

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.7869/2011**

% **Date of Decision: 08.11.2011**

Karam Singh Petitioner

Through Mr.Vinay Kr.Garg, Mr.Fazal Ahmad &
Ms.Namrata Singh, Advocates.

Versus

Union of India & Ors. Respondents

Through Mr.Himanshu Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment?; | YES |
| 2. | To be referred to the Reporters or not?; and | YES |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, a Cook in the Central Reserve Police Force (CRPF), has challenged the order of punishment, of his dismissal from service on the charges that he had consumed liquor during active duty hours on 18th December, 2000, he disobeyed the lawful order of his Company Commander and also refused to work in the cook house, argued and abused the mess staff and used un-parliamentary language with the

Company Commander. It was also alleged that the petitioner further refused to obey the orders of the pack drill of Company Commander and behaved uncouthly with the DC (Ops/Adj) by exhibiting aggressiveness and using un-parliamentary language with him.

2. Relevant facts to comprehend the controversies between the parties are that the petitioner had joined the Central Reserve Police Force (CRPF) as a Cook on 9th April, 1988 and was initially posted to 88 Bn. CRPF at Group Centre Jhadoda, Kalan, New Delhi. The petitioner was later on attached to 72 Bn. CRPF which was posted at Manipur and thereafter at Kokrajhar in Assam. He was subsequently shifted to 127 Bn. and posted at Chandigarh and ultimately posted at Srinagar (J&K).

3. According to the petitioner, while he was posted at Srinagar, on 18th December, 2000, due to the extremely adverse weather conditions and the nature of his duties requiring the use of cold water in order to wash the dirty dishes, while on active duty the petitioner consumed liquor and allegedly at about 9:30 AM he disobeyed the lawful order of his Company Commander, refused to work in the cook house, and used un-parliamentary language with Company Commander and refused to obey the order of the pack drill and used un-parliamentary language with the DC (Ops/Adj) entailing issuance of charge sheet dated 6th January, 2001. The three charges framed against the petitioner are as under:-

“ARTICLE-I

That the said No.889880025 Cook Karam Singh of D/127, CRPF while functioning as Cook in D/127, CRPF committed an act of misconduct in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 read with rule 27 of CRPF Rules, 1955 in that on 18th.12.2000, he consumed liquor during active duty hours i.e.-930 hours in utter disregard to discipline of the Force. As such he committed an act of gross misconduct in his capacity as a member of the Force which is prejudicial to good order and discipline of the Force.

Sd/-(S.S.Gill) 6.1.2001
Commandant

ARTICLE-II

That the said No.889880025 Cook Karam Singh of D/127, CRPF while functioning as Cook in D/127, CRPF committed an act of misconduct/remissness/dereliction of duties in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 read with rule 27 of CRPF Rules, 1955 in that on 18th.12.2000, he disobeyed the lawful order of his Company Commander and refused to work in the cook house which is prejudicial to good order and discipline of the Force.

Sd/-(S.S.Gill) 6.1.2001
Commandant

ARTICLE-III

That the said No.889880025 Cook Karam Singh of D/127, CRPF while functioning as Cook in D/127, CRPF committed an act of misconduct/misbehaviour in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 read with rule 27 of CRPF Rules, 1955 in that on 18th.12.2000 he argued and abused mess staff, used un-parliamentary language with Company Commander, refused to obey the order of pack drill of Coy. Commander. He further behaved uncouthly with DC (Ops/Adjt), exhibited aggressiveness, abused and used extreme un-parliamentary language with DC/Adjt) which is unbecoming of a Govt. servant. As such he has committed an act of misconduct/remissness/dereliction in his

capacity as a member of the Force, which is prejudicial to good order and discipline of the Force.

Sd/-(S.S.Gill) 6.1.2001
Commandant”

4. Consequently, a departmental enquiry was conducted against the petitioner for the charges framed against him. The petitioner pleaded guilty of charge-I, however, he refused to plead guilty of charge-II & III. On the basis of the enquiry report and after considering the evidence and documents on record, the Disciplinary Authority by order No.P.VIII.1/2001-EC-II dated 17th March, 2001 passed by the Commandant-127 Bn. CRPF, Srinagar (J&K), dismissed the petitioner from the service w.e.f. 17th March, 2001.

