Brajendra Singh Yambem vs Union Of India And Anr on 26 August, 2016

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Bench: C. Nagappan, V. Gopala Gowda, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8323 OF 2016
(Arising out of SLP(C) No.30907 of 2013)

BRAJENDRA SINGH YAMBEM …APPELLANT

Versus

UNION OF INDIA AND ANR. …RESPONDENTS

WITH

CIVIL APPEAL NO.8324 OF 2016
(Arising out of SLP(C) No.10092 of 2014)

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

The present appeals arise out of the common impugned judgment and order dated 05.08.2013 passed by the Division Bench of the High Court of Manipur at Imphal in Writ Appeal Nos. 39 and 40 of 2011, whereby the judgment and order dated 01.09.2010 passed by the learned single Judge of the High Court of Gauhati, Imphal Bench in W.P. (C) Nos. 904 of 2008 and 264 of 2010 was set

aside.

The necessary facts required to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief hereunder:

> The appellant was serving as a regular Commandant of 61st Battalion, CRPF and at the time of incidents, was posted at Mantripukhri, Imphal. He is alleged to be involved in two cases. The first case, i.e. Civil Appeal arising out of the SLP (C) No. 30907 of 2013 relates to missing of arms and ammunition. The second case, i.e. Civil Appeal arising out of SLP (C) No. 10092 of 2014 relates to the alleged supply of contraband ganja, by 11 CRPF personnel posted in the unit of the appellant.
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> Between 03.06.1995 and 05.07.1995, one AK-47 rifle with 3 magazines and 90 rounds of 7.62 ammunition issued in the name of one Lance Naik Man Bahadur, who was posted at the same battalion of which the appellant was the commandant went missing. According to the respondents, the loss occurred as a result of the verbal orders issued by the appellant, which action amounted to a violation of Rules 3(1)(i) & (iii) of the Central Civil Services (Conduct) Rules, 1964 (hereinafter referred to as the "CCS (Conduct) Rules, 1964").
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> On 28.05.1997, the Deputy Inspector General of Police (OPS), CRPF, Imphal sent a letter to the appellant, directing him to submit a written statement of defence in connection with the said lapse. The relevant portions of the said letter are extracted hereunder:
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> "It has been intimated by IGP, N/ Sector, CRPF that one AK-47 Rifle, 3 Magazines and 90 rounds of 7.62 ammunition of commanding 61 Bn at Mantripukhri, Imphal. A Court of Inquiry was conducted. IGP N/Sector has intimated to this office that the said weapon and ammunition belonging to HQr Coy was shown as issued to LNK Man Bahadur but was actually being used by a civilian on your orders. It has further been intimated that S.M. P.N. Gupta (OC HQr Coy 61 Bn) had brought it to your notice that the said weapon and ammunition were not returned by the civilian and were missing from the HQr Coy Kote. To this effect, Shri P.N. Gupta had informed you in writing on 21.08.1995. However, no action was taken nor any decision given by you..... .....Therefore, I am directed by IGP, N/Sector that to request you to send your written statement to this office at an early date....." Pursuant to the above letter, the appellant submitted his written statement on 07.04.1998, explaining the reasons which resulted in the loss of the said weapon and ammunition.
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> By letter dated 24.06.1998, the Deputy Inspector General CRPF, Imphal, on the basis of the conclusion arrived at by the internal Court of Inquiry, issued a warning to the appellant to be more careful and also ordered for a sum of Rs.3,750/- to be recovered from the appellant in lieu of the lost weapon.

Subsequently, on 15.03.1999, the IGP, Northern Sector, CRPF, sent a letter to the appellant stating that after review of the case, the Directorate General had come to the conclusion that the penalty inflicted upon him vide letter dated 24.06.1998 was being withdrawn as the same did not commensurate with the gravity of the offence committed by the appellant in discharge of his official duties. After obtaining approval from the competent authority, major penalty proceedings were initiated and Memorandum of Charges dated 23.06.1999 was issued to the appellant. Subsequently, pursuant to the Presidential Order dated 14.10.1999, a regular departmental inquiry under Rule 14 of the Central Civil Services (Classification Control & Appeal) Rules, 1965 (hereinafter referred to as the "CCS (CCA) Rules, 1965") was ordered in connection with the said incident of the loss of AK-47 Rifle along with its ammunition.

Aggrieved of the said action of withdrawal of imposition of minor penalty and initiating departmental inquiry, the appellant filed Writ Petition (C) No. 720 of 2002 before the High Court of Gauhati, Imphal Bench, by questioning the validity of the said Memorandum of Charges dated 15.03.1999 on the ground that it is in violation of the principles of natural justice and is also contrary to the settled position of law.

The learned single Judge allowed the Writ Petition vide judgment and order dated 18.05.2006 by placing reliance on various decisions of this Court on the aspect of principles of natural justice. It was observed that the earlier punishment imposed upon the appellant was withdrawn suo motu by the competent authority by order dated 15.03.1999 without affording him the opportunity of being heard, by passing a non speaking order. The learned single Judge accordingly set aside the order dated 15.03.1999 as the earlier penalty imposed upon the appellant was withdrawn by which the letter dated 24.06.1998 was withdrawn by the IGP-NS.

