

GAHC010004972013



Judgment reserved on : 22nd August, 2023
Judgment delivered on : 24.11.2023

In the Gauhati High Court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P.(C) NO. 1256 OF 2013

Sri Rajpal Singh
S/O Sri Vijai Kripal Singh
Vill-Pindarthu
P.S-Pindarthu
District-Kanpur, Dehat, U.P.

.....Petitioner

-Versus-

1. Union of India, represented by the Director General, Central Reserve Police Force (C.R.P.F) Lodhi Complex, New Delhi.
2. Inspector General, Central Sector, Central Reserve Police Force (C.R.P.F).
3. Deputy Inspector General, Central Reserve Police Force (C.R.P.F).

4. Commandant, 8th Battalion, Central Reserve Police Force (C.R.P.F) Bhadarwah, District-Doda, Jammu and Kashmir.

5. Departmental Enquiry Officer, 8th Battalion, Central Reserve Police Force (C.R.P.F), Bhadarwah, District-Doda, Jammu and Kashmir.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the petitioner : Mr. M. Dutta, learned counsel.

Advocate for the respondents : Mr. B. Chakravarty, learned CGC.

JUDGMENT AND ORDER

(Soumitra Saikia, J)

Heard Mr. M. Dutta, learned counsel appearing for the petitioner.

Also heard Mr. B. Chakravarty, learned CGC appearing for the respondents.

2. The petitioner is before the court challenging the disciplinary enquiry conducted against the petitioner, the dismissal order dated 19.11.1999, issued by the Commandant dismissing the petitioner from service as a constable of Central Reserve Police Force (C.R.P.F), the order dated 20.10.2000 passed by the Appellate Authority dismissing the appeal

preferred by the petitioner as well as the order dated 14.03.2001 passed by the authority dismissing the revision before the competent authority preferred by the petitioner.

3. The petitioner was appointed as a Constable General Duty C.T.(G.D) in the year 1991 in the Coy 8th Bn, C.R.P.F. 8th Battalion, Central Reserve Police Force(C.R.P.F). The petitioner was allotted constable No. 913123775. At the relevant point in time the petitioner was posted in Morigaon as Constable General Duty C.T.(G.D) Coy 8th Bn, C.R.P.F. 8th Battalion, Central Reserve Police Force(C.R.P.F). An incident was alleged to have occurred on 04.08.1998 when the petitioner and 3 (three) others allegedly misbehaved with the O/C, 'B' Coy, 8thBattalion C.R.P.F, who was the Assistant Commandant. It is alleged that the petitioner and 3 (three) others misbehaved with the Assistant Commandant in a state of intoxication and used abusive language against him as well as other personnel of the Coy. It was construed to be an act of misconduct and misbehaviour in their capacity as members of the force.

4. Accordingly, the Commandant of 8thBattalion, C.R.P.F issued a memorandum dated 19.02.1999 proposing to hold a joint enquiry against the petitioner and the 3 (three) other personals.

5. By office Order dated 31.07.1999, the Enquiry Officer was appointed to conduct the enquiry. The following four charges were made against the petitioner and the other 3 (three) constables in the said memorandum dated 19.02.1999:-

ARTICLE-I

That the said following four personnel while functioning as Ct (GD) in 'B' Coy, 8th Bn CRPF, Morigaon (Assam) on 04.08.98 committed an act of misconduct and misbehaviour in their capacity as a members of the force, under section 11 (1) of CRPF Act, 1949 in that they consume liquor and then misbehaved with OC Coy and used abusive language against OC Coy and other Coy personnel in the state of intoxication :-

1. 931183072 Ct Yogendra Singh
2. 912112377 Ct Raj Pal
3. 931184033 Ct Love Kumar
4. 941183641 Ct Mukesh Kumar

ARTICLE - II

That the said following four personnel while functioning as Ct (GD) in 'B' Coy, 8th CRPF on 04.08.98 committed an act of serious misconduct and misbehaviour in their capacity as a members of the force, under

section 11 (1) of CRPF Act, 1949 in that they entered into the residence of Shri Rakesh Rao, AC the OC B Cc 8th Bn CRPF, Morigaon, (Assam) and torn his personnel belongings, broken windows and other property and then tried to manhandle him :-