5. Aggrieved by the order of his dismissal, the petitioner, cook, bearing No.889880025 preferred an appeal on 26th April, 2001 to the Deputy Inspector General of Police, CRPF. After considering the pleas raised by the petitioner, the Appellate Authority by its order dated 31st May, 2001 held that there were certain procedural flaws in conducting the enquiry which amounted to denial of reasonable opportunity to the petitioner to defend himself. The Appellate Authority also took into consideration the fact that some of the documents relied upon during the enquiry were not got examined/inspected by the petitioner, nor were the copies given to him. Consequently, without going into the

merits of the matter, the Appellate Authority set aside the dismissal order dated 17th March, 2001 and the petitioner was reinstated in service from the date of his dismissal i.e. 17th March, 2001 and the intervening period from the date of dismissal to joining the duty was ordered to be regularized as leave kind due. The Appellate Authority, however, by order dated 31st May, 2001 also directed the Commandant-127 Bn. CRPF to conduct De-novo enquiry under the authority of GOI Instruction No.6 below Rule 27 of the CCS(CCA) Rules, 1965.

6. Vide Memorandum No.P.VIII-8/2001-EC-II dated 26th July, 2001 a de-novo departmental enquiry was proposed and was conducted by the Enquiry Officer. In the De-novo enquiry, Ashok Sanyal, (DC Ops)/Adjt PW1; Puran Chand, OC D/127 PW2; Jeet Singh, (Mess SO), PW3; Hav. Ram Niwas CHM, PW4; Cook Pawan Kumar, PW5; W/C Kanta Ram, PW6 & Sh.Jagvir Singh SN 0127, PW7 were examined. Also in the De-novo enquiry, the original copy of the medical examination report of the petitioner and the report produced by the DC (Ops/Adjt) of the battalion about the acts done by the petitioner, were exhibited and considered. During the enquiry, the petitioner was asked whether he requires any help for preparation of his evidence, however, it was declined by the petitioner and he did not plead guilty to any of the charges.

7. Relying on the testimonies of the witnesses and the documents exhibited and proved and considering the defense of the petitioner that his Battalion had to perform duties in extremely adverse conditions and that the conditions were especially very cruel to the petitioner as he had to wash the dirty utensils with cold water and that since he was almost frozen on account of the shivering weather and the cold water, he had consumed a little rum which was issued to him to keep himself warm and working, the Enquiry Officer by his report dated 17th October, 2001 held that all the three charges were proved against the petitioner. The Disciplinary Authority, consequently, after giving the copy of the enquiry report to the petitioner and an opportunity to file a reply and after considering his reply, passed the order of dismissal dated 15th November, 2001 against the petitioner. The Disciplinary Authority held that the petitioner is not a fit person to be retained in the disciplined force, and directing that on his dismissal, the medal and decorations earned by the petitioner, if any, be also forfeited.

8. Aggrieved by the order of dismissal date 15th November, 2001 passed against the petitioner pursuant to the de-novo proceedings, he filed an appeal dated 17th December, 2001. According to the petitioner, his statutory appeal against the order of dismissal dated 15th November, 2001 was not decided and, therefore, he filed a writ petition on 16th September, 2002 being W.P.(C) No.5925/2002, titled as 'Karam Singh v. Union of India & Anr.' which was disposed of by order dated 8th

December, 2009 directing the respondents to supply a photocopy of the order dated 3rd July, 2002 to the petitioner, whereby his appeal was disposed of. It was also held that the order dated 3rd July, 2002 be treated as if it was communicated to the petitioner on 8th December, 2009. The High Court further held that the petitioner shall be entitled to seek his remedies as available to him under law and that he would be entitled to urge all the contentions raised in the writ petition against the order of the Disciplinary Authority. Consequent to the disposal of the writ petition being W.P.(C) No.5925/2002, titled as 'Karam Singh v. Union of India & Ors.', on 8th December, 2009, the petitioner filed a revision petition under Rule 29 of CRPF Rules, 1955 against the order dated 3rd July, 2002 dismissing his appeal by the Deputy Inspector General of Police, CRPF, Jalandhar. The revision petition filed by the petitioner was dismissed by the Revisional Authority by Reference No.O-R.XIII-01-1010-ADM.III dated 9th August, 2010. The petitioner has challenged the dismissal of his revision petition and his dismissal from service seeking quashing of order dated 3rd July, 2002 passed in appeal and the order dated 9th August, 2010 dismissing his revision petition inter-alia on the ground that the charges leveled as per article of charges-II & III are vague and general in nature and that the imputations in support of the article of charges are nothing but a mere reproduction thereof and it does not communicate with certainty the relevant facts or accusations against the petitioner which he was required to meet. The petitioner's plea is that the evidence produced