In the meanwhile, the appellant retired from service as a regular Commandant/Police Officer, CRPF on 31.08.2006.

The respondent-Union of India preferred Writ Appeal No. 45 of 2006 before the Division Bench of the High Court against the said judgment and order of the learned single Judge.

The Division Bench of the High Court by way of judgment and order dated 07.11.2006 upheld the finding and reasons recorded by the learned single Judge and held that the appellant should have been afforded an opportunity of being heard before the Memorandum of Charges dated 15.03.1999 was issued to him. The Division Bench however, observed that it was open for the Disciplinary Authority to initiate fresh action in the matter against the appellant by complying with the principles of natural justice. The appeal was accordingly dismissed.

In pursuance of the liberty granted by the Division Bench to the respondents, a show cause notice dated 02.02.2007 was issued to the appellant, by which he was given time of fifteen days to reply to the same. After considering the reply of the appellant, the DG-CRPF came to the conclusion that it was appropriate to initiate disciplinary proceedings against the appellant afresh.

Accordingly, on 22.08.2008, the respondents issued another Memorandum of Charges to the appellant in pursuance of the sanction accorded by the President of India under Rule 9(2)(b)(i) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the "CCS (Pension) Rules, 1972") for initiating departmental inquiry proceedings against him in accordance with the procedure laid down in Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and directed him to submit his written statement of defence to the said Memorandum of charges. The articles of charges framed against the appellant are extracted hereunder:

> "Article-I That the said Shri B.S. Yambem, Commandant (Retired) while posted and functioning as Commandant 61 Bn CRPF at Mantripukhri, Imphal (Manipur) during the period from 1.5.95 to 31.8.95 committed an act of misconduct in that he allowed, kote UO to issue arms and ammunitions more than authorization. Thus the said B.S. Yambem, Commandant (Retired) failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Government Servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.
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> Article-II That the said Shri B.S. Yambem, Commandant (Retired) while posted and functioning in the aforesaid capacity and during the aforesaid period committed an act of misconduct in that he passed verbal orders to issue service arms and ammunitions to ex-undergrounds through kote UC's without keeping/maintaining proper records violating the instructions on the subject. Thus, the said Shri B.S. Yambem, Comdt. (Retired) failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated the provisions contained in Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964.
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> Article-III That the said Shri B.S. Yambem, Commandant(Retired)while posted and functioning as Commandant 61 Bn CRPF, Mantripukhri, Imphal (Manipur) during the period from 1.5.95 to 31.8.95 committed an act, of misconduct in that he got issued service weapons to undergrounds through No.793020336 LNK Man Bahadur in violation of orders which resulted in missing of one AK-47 Body No. 313422 Butt No. 77, 3 Magazine and 90 rounds. That the said Shri B.S. Yambem, Commandant (Retired) failed to maintain absolute integrity and devotion to the duty and acted in a manner unbecoming of a Govt. Servant and thereby violated the provisions contained in Rule 3(1)(i)(ii) and (iii) of the CCS (Conduct)Rules, 1964.
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> Article-IV That the said Shri B.S. Yambem, Comdt. (u/s) while posted and functioning in the aforesaid capacity during the aforesaid period committed an act of misconduct in that he passed verbal orders to issue service arms and ammunitions to ex-undergrounds resulting missing of one AK 47 Body No. 313422 Butt No. 77, 3

> Magazines and 90 Rounds. He had hidden the above fact and failed to take appropriate action after missing the service weapon. Thus the said Shri B.S. Yambem, Comdt. (u/s) failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. Servant and thereby violated the provisions contained in Rule 3(1)(i)(ii) and (iii) of CCS (Conduct) Rules, 1964." Aggrieved of the same, the appellant filed Writ Petition(C) No.904 of 2008 before the High Court of Gauhati, Imphal Bench questioning the issuance of the Memorandum of Charges urging various legal grounds. In the meanwhile, another set of disciplinary proceedings had been initiated against the appellant in connection with the arrest of 11 personnel and seizure of two trucks of the unit of the appellant carrying contraband ganja. The allegation against the appellant was that he tried to cover up the same and that the said act of the appellant amounted to a violation of the Rules 3(1)(i),(ii) &(iii) of CCS (Conduct) Rules, 1964. The departmental enquiry was initiated against him on 14.05.1998. Aggrieved of the initiation of disciplinary proceedings in connection with the above alleged misconduct, the appellant filed W.P. No. 805 of 2005 before the High Court of Gauhati, Imphal Bench. The learned single Judge of the High Court allowed the Writ Petition by way of judgment and order dated 16.06.2006 by the learned single Judge of the High Court. The single Judge, however, granted liberty to the Disciplinary Authority to initiate departmental enquiry afresh against the appellant after complying with the directions given in the judgment.