- 1. 931183072 Ct. Yogendra Singh*
- 2. 912112377 Ct. Raj Pal*
- 3. 931184033 Ct. Love Kumar*
- 4. 941183641 Ct. Mukesh Kumar*

ARTICLE-III

That the said following four personnel while functioning as Ct (GD) in 'B' Coy, 8th Bn CRPF, on 04.08.98 committed an act of serious misconduct and misbehaviour in their capacity as a members of the force, under section 11 (1) of CRPF Act, 1949 in that they picked up quarrel with civil police personnel and tried to damage GYPSY of civil police and also misbehaved with the driver of civil police :-

- 1. 931183072 Ct. Yogendra Singh*
- 2. 912112377 Ct. Raj Pal*
- 3. 931184033 Ct. Love Kumar*

4. 941183641 Ct. Mukesh Kumar

ARTICLE-IV

That the said following four personnel while functioning as Ct (GD) in 'B' Coy, 8th Bn CRPF, Morigaon (Assam) on 04.08.98 committed an act of disobedience of lawful orders and neglect of duty in the capacity as a member of the force, under section 11 (1) of CRPF Act, 1949 in that they disobeyed the lawful order of the Coy. CHM and did not attend check Roll-Cell conducted by Shri K.S. Cheems, 2-I/C on the night of 04.08.98 :-

1. 931183072 Ct. Yogendra Singh
2. 912112377 Ct. Raj Pal
3. 931184033 Ct. Love Kumar
4. 941183641 Ct. Mukesh Kumar"

6. The Enquiry Officer after conclusion of the enquiry arrived at a finding that the charges made against the petitioner and the other 3(three) constables have been held to be proved. On the basis of the enquiry report, the disciplinary authority imposed the punishment of dismissal from service on the petitioner.

7. The appeal and the revision preferred by the petitioner was also

dismissed by upholding the enquiry conducted as well as the order passed by the disciplinary authority.

8. The learned counsel for the petitioner submits that the entire enquiry was conducted ex-parte and although he had initially participated in the enquiry proceedings, however, because of threat and because of oral threats of dark and dire consequences by the Enquiry Officer and other persons having vested interests, the petitioner was deprived of the minimum facilities of bare food and lodging and also, he was seriously ill requiring constant medical treatment, the petitioner had to leave the camp and could not participate in the enquiry proceedings. It is submitted by the learned counsel for the petitioner that the petitioner was never declared a 'deserter' as is required under the provisions of law. The learned counsel for the petitioner submits that since the entire proceeding was conducted ex-parte and that apart, copies of the enquiry report were never furnished to the petitioner, the enquiry conducted is totally violating of the provisions of law as well as the principles of natural justice. Consequently, the enquiry could not be accepted to be an enquiry conducted in law and thereby the impugned order dated 19.11.1999 imposing the punishment of dismissal on the petitioner is equally bad in law and should therefore be set aside and quashed. It is submitted that

as a consequence thereof, the orders dated 20.10.2000 and 14.03.2001 passed by the appellate and the revisional authority respectively are also required to be declared as *non est* in law.

9. The learned counsel for the petitioner submits that besides the charges levelled against the petitioner, on facts are totally incorrect, the manner and the procedure adopted for conducting the enquiry, holding the charges to be proved as well as the consequential orders passed by the disciplinary authority imposing the punishment of dismissal is contrary to the provisions of law and opposed to the principles of fair play and natural justice and therefore, the same should be interfered with, set aside and quashed and the petitioner be directed to be re-instated in service with full back wages and all service benefits payable to the petitioner.

10. It is further submitted by the learned counsel for the petitioner that relating to the same episode an FIR was lodged pursuant to which charge-sheet was filed against the petitioner and the other 3 (three) constables. The competent Court framed charges and proceeded with the trial. Thereafter, by Judgment dated 30.06.2000 passed in case number GR Case No.515/98 under Sections 448/353/427/506/34 of IPC, the Court

of Additional Chief Judicial Magistrate, Morigaon, Assam upon consideration of the evidence adduced by the prosecution held that the prosecution failed to prove the case against the accused persons beyond all reasonable doubt and therefore, the accused persons are acquitted and set at liberty. It is submitted that the competent Court of criminal jurisdiction on the same charges levelled against the petitioner had acquitted the petitioner of all the charges. Therefore, there is no occasion for the respondent department to proceed against the petitioner in a departmental enquiry on the same charges.