during the enquiry was beyond the charges and is of the time which was before the time alleged against the petitioner for his misconduct. Learned counsel for the petitioner has also contended that the charge against the petitioner that he did not permit others to work was not framed categorically though it was deposed by PW3. On behalf of the petitioner, it has also been contended that the petitioner was placed in an unequal position by being pitched against high ranking officers and that the petitioner being the lowest grade employee in the entire Battalion was educated only up to the middle level education and therefore, was not capable of understanding either the import or relevance of a question put to him during the inquiry proceedings and, thus, the mere recording of statements in the presence of the petitioner was not sufficient, since the petitioner could not cross-examine the witnesses, and it therefore amounted to denial of adequate opportunity to the petitioner to defend himself. According to the learned counsel for the petitioner, the petitioner did not know the consequences of not cross-examining the witnesses.

9. On behalf of the petitioner, it has also been contended that the perusal of the dismissal order passed before the de-novo and after the de-novo enquiry reveal that they are almost the same which is reflective of non-application of mind by the Disciplinary Authority. Learned counsel has also contended that the petitioner has an unblemished record since his employment as a cook in CRPF on 9th April, 1988 and

thus, the punishment of dismissal from service is disproportionate to the offence alleged against him. Learned counsel for the petitioner has also asserted that the Memorandum of article of charge against the petitioner was under Section 11(1) of the CRPF which pertains to imposition of minor penalty, and therefore, the major penalty of dismissal could not be awarded to the petitioner. Learned counsel for the petitioner has also challenged the order of the Revisional Authority on the ground that the order does not disclose any application of mind and is rather a reproduction of the para wise observations and comments submitted to him in the revision petition against the allegations made by the petitioner.

10. The learned counsel, Mr.Himanshu Bajaj, Advocate, who has appeared on advance notice on behalf of the respondents has relied on the reasons given by the Disciplinary Authority, the Appellate Authority and the Revisional Authority in their respective orders and has contended that the petitioner is a habitual drinker and is undisciplined. Referring to the order dated 9th August, 2010, it is contended that reliance was placed on the C/Card of the petitioner showing that he is a habitual drinker and is an indisciplined type of character. Learned counsel for the respondents has relied on the judgment of 'Ram Bihari Shukla v. Union of India & Ors.', W.P.(C) No.3920/1999 decided on 6th December, 2001.

11. This Court has heard the learned counsel for the parties and has also perused the writ petition along with some of the depositions of the witnesses filed along with it, the de-novo enquiry report and the order of the Disciplinary Authority dated 15th November, 2001, the Appellate Authority dated 3rd July, 2002 and Revisional Authority dated 9th August, 2010. From the record of the petitioner, it is apparent that his plea that he had an unblemished record is contrary to record. The petitioner was awarded confinement as punishment on various duties that were assigned to him, which are as under:-

- “i) 07 days confinement to lines w.e.f. 4.1.89 to 10.1.89 as he quarreled with fellow employee and injured him.
- ii) 07 days confinement to lines w.e.f. 28.12.91 to 3.1.92 for misconduct.
- iii) 07 days confinement to lines during 1995 for consumption of liquor on duty hours.
- iv) 28 days quarter Guard w.e.f. 23.6.1995 for consumption of liquor during duty hours.”

Reliance has also been placed by the Revisional Authority on the C/Card of the petitioner reflecting that he is a habitual drinker and is an indisciplined type of character. In the circumstances, it cannot be accepted that the petitioner had an unblemished record during his service.