Aggrieved of the said judgment, the respondents filed Writ Appeal No. 25 of 2007 before the Division Bench of the High Court questioning the correctness of the same. The Division Bench of the High Court dismissed the said Writ Appeal vide judgment and order 13.11.2008 and upheld the impugned judgment and order of the learned single Judge. Thereafter, the said Memorandum of Charges dated 14.05.1998 was withdrawn by the respondents, and another Memorandum of Charges dated 16.10.2009 was issued. The Articles of Charges framed against the appellant are extracted as hereunder:

> "Article-I That the said Shri B.S. Yambem, Commandant while posted and functioning as Commandant in 61 Bn. CRPF at Mantripukhri, Imphal during August 1995 committed a serious misconduct in that he on 08/08/1995 sent three vehicles, one Asstt. Commandant and 18 other ranks of his Unit out of the area of operational jurisdiction without the approval of IGP (Ops) Manipur and Nagaland. Two of the above vehicles and 11 men were later intercepted and apprehended by the Customs and Central Excise Authorities at Didarganj check post near Patna on the night of 11/08/1995 as a huge quantity of contraband ganja was found loaded in these vehicles. Thus, the said Shri B.S. Yambem, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1), (i),(ii)and (iii) of CCS (Conduct) Rules, 1964.
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> Article-II That during the aforesaid period and while functioning in the aforesaid Unit in the aforesaid capacity, the said Shri B.S. Yambem committed a serious

misconduct in that he fabricated office records to cover illegal dispatch of CRPF vehicles and men out of operational jurisdiction without proper permission or orders of the competent authority and also tried to secure false medical certificates in respect of Officers and men allegedly involved in the illegal transshipment of ganja from civil hospital on coming to know about the detention of his Unit vehicles and men by Central Excise authorities of Patna on 12/08/1995. Thus, the said Shri B.S. Yambem, failed to maintain absolute integrity and devotion of duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1), (i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article-III That the said Shri B.S. Yambem, Commandant (under suspension) while posted and functioning as Commandant 61 Bn. CRPF, Mantripukhri, Imphal during August, 1995 committed a serious misconduct in that he suppressed the information of arrival of Shri Ram Singh, Asstt. Comdt (under suspension), 4 Ors. with Civil TATA 608 truck with civilian driver at Bn. HQrs on 15/16-

8-95 and kept them hiding at remote Coy location at Mayang, Imphal and shown their arrival at Bn HQrs on 0245 hrs on 17/08/1995 though they were wanted by Central Excise authorities in connection with the seizure of ganja from two trucks of his Unit at Didarganj check-post near Patna on the night of 11/8/1995. Thus, the said Shri B.S. Yambem, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated the provisions contained in Rule 3(1), (i) (ii) and (iii) of CCS (Conduct) Rules, 1964." Aggrieved of the same, the appellant filed Writ Petition(C) No. 264 of 2010 before the High Court of Gauhati, Imphal Bench.

As the legal issue was same in both the Writ Petitions, i.e., No. 904 of 2008 (filed against the Memorandum of Charges dated 22.08.2008-issued in 1st case i.e. Arms case) and Writ Petition No. 264 of 2010 (filed against Memorandum of Charges dated 16.10.2009-issued in 2nd case i.e. Ganja case), they were heard together and disposed of by the learned single Judge vide common judgment and order dated 01.09.2010. The learned single Judge held that the Memorandum of Charges in both the cases make it clear that the initiation of disciplinary proceedings against the appellant by the Disciplinary Authority for the alleged incidents which took place more than 10 years earlier was barred by limitation as provided for under Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. Accordingly, the learned single Judge quashed the Memorandum of Charges dated 22.08.2008 and 16.10.2009 and allowed the above Writ Petitions filed by the appellant.

Aggrieved of the common judgment and order passed by the learned single Judge, the respondents filed Writ Appeal (C) Nos. 39 of 2011 and 40 of 2011 (against Writ Petition No. 904 of 2008 and Writ Petition No. 264 of 2010, respectively) before the Division Bench of the High Court questioning the correctness of the same.

The Division Bench of the High Court after hearing the parties decided the above said Writ Appeals by passing the impugned common judgment and order dated 05.08.2013, observing that once the sanction was obtained by the Disciplinary Authority from the President of India, then the bar of

period of limitation of four years as contained in Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 will not apply. Hence, the proceedings of serving the Memorandum of Charges to the appellant after his retirement falls within the ambit of Rule 9(2)(a) read with Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The Division Bench of the High Court, thus, allowed the appeals and set aside the order of the learned single Judge and upheld the decision of the respondents to hold departmental enquiry against the appellant. The Division Bench of the High Court further directed the Enquiry Officer to hold the departmental enquiry strictly in accordance with law without being influenced by any observation of its order. The respondents were further directed to proceed with the departmental enquiry against the appellant and conclude the same after affording adequate opportunity of hearing to him in the enquiry proceedings. Hence, the present appeals filed by the appellant.

Mr. Lenin Singh Hijam, the learned counsel appearing on behalf of the appellant contends that the initiation of the disciplinary proceedings against the appellant by the Disciplinary Authority in the year 2008, after long lapse of 13 and 14 years of the occurrence of the alleged incidents in the two cases is violative of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. In support of the same, reliance is placed on the decision of this Court in the case of State of U.P. & Anr. v. Shri Krishna Pandey[1], wherein it has been held that a government employee cannot be subjected to a departmental enquiry after his retirement from service for any event or occurrence which took place more than four years prior to the date of the institution of the disciplinary proceedings against an employee.

The learned counsel further contends that the Division Bench of the High Court has erred in bypassing the CCS (Pension) Rules, 1972 in extending the limitation period for initiating departmental enquiry against the appellant, which action of the disciplinary authority is contrary to the Rules as well as the decision of this Court in the case of Shri Krishna Pandey (supra).

