

**IN THE HIGH COURT OF SIKKIM  
GANGTOK**

*Writ Petition ( C ) No.5 of 2002.*

Shri N.B. Tiwari  
resident of Church Road, Gangtok,  
P.O. Gangtok, East Sikkim. ... Petitioner.

**-versus-**

1. The State of Sikkim  
through the Chief Secretary to the  
Government of Sikkim,  
Tashiling, Gangtok.
2. The Secretary,  
Department of Personnel Administrative  
Reforms and Training,  
Government of Sikkim, Tashiling, Gangtok.
3. The Secretary,  
Department of Power, Government  
of Sikkim, Gangtok. ... Respondents.

**Coram:**  
**The Hon'ble Shri Justice Ripusudan Dayal, Chief Justice.**

Present: Mr. A. Moulik, Advocate for the petitioner.

Mr. S.P. Wangdi, Advocate General with Mr. J.B. Pradhan, Govt. Advocate  
for the respondents.

*Date of decision: 10-7-2002.*

**JUDGMENT**

**Dayal, CJ**

The petitioner was posted as Superintending Engineer in the Power Department, Government of Sikkim at Gangtok when disciplinary proceedings were initiated against him vide Memorandum No.1950/(G)/DOP dated 3-11-1997. That

*M. S. Wangdi*

culminated in the impugned order No.792/(G)/DOP dated 10-9-2001 whereby the major penalty of compulsory retirement was imposed upon him under sub-rule (vii) of rule 3 of the Sikkim Government Servants' (Discipline and Appeal) Rules, 1985. By this writ petition, the petitioner has challenged this order dated 10-9-2001, the inquiry report of the Inquiry Officer dated 27-9-2001 and also remission order dated 2-2-2000. During the course of arguments, the learned counsel for the petitioner has submitted that the order of compulsory retirement is vitiated by illegality in as much as it does not specifically mention that the representation made by the petitioner on 13-2-2001 after the receipt of the report of the Inquiry Officer was considered by the disciplinary authority. His submission is that the requirement as to the giving of the copy of the Inquiry Officer before any order imposing any penalty is passed by the disciplinary authority is not an empty formality and since the order does not indicate that the representation was considered by the disciplinary authority, the impugned order dated 10-9-2001 suffers from illegality. The learned Advocate General has produced before me the relevant file which shows that there was a noting as of 23-3-2001 by the Deputy Secretary-Personnel showing that the representation was considered. Thereafter, there is the signature of Joint Secretary, Department of Personnel A. R. & Training, Government of Sikkim, Gangtok as of 26-3-2001. Thereafter, the signature appears of Secretary, Department of Personnel A.R. & Training, Government of Sikkim, Gangtok as of 27-3-2001. Thereafter, there is a noting of the Chief Secretary as of 25-6-2001. There is no specific mention in the noting of the Chief Secretary that the representation dated 13-2-2001 was considered by him and so it cannot be said with certainty that the representation was considered by him. It is considered on behalf of both the sides that the representation raised all the points which have been raised in the writ petition. Therefore, the possibility of the prejudice having been caused to the petitioner for non-consideration of the representation of the petitioner by the disciplinary authority cannot be ruled out. As



Corrected on 6.7.2002  
15/11/2001  
(JE-Registrar Case for Re-Admission)

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10.9.2001  
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such, I set aside the impugned order of penalty dated ~~3-9-2001~~ and direct that the disciplinary authority shall consider the representation dated 13-2-2001 and shall pass an appropriate order thereafter in the matter within one month from today. The petitioner shall be treated on suspension during the period from 10-9-2001 till the fresh order is passed by the disciplinary authority. The disciplinary authority shall observe the procedure for considering the representation as usually observed under the rules. The petition thus stands disposed of.

M. S. G. J. S.  
10.7.2002  
(R. Dayal)  
Chief Justice  
10-7-2002.