12. The plea of the petitioner that since the weather was very cold and he had to wash dirty utensils with cold water and, therefore, he had consumed a little rum to keep himself warm, has been repelled by the concerned authorities on the basis of the evidence on record. Though this Court does not have to re-appreciate the evidence led before the enquiry officer, however, on perusal of the evidence quoted, it is apparent that PW2 OC-D/127 had gone to the Mess as food was not ready in time and found that the petitioner was missing. Though the other cooks Pawan Kumar and W/C Kanta Ram, PW5 & PW6 respectively were engaged in the work, Pw2 while searching for the petitioner had found him lying on his cot heavily drunk and he was not in a position to work. Though this had happened on 17th December, 2000, however, on the next date on 18th December, 2000 again the petitioner was found missing in the morning from the Mess and it had transpired, according to his testimony, that the petitioner had not come to work from the morning itself. From the statement of PW2, PW3 & PW5, it had transpired that the petitioner was seen coming towards the Mess with a tooth brush in his mouth at 8:00 AM. Subsequently at 9:30 AM, the petitioner came to the company mess and he was found to be not in his senses and he was badly wavering on account of excessive consumption of liquor. He could not work and he was falling here and there. The cook Pawan Kumar Jha, PW5, also deposed that the petitioner misbehaved with fellow employees PW5 & PW6 and abused them in filthy language. Thereafter, the SO was also informed about the

condition of the petitioner, as the presence of the petitioner in the kitchen in such an intoxicated state could cause an accident.

13. The enquiry report also inferred that it has been proved that the petitioner, when counseled by PW-2, abused him which were also heard by the other witnesses. It was also deposed that the petitioner had uttered that “you can do no harm to me, I have seen many like you, you do whatever you want”. The deposition regarding Puran Chand asking the petitioner to wear packs for correction of this mistake which was flatly refused by the petitioner and disobeyed the order had also been considered. It had also been deposed by the PW2 & PW3 that the petitioner was disrespectful to OC-D/127, PW2 and had retorted “who are you to order packs”. The testimony of PW4 was also referred who deposed that the petitioner had refused to obey the order to appear in the office of OC-D/127, PW2. The depositions of the witnesses, PW 1, 2, 3 & 4, against the petitioner were that he allegedly stated that “I am from a good family and I do not respect any post. It will be better that I go back home. I do not care for the ranks which DC (Ops/Adjt) was wearing’.

14. The learned counsel for the petitioner is unable to show any evidence or any such fact which will show that the finding of the Enquiry Officer and the order passed by the Disciplinary Authority are such that no one acting reasonably and with objectivity could have

arrived at such findings. The learned counsel for the petitioner has not been able to show that the Enquiry Officer has taken any irrelevant fact into consideration or that he has not considered any relevant fact or rejected any relevant testimony of any of the witnesses on the basis of surmises and conjectures.

15. The plea of the petitioner that he had consumed alcohol on account of adverse weather condition and as he had to wash the dirty utensils with cold water, has been rejected on the ground that not only the petitioner but the other cooks and persons as well were exposed to the same weather conditions and they too had to perform their duties at odd hours and in adverse weather conditions. The ground that had been raised in this regard is that the consumption of excessive liquor during duty hours was early in the morning on account of nature of work at such hours. However, the finding of excessive consumption of alcohol is based on the legal report of the petitioner and the statement of the witnesses. The reasons given by the Revisional Authority cannot be faulted on any of the grounds raised by the petitioner in his defense.

16. From the utterances made by the petitioner against the fellow officers and his superiors, as has been deposed by the various witnesses, if the inferences has been made that the petitioner is an indisciplined person and he had disobeyed the order and refused to

work, such finding of the concerned authorities cannot be faulted. The defense of the petitioner had been repelled on the ground that he was not the only person who had been working in adverse weather conditions.

17. The plea of the learned counsel for the petitioner that the statement of imputations of misconduct or misbehavior is the reproduction of the charges and do not communicate the relevant facts also cannot be accepted in the present facts and circumstances. The petitioner had pleaded guilty to article-I. Regarding article II, it has been categorically stated that on 18th December, 2000, the petitioner disobeyed the lawful order of his Company Commander and refused to work in the cook house. The imputations regarding the same were made against the petitioner in certain and specific terms. The statement of imputation does not have to incorporate the entire evidence which was to be adduced during the enquiry against the charged officer. In fact, the entire evidence cannot be incorporated in Imputation of Charges, as the statements of the witnesses are to be recorded after the imputation of misconduct is communicated to a charged officer. Similarly, pertaining to article-III, the statement of imputation reveals that on 18th December, 2000 the petitioner had argued and abused the Mess staff and had used un-parliamentary language with the Company Commander and had also refused to obey the order of pack drill of