The learned counsel further contends that neither the Inspector General of Police (NS-CRPF) nor the Director General, CRPF could have issued the Memorandum of Charges dated 22.08.2008 and 16.10.2009 for initiating fresh departmental enquiry proceedings against the appellant as they were not the competent authority to do so. It is further contended that the statutory safeguards provided for retired government employees under the CCS (Pension) Rules, 1972 should not have been overlooked by the respondents.

The learned counsel further contends that enquiry proceedings that were initiated by the respondents under Rule 14 of the CCS (CCA) Rules, 1965 in respect of the alleged incident of loss of weapon and ammunition, were quashed by the learned single Judge of the High Court. Subsequently, enquiry proceedings were initiated afresh against the appellant under Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972. Therefore, the respondents cannot mislead this Court by justifying their action of initiation of the disciplinary proceedings against the appellant on the ground that the second enquiry proceeding which was initiated by them by issuing the Memorandum of Charges was merely a continuation of the first enquiry proceeding itself, when the same was initiated afresh by the disciplinary authority after obtaining sanction from the President as required under Rules 9(2)(b)(i) after the retirement of the appellant from service and more than four years from the date of the alleged incidents.

As far as the case in the Civil Appeal arising out of the SLP (C) No. 10092 of 2014 is concerned (ganja case), the learned counsel on behalf of the appellant refutes the involvement of the appellant in the same. It is contended that there were 11 CRPF personnel who were charge-sheeted and booked in the said case and tried before the District and Sessions Judge, Patna for the alleged offences punishable under the relevant provisions of the NDPS Act. The Trial Court acquitted the said personnel. Further, no departmental enquiry was conducted against them. Strangely, the departmental enquiry proceedings were initiated only against the appellant and that too, after 13 years of the alleged incident which is in violation of the CCS (Pension) Rules, 1972. The learned counsel further contends that the above departmental enquiry was initiated against the appellant with a mala fide intention to harass him.

On the other hand, Mr. P.S. Patwalia, learned Additional Solicitor General appearing on behalf of the respondents, has sought to justify the common impugned judgment and order dated 05.08.2013 passed by the Division Bench of the High Court contending that the High Court was right in allowing the Writ Appeals filed by the respondents and that the same does not suffer from either erroneous reasoning or any error in law which warrants interference by this Court in exercise of its appellate jurisdiction under Article 136 of the Constitution of India.

The learned ASG further contends that Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 cannot come to the rescue of the appellant as the departmental inquiry had already been initiated against the appellant vide letter dated 15.03.1999, while he was still in service.

The learned ASG further places reliance on clause (a) of sub-rule 2 of Rule 9 of the CCS (Pension) Rules, 1972 which reads thus:

> "9(2)(a)... The departmental proceedings referred to in sub-rule (1) if instituted, while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the Authority by which they were commenced in the same manner as if the Government servant had continued in the service" Further, reliance is placed by the learned ASG on the decision of this Court in the case of D.V. Kapoor v. Union of India[2], wherein this Court has held that the proceedings under Rule 9 of the CCS (Pension) Rules, 1972 can be instituted or continued against a government servant who has retired from service in those cases in which grave misconduct is alleged to have been committed. In the case on hand, prior sanction of the President was obtained by the Disciplinary Authority as required under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 for continuing the disciplinary proceedings against the appellant. The learned ASG further places reliance on the decision of this Court in the case of State of M.P. v. Dr. Yashwant Trimbak[3], wherein it was held that personal sanction of the Governor or President is not required and it is sufficient that the sanction be issued by a duly authorized officer and is properly authenticated. No court can look into the validity of such sanction in terms of Articles 77(3) and 166(3) of the Constitution of India.

> The learned ASG further contends that the legal principles enunciated by this Court in the case of Shri Krishna Pandey (supra) cannot be relied upon in the instant case, as the factual situations in the two cases are very different from each other. In the case of Shri Krishna Pandey (supra), the concerned officer therein retired from service on 31.03.1987 and the proceedings against him were initiated on 21.04.1991. This Court observed in the said case that it was clear that the incident of embezzlement had taken place four years prior to the date of his retirement and the embezzlement had resulted in pecuniary loss to the State Government. The State Government did not take any action and allowed the officer to escape from the provisions of regulations 351-A of the Civil Services Regulations. It was further observed by this Court in the above case that the decision of this Court did not preclude the Disciplinary Authority from carrying on with the investigation into the offence and take action thereon. While in the instant case, the appellant retired from service on 31.08.2006 and sanction was accorded by the President of India within 3 years, that is, on 22.8.2008 for conducting departmental enquiry against him, which is within the limit of four years period as prescribed in the said Rules. Therefore, the learned ASG submits that the facts of the instant case do not attract Rule 9(2)(b)(ii)of the CCS (Pension)Rules, 1972. According to the learned ASG, the date of institution of the disciplinary proceedings should be considered from the date on which the Memorandum of Charges was issued. The learned ASG further places reliance on the decision of this Court in the case of Union of India v. Kewal Kumar[4], wherein it was held that the requirement of issuance of the Memorandum of Charges is not necessary to be complied with when decision is taken by the competent Disciplinary Authority to initiate disciplinary proceedings on the basis of an FIR.

