces within the meaning of Article 33 of the Constitution of India and the BRO came under the Ministry of Defence only 2015, the provision of Regulation Clause 5 (2) of the UPSC (Exemption from Consultation) Regulations, 1958 squarely applies to the petitioner and there is no necessity for consultation with the UPSC.

**19.** This Court has also taken into consideration of the decision in the case of ***Mohammed Ansari (Supra)***, wherein the Hon'ble Apex Court has held that: -

> "*10. After adverting to the constitutional validity of Section 29 of the 1950 Act, the Court deliberated upon SRO 329 and 330 issued under the said Act and the Army Rules 1954 and expressed thus:-*
>
> *"The history, composition, administration, organisation and role of GREF which we have described above while narrating the facts clearly show that GREF is an integral part of the Armed Forces. It is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other construction agencies such as Central Public Works Department etc. in that it is a Force intended primarily to support the Army in its operational requirement. It is significant to note that the Border Roads organisation, which is in overall control of GREF was originally created as part of Army Headquarters and it was only later, for reasons of high policy,*

*that it was separated from Army Headquarters and placed under the Border Roads Development Board."*

**20.** In view of the discussion above, this Court does not find any merit in the petition seeking the interference of this Court to interfere with the Departmental Proceeding, Impugned Enquiry report and the Impugned Punishment Order dated 27.11.2015 issued against the petitioner and further to issue any consequential orders. Therefore, the claim made by the petitioner fails and the writ petition being devoid of merit the same is accordingly, dismissed.

**21.** No order as to cost.

**JUDGE**

**Comparing Assistant**