Company Commander. The statement of imputation further reveals that the petitioner behaved uncouthly with DC (Ops/Adj) and exhibited aggressiveness, abused and used un-parliamentary language, which is sufficient in the facts and circumstances. If the facts disclosed in the imputation of misconduct have been reproduced in the article of charge as well, that will also not mean that the imputation of misconduct does not reveal the relevant and necessary facts. The reproduction of the imputation of misconduct in the articles of the charge will also not effect the statement of articles of charge in a manner as has been argued by the learned counsel for the petitioner. The learned counsel for the petitioner has not shown any precedent or any rule or regulation laying down the principle that the statement of imputation cannot be incorporated verbatim in the article of charge. Consequently, on the basis of this plea of the petitioner, the orders of the Revisional Authority and the Appellate Authority cannot be vitiated.

18. The plea of the learned counsel for the petitioner that the evidence has been led beyond the charges framed against the petitioner as the charge that he did not permit others to work was not framed specifically, cannot be accepted in the facts and circumstances. The imputation of the misconduct and the article of charge specifically stipulated that the petitioner argued and abused the Mess staff. If the petitioner argued and abused the Mess staff, it undoubtedly interfered

with the working of the Mess staff and in the circumstances, this plea that the evidence has been led beyond the statement of imputation of misconduct and the article of charges framed against the petitioner cannot be accepted. Similarly, the plea of the learned counsel for the petitioner that the evidence of the witnesses who appeared during the enquiry is of the time before the time indicated in the charge and thus, the evidence is to be rejected cannot be accepted. Therefore, considering the nature of controversies, articles of charge framed against the petitioner and the statement of imputation, it cannot be held in the facts and circumstances that the evidence of the witnesses is beyond the scope of charge framed against the petitioner.

19. The plea canvassed on behalf of the petitioner that para 5 & 6 of the punishment order dated 15th November, 2001 and earlier order of punishment which was set aside by the Appellate Authority dated 3rd July, 2002 are similar, is also of no consequence in the facts and circumstances. Similarity in two orders does not show non-application of mind. Para 5 & 6 of the order dated 15th November, 2001 stipulates that the Disciplinary Authority after perusing the report of the Enquiry Officer agreed with the report of the Enquiry Officer and came to the decision that the charges leveled against the petitioner had been proved and held that the petitioner had committed an offence under Section 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955 and therefore, imposed the punishment of dismissal from service. In the

order dated 3rd July, 2002 the Disciplinary Authority again agreed with the enquiry report and again passed the punishment order dated 15th November, 2001. The Disciplinary Authority had gone through the de-novo enquiry proceedings and had applied his mind and thereafter held that Articles-I, II & III had been proved beyond any shadow of doubt against the petitioner and imposed the punishment of dismissal from service. Because similar language has been used in the two paragraphs of the two orders, does not reflect any non-application of mind as has been canvassed by the learned counsel for the petitioner.

20. The Revisional Authority while dismissing the revision petition by order dated 9th August, 2010 has referred to the facts extensively which emerged during the enquiry and has para wise dealt with the pleas and contentions raised by the petitioner in his revision petition. While dealing with the pleas and contentions in the revision petition parawise, the reasons for disagreeing with the pleas and contentions of the petitioner have been elaborated in the circumstances. The allegations of the petitioner that the Revisional Authority has not given any reason and that the order has been passed mechanically cannot be accepted and the said allegation is contrary to the record. The order dated 9th August, 2010 of the Revisional Authority sustaining the order of dismissal of the petitioner in the facts and circumstances cannot be set aside on this ground also.

21. The next plea raised on behalf of the petitioner by learned counsel is that Section 11 of CRPF Act deals with minor punishment and, therefore, the punishment of dismissal could not be awarded to the petitioner, as he was charged only with Section 11. This plea is also not tenable since on perusing Section 11 of the said Act it is apparent that it empowers the concerned authorities to award punishment of suspension or dismissal to the members of the force who are found guilty and in addition to or in lieu thereof punishment as stipulated under Clause (a) to (e) can also be imposed. In the circumstances, heading of Section 11 stating 'minor punishment' is only a misnomer and does not restrict the language of Section 11 of the said Act nor can it be contended that under the Section 11 only minor punishment as stipulated under Section (a) to (e) can be awarded. In Ram Bihari Shukla (supra) the Court after considering Sections 9 to 11 of the CRPF Act had held that a delinquent can be punished with dismissal even if he has not been prosecuted for offence under Section 9 & 10 of the Act. The reliance was placed on D.D.Yadav v. D.I.G, CRPF, 1974 LAB (IC) 929 and a decision of the Allahabad High Court in Shyam Singh v. Inspector General of Police and CRPF, Ajmer and Ors. The Court in para 5 of the said judgment had held as under:

“5. In the light of the aforesaid submissions, I have considered the records as also the provisions of the Central Reserve Police Force, which were relied upon and referred to before me. Chapter 5 of the Central Reserve Police Force Act

deals with the offences and punishments. Section 9 gives the description and nature of the more heinous offences as stated in the head note of the said Section itself and also describes the punishments which could be awarded for commission of such offences. Section 10 on the other hand deals with less heinous offences and also enumerates the nature of punishment to be imposed in such cases. Section 11 of the Central Reserve Police Force Act provides that:-

"11. Minor Punishments. -(1) The commandant or any other authority or officer as may be prescribed, may, subject to any rules made in this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the force whom he considers to be guilty of disobedience, neglect of duty, of remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,-

- (a) reduction in rank;
- (b) fine of any amount not exceeding one month's pay and allowance;
- (c) confinement to quarters, lines or camp for a term not exceeding one month;
- (d) confinement in the quarter guard for not more than twenty-eight days, with or without punishment drill or extra-guard, fatigue or other duty, and
- (e) removal from any office of distinction on special emolument in the force."

The aforesaid provision makes it clear that punishment could be imposed on a delinquent person if he is guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as member of the Force. If a person is guilty in any manner as stated above, he could be awarded suspension or dismissal from service. The words 'in lieu of, or in addition to, suspension or dismissal' appearing in Sub-section (1) of

Section 11 before Clauses (a) to (e) show that the authorities mentioned therein are empowered to award punishment of suspension or dismissal to the member of the Force, who is found guilty and in addition to or in lieu thereof, could impose punishment as mentioned in Clauses(a) to (e). The heading 'Minor Punishment' in Section 11 is a misnomer. It is established rule of interpretation that although such heading may be looked into for interpreting a section, the words of which admit of any reasonable doubt, it cannot be taken to restrict the plain terms of the Section. A proper reading of the aforesaid Sections 9,10 and 11 would clearly show that a delinquent person can be punished with dismissal even if he has not been prosecuted for an offence under Section 9 or 10 of the Act. While coming to the aforesaid conclusions, I am fortified by the decisions of the Jammu & Kashmir High Court in [D.D. Yada v. D.I.G., C.R.P.F.](#) ; reported in 1974 LAB (IC) 929, Shyamsing v. Deputy Inspector General of Police, Central Reserve Police, Ajmer and Ors. ; and the decision of the Allahabad High Court in Special Appeal No. 201/1993 ([Deputy Inspector General of Police, Central Reserve Police Force \(Rampur, U.P.\) and Anr. v. Munna Singh Yadav](#) ; disposed of on October 6, 2001. The first contention of the counsel for the petitioner is, therefore, found to be without any merit.

In the circumstances, this plea of the petitioner that he could not be dismissed and could be awarded only minor punishment as enumerated in para (a) to (e) of Section 11 cannot be accepted and is rejected.

22. The next plea of the petitioner is that the punishment of dismissal is disproportionate to the charges made against him. The High Court in exercise of its power under Article 226 of the Constitution of India does not exercise the power as an Appellate Authority. The power to impose punishment is vested with the Disciplinary Authority. Unless punishment imposed is so disproportionate that no reasonable person could have imposed such a punishment, this Court is not to interfere with the punishment imposed on a member of the disciplined force who has shown extreme indiscipline and who is habitual in his indiscipline. If the Disciplinary Authority on the basis of the evidence has come to the conclusion that the delinquent person is required to be punished with an order of dismissal, this Court is not to revise the said order in the present facts and circumstances. Considering the facts and circumstances and C/Card of the petitioner which has been referred to by the Revisional Authority reflecting that the petitioner is a habitual drinker and an indisciplined type of character, the order of the Revisional Authority, Appellate Authority and the Disciplinary Authority cannot be faulted. In the circumstances, it cannot be held that the orders challenged by the petitioner in the present writ petition suffer from such perversity, or illegalities that are required to be corrected by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