Hence, the appellant cannot place reliance on the decision of this Court on the case of Shri Krishna Pandey (supra), when the charges framed against him by the disciplinary authority pertain to a matter as serious as smuggling contraband ganja.

The learned ASG further places reliance on the decisions of this Court in the cases of Railway Board Representing The Union of India v. Niranjan Singh[5] and State of Madras v. G. Sundaram[6], wherein this Court has held that the High Court while exercising jurisdiction under Article 226 of the Constitution of India should not interfere with the conclusions arrived at by the Disciplinary Authority after holding an enquiry, unless the findings of fact are not supported by any evidence.

We have heard the learned counsel appearing on behalf of both the parties. The following essential questions would arise for our consideration in the case:

> Whether the impugned judgment and order passed by the Division Bench of the High Court correctly appreciates the scope of Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 in light of the fact the disciplinary proceedings were initiated more than four years after the alleged incidents?
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> Whether the impugned judgment and order is erroneous and is vitiated in law?

What Order?

Since Points 1 and 2 are inter-related, the same are answered together as under:

With reference to the aforesaid factual and rival legal contentions urged before this Court, to answer the same, at the outset it would be necessary to refer to the letter dated 20.02.2009 issued by the DIGP (CR & Vig.) which reads as under:

"Directorate General, CRPF (Ministry of Home Affairs) Sub : Department Enquiry Against Shri B.S. Yambem, Commandant (Retd.)

A DE was conducted against Shri B.S. Yambem, Commandant on the charges of sending vehicle of his Unit along with men on 8.8.1995 out of his jurisdiction and when the vehicles were seized by the Customs authorities for illegal transshipment of Ganja, he made efforts to conceal the same by manipulating documents. Article of charge is at P/72 of C/file.

2. The DE was completed and a copy of IOs report was served on the C/O. The C/O filed a WP No. 805 of 2005 in the Guwahati High Court, Imphal Bench in which first the Hon'ble Court vide order dated 18.7.2005 stayed the DE and then vide judgment dated 16.6.2006 (copy at P/55/c/side), quashed the DE initiated vide Memo dated 14.5.1998 and report of the IO. The Hon'ble Court, however, left it open for the DA/IOP to conduct the DE afresh, after supplying copies of proceedings of the COI and also the English translated copies of statements of the witnesses and documents recorded in Hindi to the petitioner.

3. Against the above order, the Department filed W.A. No. 25 of 2007 in the Division Bench which was dismissed by the Hon'ble Court on 13.11.2008 (copy at P/125c/Side). The matter was referred to MOL and the ASG opined that it is not a fit case for filing SLP (copy of relevant notes at P/120c/side).

4. In view of the above, the judgment dated 16.6.2006 of the Hon'ble Court is required to be implemented now which would require taking the following actions :-

Supplying copies of proceedings of the COI and the English translated copies of statements of the witnesses and documents recorded in Hindi to the petitioner. This would be pre-requisite for starting the DE against the C/O afresh.

Memorandum dated 14.5.1998 will have to be cancelled and DE against the C/O started afresh on the same charges. However, fresh Memorandum would be issued after supplying the C/O with a copy of the COI file and English translation of the statement of witnesses.

5. MHA may therefore like to see the case and convey approval of Competent Authority to take the above actions. Since the Officer has already proceeded on superannuation (while under suspension) w.e.f 31.8.2006, the DE ordered afresh would be under Rule 9(2) of CCS (Pension) Rules, 1972.

6. This has the approval of the DG.

(Ranjit Singh) DIGP (CR & Vig) 20.02.2009" (emphasis laid by this Court) A perusal of the said letter makes it clear that the Disciplinary Authority, following the judgment and order dated 16.06.2006 passed in W.P. No.805 of 2005 by the learned single Judge of the High Court and judgment and order dated 13.08.2008 passed in W.A. No. 25 of 2007 by the Division Bench of the High Court initiated disciplinary proceedings afresh against the appellant under Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972 and also sought the sanction of the President of India.

Rule 9(2) of the CCS (Pension) Rules, 1972 reads thus:

"9. Right of President to withhold or withdraw pension-

|(2) |(a)|The departmental proceedings referred to in | | | |sub-rule (1), if instituted while the | | | |Government servant was in service whether | | | |before his retirement or during his | | | |re-employment, shall, after the final | | | |retirement of the Government servant, be | | | |deemed to be proceedings under this rule and | | | |shall be continued and concluded by the | | | |authority by which they were commenced in the| | | |same manner as if the Government servant had | | | |continued in service : | Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

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|(b)       |The departmental proceedings, if not        |
|          |instituted while the Government servant was |
|          |in service, whether before his retirement,  |
|          |or during his re-employment, -              |
|          |(i)          |shall not be instituted save   |
|          |             |with the sanction of the       |
|          |             |President,                     |
|          |(ii)         |shall not be in respect of any |
|          |             |event which took place more    |
|          |             |than four years before such    |
|          |             |institution, and               |
|          |(iii)        |shall be conducted by such     |
|          |             |authority and in such place as |
|          |             |the President may direct and in|
|          |             |accordance with the procedure  |
|          |             |applicable to departmental     |
|          |             |proceedings in which an order  |
|          |             |of dismissal from service could|
|          |             |be made in relation to the     |
|          |             |Government servant during his  |
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| | | |service." | |

A perusal of the above Rule makes it clear that if the disciplinary proceedings are not instituted against the Government servant by the disciplinary authority while he was in service, then the prior sanction of the President of India is required to institute such proceedings against such a person. It is also clear that such sanction shall not be in respect of an event which took place more than four years before the institution of such disciplinary proceedings.

The learned counsel appearing on behalf of the appellant has rightly placed strong reliance on Rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972. It is an undisputed fact that the appellant retired from service on 31.08.2006. The learned single Judge of the High Court by way of judgment and order dated 18.05.2006 in Writ Petition No. 720 of 2002 quashed the disciplinary proceedings in the case pertaining to the missing arms and ammunitions. However, liberty was granted to the Disciplinary Authority/Enquiry Officer to conduct the disciplinary enquiry afresh after supplying the copies of the proceedings of the enquiry to the appellant. The said judgment and order of the single Judge was challenged by the respondents by way of Writ Appeal No. 45 of 2006, in which the Division Bench, by judgment and order dated 07.11.2006 upheld the order of the single judge of the High Court. It was only pursuant to this that the fresh memorandum of charges dated 22.08.2008 was issued to the appellant, which was clearly beyond the period of limitation of four years as provided for under the CCS (Pension) Rules, 1972. Similarly, in the case involving the contraband ganja, the single Judge of the High Court by way of judgment and order dated 16.06.2006 passed in Writ Petition No. 805 of 2005 quashed the departmental enquiry under the memorandum of charges dated 14.05.1998. The Division Bench dismissed the Writ Appeal No. 25 of 2007 filed by the respondents vide judgment and order dated 13.11.2008 and upheld the order of the learned single Judge. It was pursuant to this that the fresh departmental enquiry was initiated against the appellant on 16.10.2009 after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The appellant challenged the correctness of the sanction and charges framed against him before the High Court of Gauhati, Imphal Bench in W.P. (C) No. 264 of 2010. The High Court quashed the Memorandum of Charges on the ground that it was issued after four years from the date of the alleged incident. Therefore, it was held that the said action of the Disciplinary Authority in initiating disciplinary proceedings is not valid in law as the same was barred by limitation as per the provision of Rule 9(2)(b)(ii) of the CCS (Pension) Rules 1972. This important legal aspect of the case was not considered by the Division Bench of the High Court while setting aside the common judgment and order dated 01.09.2010 passed by the learned single Judge in Writ Petition No. 904 of 2008 (arms and ammunitions case) and Writ Petition No. 264 of 2010 (contraband ganja case).

It is a well established principle of law that if the manner of doing a particular act is prescribed under any statute then the act must be done in that manner or not at all. The aforesaid legal position has been laid down by this Court in the case of Babu Verghese & Ors. v. Bar Council of Kerala & Ors.[7], the relevant paragraphs of which are extracted hereunder :

> "31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:
>
> "[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."
>
> 32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of U.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law." The aforesaid important aspect of the case should have been considered by the Division Bench of the High Court instead of mechanically accepting the argument advanced on behalf of the respondents that the case of the appellant squarely falls under Rule 9(2)(b)(i) read with Rule 9 (2)(b)(ii) of CCS (Pension) Rules, 1972. Therefore, the findings recorded by the Division Bench in the impugned judgment are erroneous in law and are liable to be set aside.

The learned ASG appearing on behalf of the respondents contends that the period of limitation of four years as stipulated in 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 does not apply to the facts of the present case for the reason that the departmental proceedings against the appellant had already been initiated while he was in service, and it was because of the pendency of the litigation before the High Court that the proceedings could not be concluded and further disciplinary proceedings were continued after obtaining prior sanction of the President of India as required under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The said contention is untenable both on facts as well as in law.

The Division Bench of the High Court failed to appreciate the fact that liberty had been granted by the High Court vide its judgment and order dated 07.11.2006 in W.A. (C) No. 45 of 2006 to the Disciplinary Authority to take disciplinary action against the appellant. Thus, there was no need for the respondent Disciplinary Authority to withdraw the Memorandum of Charges dated 14.05.1998 for the purpose of initiating disciplinary proceedings afresh against the appellant on the same charges by obtaining an order of sanction from the President of India as required under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The Division Bench of the High Court in its judgment and order dated 05.08.2013 has completely ignored this important legal aspect of the matter, that the prior sanction accorded by the President under the above said Rules was in fact, barred by limitation. Thus, it has committed serious error in law in arriving at the conclusion that the respondent Disciplinary Authority had obtained due sanction from the President of India to conduct

the departmental proceedings against the appellant for the same charges, which action was barred by limitation as provided under Rule 9(2)(b)(ii) of CCS (Pension) Rules, 1972. Therefore, the impugned judgment and order passed by the Division Bench of the High Court cannot be allowed to sustain in law.