23. On behalf of the petitioner, it has also been canvassed that considering the status of the petitioner as he is only 8th Class pass and that he was pitted against higher standing officers, therefore, he did not understand the significance of cross-examination and thus, the petitioner not cross-examining the witness, is denial of reasonable opportunity to him and in violation of principle of natural justice. Against the petitioner, the enquiry conducted against him culminated into an enquiry Report dated 13th February, 2001. During the said enquiry also, the petitioner was given an option and an opportunity to cross-examine the witnesses. The witnesses were examined in his presence, however, he opted neither to seek the help of anyone nor to cross-examine the witnesses who were examined. At that time six witnesses were examined and on the basis of the report of the medical examination conducted by the medical officer 127 Bn. of CRPF, the incident report by the DC and the preliminary inquiry report as well as the testimonies of six witnesses, it was held that the articles of charges against the petitioner were made out. The order of punishment dated 17th March, 2001 was passed by the Disciplinary Authority against which an appeal dated 26th April, 2001 was filed by the petitioner. On perusal of the appeal dated 26th April, 2001 filed against the order dated 17th March, 2001, it is apparent that it was drafted not by the petitioner but someone else as the petitioner is alleged to be educated only up to the middle school. The appeal of the petitioner against the order dated 17th March, 2001 was allowed by order dated 31st May,

2001 setting aside the Disciplinary Authority order dated 17th March, 2001 and directing de-novo enquiry. Before the De-novo enquiry was initiated, the petitioner had accessed the person who had drafted his appeal dated 26th April, 2001 and in the circumstances, it is difficult to infer that the petitioner did not have the knowledge about the relevance of cross-examination of the witnesses during the de-novo enquiry recorded in his presence. In the De-novo enquiry, the enquiry officer specifically put to the petitioner whether he is in need of any help for the preparation of his evidence for his defense, however, the petitioner had replied that no help is required. During the recording of the statements of the witnesses, the petitioner was given a chance to cross-examine the same, however he did not avail the opportunity. In the Enquiry Report dated 17th October, 2001, the Enquiry Officer had observed as under:-

“.....On completion of prosecution evidence the charged officer as a matter of examination was again asked that since proceedings on behalf of prosecution has been completed whether he had admits himself to be guilty in this behalf which was refused by the charged member and did not plead guilty. Thereafter, I in the capacity of inquiry officer asked him as to whether he is in need of any help for preparation of his evidence and defense. The charged member replied that no help is required. Thereafter the charged member was informed vide written letter No.D-IX-1/2001-EO(DE) dated 22.9.2001 that the proceedings on behalf of the prosecution in the departmental enquiry going on against him and he has complete opportunity of producing statement, witness and evidence in his defense. In this he was allowed 15 days time to prepare for his defense and after expiry of the time period the proceedings for defense commenced wherein following documents

received from the charged member were examined and taken on record of the proceedings;

1. Application produced by No.889880025 Cook Karam Singh (Charged Member) in his defence. (D-I hereinafter).
2. The inquiries made by the inquiry officer with an intention to give him complete opportunity of defence.”

24. The petitioner had instead filed an application in his defense. In the circumstances, the plea of the petitioner that in the de-novo enquiry he had not been aware of the relevance of the cross-examination of the witnesses and he was not allowed to cross-examine the witnesses cannot be accepted nor can it be held that the respondents acted in violation of the principles of natural justice. The petitioner was given an option to have assistance in the preparation and evidence for his defense which was specifically declined by him. Therefore, subsequently the petitioner cannot be allowed to contend that he was not given a reasonable opportunity.

25. In the totality of the facts and circumstances, this Court does not find any illegality, irregularity or such perversity in the order of the Disciplinary Authority dated 15th November, 2001 (not challenged by the petitioner in the writ petition), order dated 3rd July, 2002 passed by the Appellate Authority dismissing his appeal and the order dated 9th August, 2010 dismissing the revision petition so as to be interfered with

by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. No other plea or ground has been raised on behalf of the petitioner. In the circumstances, the writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

NOVEMBER 08, 2010
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SUDERSHAN KUMAR MISRA, J.