The similar question of law came for consideration before this Court in the case of Shri Krishna Pandey (supra), wherein it was held as under:

> "6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as a disciplinary measure and the action initiated earlier would remain unabated after retirement. If Regulation 351- A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the Regulation also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on 31-3-1987 and the proceedings were initiated on 21-4-1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations. This order does not preclude proceeding with the investigation into the offence and taking action thereon." (emphasis laid by this Court) The judgment of this Court in the case of Dr. Yashwant Trimbak (supra) also does not apply to the facts of the case on hand. This Court had held in that case that the order of sanction to initiate disciplinary proceedings granted by the Governor cannot be scrutinized by this Court in exercise of its power of judicial review, as the said action comes within the protection of Article 166(2) of the Constitution of India. This principle of law is not applicable to the present fact situation for the reason that the order of sanction granted by the President of India is not in exercise of his executive power under Article 77(2) of the Constitution which speaks of orders and other instruments made and executed in the name of President of India. The Rules specified under Article 77(3) of the Constitution are rules framed by the President of India for transaction of business of the Government of India. The said constitutional immunity conferred either upon the Governor or President is

confined only to the executive action of the appropriate Government. The order of sanction to be granted by the President of India as provided under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 is for initiation of the disciplinary proceedings against the appellant, which cannot be treated as an executive action of the Government of India. Rather, it is a statutory exercise of power by the President, under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972. The said Rules are framed by the President of India in exercise of legislative power conferred under Article 309 of the Constitution of India. Article 309 of the Constitution provides for framing Rules and Regulations for the regulation of recruitment and conditions of service of persons serving under the Union or a State government, and reads as under :

"309.Recruitment and conditions of service of persons serving the Union or a State-Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provisions in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act." Discussing the scope and powers of the President and Governor under Article 309, a Constitution Bench of this Court in the case of B.S Yadav v. State of Haryana[8], held as under:

".....It is in this context that the proviso to Article 309 assumes relevance and importance. The State legislature has the power to pass laws regulating the recruitment and conditions of service of judicial officers of the State. But it was necessary to make a suitable pro vision enabling the exercise of that power until the passing of the law by the legislature on that subject. The Constitution furnishes by its provisions ample evidence that it abhors a vacuum. It has therefore made provisions to deal with situations which arise on account of the ultimate repository of a power not exercising that power. The proviso to Article 309 provides, in so far as material, that until the State legislature passes a law on the particular subject, it shall be competent to the Governor of the State to make rules regulating the recruitment and the conditions of service of the judicial officers of the State. The Governor thus steps in when the legislature does not act. The power, exercised by the Governor under the proviso is thus a power which the legislature is competent to exercise but has in fact not yet exercised. It par takes of the characteristics of the legislative, not executive, power. It is legislative power.

That the Governor possesses legislative power under our Constitution is incontrovertible and, therefore, there is nothing unique about the Governor's power under the proviso to Article 309 being in the nature of a legislative power. By Article 158, the Governor of a State is a part of the legislature of the State. And the most obvious exercise of legislative power by the Governor is the power given to him by Article 213 to promulgate Ordinances when the legislature is not in session. Under that Article, he exercises a power of the same kind which the legislature normally exercises, the power to make laws. The heading of Chapter IV of Part VI of the Constitution, in which Article 213 occurs, is significant: 'Legislative Power of the Governor". The power of the Governor under the proviso to Article 309 to make appropriate rules is of the same kind. It is legislative power. Under Article 213, he substitutes for the legislature because the legislature is in recess. Under the proviso to Article 309, he substitutes for the legislature because the legislature has not yet exercised its power to pass an appropriate law on the subject." (emphasis laid by this Court) The distinction between the powers under Articles 77(3), 166(3) and 309, regarding the framing of Rules and Regulations was discussed by a Constitution Bench of this Court in the case of Sampat Prakash v. State of Jammu and Kashmir[9], as under:-

".....As an example, under Article 77(3), the President, and, under Article 166(3) the Governor of a State are empowered to make rules for the more convenient transaction of the business of the Government of India or the Government of the State, as the case may be, and for the allocation among Ministers of the said business. If, for the interpretation of these provisions, Section 21 of the General Clauses Act is not applied, the result would be that the rules once made by the President or a Governor would become inflexible and the allocation of the business among the Ministers would forever remain as laid down in the first rules. Clearly, the power of amending these rules from time to time to suit changing situations must be held to exist and that power can only be found in these articles by applying Section 21 of the General Clauses Act. There are other similar rule-making powers, such as the power of making service rules under Article 309 of the Constitution. That power must also be exercisable from time to time and must include within it the power to add to, amend, vary or rescind any of those rules....." (emphasis laid by this Court) It becomes clear from a perusal of the constitutional provisions and the decisions by constitution benches of this Court referred to supra that the powers under Articles 77(3), 166(3) and 309 operate in completely different fields. It would thus, be clear that the Rules framed in exercise of power under Articles 77(3) and 166(3) cannot be compared while exercising power under Article 309 of the Constitution and framing rules and regulations for recruitment and conditions of service of persons appointed to such posts either in connection with the affairs of the Union government or a state government. It is for this reason that the statutory exercise of power by the President of India under Rules 9(2)(b)(i) and (ii) of the CCS (Pension) Rules, 1972 cannot be equated with power exercised under Article 77(2) of the Constitution of India. The High Courts and this Court can exercise power of judicial review under Articles 226

and 32, respectively, of the Constitution of India in cases of statutory exercise of power by the President or Governor. In the case of Dr. Yashwant Trimbak (supra), this Court held that the power of judicial review is not available in case of executive exercise of power by the President or the Governor. The said observation made by this Court in the said case is not tenable in law in view of the decision of this Court in the landmark judgment of His Holiness Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala and Anr.[10] wherein this Court has clearly held that the power of judicial review is part of the basic structure of the Constitution of India. The relevant portion of the judgment is extracted hereunder:

"577 .....The observations of Patanjali Sastri, C.J., in State of Madras v. V.G. Row which have become locus classicus need alone be repeated in this connection. Judicial review is undertaken by the courts "not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid down upon them by the Constitution". The respondents have also contended that to let the court have judicial review over constitutional amendments would mean involving the court in political questions. To this the answer may be given in the words of Lord Porter in Commonwealth of Australia v. Bank of New South Wales:

"The problem to be solved will often be not so much legal as political, social or economic, yet it must be solved by a Court of law. For where the dispute is, as here, not only between Commonwealth and citizen but between Commonwealth and intervening States on the one hand and citizens and States on the other, it is only the Court that can decide the issue, it is vain to invoke the voice of Parliament." There is ample evidence in the Constitution itself to indicate that it creates a system of checks and balances by reason of which powers are so distributed that none of the three organs it sets up can become so pre- dominant as to disable the others from exercising and discharging powers and functions entrusted to them. Though the Constitution does not lay down the principle of separation of powers in all its rigidity as is the case in the United States Constitution yet it envisages such a separation to a degree as was found in Ranasinghe case. The judicial review provided expressly in our Constitution by means of Articles 226 and 32 is one of the features upon which hinges the system of checks and balances..." The observation made by this Court in the case of Dr. Yashwant Trimbak (supra) to the extent that orders of sanction granted by the Governor are outside the scope of judicial review, is untenable in law. The same is contrary not only to the law laid down by this Court referred to supra, but also the provisions of Articles 77(2) & 166(2) of the Constitution of India. Therefore, the same has no application to the fact situation for the reason that the President has exercised his statutory power for grant of sanction under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 to initiate the disciplinary action but not the executive action against the appellant.

In the instant case, the action of the Disciplinary Authority is untenable in law for the reason that the interpretation of the CCS (Pension) Rules, 1972 which is sought to be made by the learned ASG

on behalf of the respondents amounts to deprivation of the Fundamental Rights guaranteed to the appellant under Part III of the Constitution of India. Therefore, we have to hold that the disciplinary proceedings initiated by the disciplinary authority after obtaining sanction from the President of India under Rule 9(2)(b)(i) of the CCS (Pension) Rules, 1972 are liable to be quashed.

For the aforesaid reasons, we answer the questions of law that arose for consideration of this Court in favour of the appellant. The Division Bench of the High Court erred in allowing the Writ Appeal Nos. 39 and 40 of 2011. Therefore, the impugned judgment is liable to be set aside and accordingly, set aside.

Though we have answered the questions of law framed in this case in favour of the appellant and set aside the impugned judgment by allowing these appeals, however, having regard to the seriousness of the allegations made against the appellant, in exercise of power of this Court under Article 142 of the Constitution of India, we direct the Disciplinary Authority to continue the disciplinary proceedings and conclude them within six months in accordance with the relevant provisions of law as well as the principles of natural justice. If the same are not completed within the said time period by the disciplinary authority, the said liberty granted by this Court in this order to the respondents will not ensue to their benefit. The Appeals are partly allowed only to the extent of answering the legal questions framed and the impugned judgment and order is set aside to that extent with the above liberty given to the respondents. All the pending applications are disposed of. No costs.

... ... J. [ANIL R. DAVE]
... ... J. [V. GOPALA GOWDA]
.....J. [C. NAGAPPAN] New Delhi, August 26, 2016 ITEM NO.1A-For JUDGMENT COURT NO.8 SECTION XIV S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS C.A. NO.8323/2016 @ Petition(s) for Special Leave to Appeal (C) No(s).

30907/2013

BRAJENDRA SINGH YAMBEM Petitioner(s)

VERSUS

UNION OF INDIA AND ANR Respondent(s)

WITH

C.A. No.8324/2016 @ SLP(C) NO.10092/2014

Date : 26/08/2016 These appeals were called on for pronouncement of JUDGMENT today.

For Petitioner(s) Ms. Momota Devi Oinam,AOR For Respondent(s) Mr. B. Krishna Prasad,AOR Ms. Sushma Suri,AOR Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench

comprising Hon'ble Mr. Justice Anil R. Dave, His Lordship and Hon'ble Mr. Justice C. Nagappan.

Leave granted.

The appeals are partly allowed in terms of the signed Reportable Judgment.

(VINOD KUMAR JHA) AR-CUM-PS	(MALA KUMARI SHARMA) COURT MASTER

(Signed Reportable judgment is placed on the file)

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[1] (1996) 9 SCC 395
[2] (1990) 4 SCC 314
[3] (1996) 2 SCC 305
[4] AIR 1993 SC 1585
[5] (1969) 1 SCC 502
[6] AIR 1965 SC 1103
[7] (1999) 3 SCC 422
[8] AIR 1981 SC 561
[9] AIR 1970 SC 1118
[10] (1973) 4 SCC 225