11. The learned counsel for the petitioner submits that no medical report was placed or relied upon during the enquiry proceedings to sustain the allegation that petitioner was under the influence of liquor and had accordingly committed the nuisance as alleged.

12. The learned counsel for the petitioner submits that no enquiry report was ever furnished to the petitioner prior to imposition of the penalty of dismissal by the disciplinary authority. The learned counsel for the petitioner further submits that prior to the conduct of the enquiry it is mandatory for the Enquiry Officer to comply with the provisions of Rule 27 (C) (2). It is submitted that as per the said provision under the Rules,

the accused was required to be asked to enter the plea of 'guilty' or 'not guilty'. Such procedure, as prescribed under the Rules, was never adhered to by the respondent authority. The petitioner was never given any opportunity to cross examine the prosecution witnesses.

13. In support of his contentions, the learned counsel for the petitioner relies upon the following judgments:-

“1. 2014 (1) GLR 141 Sundeshwar Choudhury V Union of India.

2. 2011 Supreme (Gau) 386 Police Force (CRPF) V Nirmal Bhattacharya.

3. 2015 (4) GLT 1034 Hriday Das Vs Union of India.

4. 1999 (1) GLT 76 Jogeswar Rahang Vs Union of India.

5. 1983 (2) SCC 442 Bhagatram Vs State of H.P.

6. 2016 (11) SCC 147 Director (Marketing) Indian Oil Corporation Ltd Vs Santosh Kumar.

7. 2019 (3) GLT 609 Santosh Kumar Singh Vs Union of India

8. 2018 (0) Supreme (SC) 681 Union of India Vs Ram Laxhan Sharma.

14. The learned Counsel for the respondents disputes the contentions made by the petitioner. It is submitted that the petitioner participated in

the enquiry proceedings, he was given all opportunities to cross examine the witnesses. However, he declined to take those opportunities. Regarding the compliance of Rule 27 (C) (2), it is submitted that the records reveal that such a query was specifically put to the petitioner and it is only after entering his plea of 'not guilty', that the respondent authorities have proceeded to conduct the enquiry.

15. The learned counsel appearing for the respondent submits that violation of natural justice has to be pleaded on specific facts and the prejudiced caused. It is submitted that the records reveal that no violation of natural justice and/or prejudice was caused to the petitioner during the enquiry conducted. It is further submitted that specific queries were put to him to cross examine the prosecution witnesses and to which he denied.

16. Referring to the additional affidavit filed enclosing translated copies of the proceedings conducted during the enquiry, learned counsel for the respondent submits that it is not disputed by the petitioner that he had initially participated in the proceedings. This was pursuant to notices issued to the petitioner and sent at the address available in the records of the respondent authority. The learned Counsel for the respondent

referring to the pleadings submits that photocopies of the postal receipts and AD cards revealed that the documents were sent to the correct address and was received at the said address. Therefore, where the documents have been sent at the correct address, there is no occasion for the petitioner to claim that he did not receive the enquiry report or the dismissal order, when earlier notices sent at the same address were received by the petitioner and acknowledged.

17. In support of his contentions, the learned counsel for the Respondent relies on the following judgments:-

- “1. 2014 (1) GLR 688 Sekh Abdul Hamid Vs State of Assam and Ors.*
- 2. 2005 (1) GLT 342 Banbehari Das Vs State of Tripura (DB)*
- 3. 2013 (2) GLT 359 Abbas Ali Vs State Bank of India and Ors.*
- 4. 2021 (3) GLT 261 (DB) Promod Malia Vs Union of India and Ors.*
- 5. 2008 (3) GLT 812 (DB) Union of India Vs Mohan Lal Das.*
- 6. 2004 (2) GLT 309 (DB) Union of India Vs Sukraj Debbarma.*
- 7. 1999 (2) GLJ 525 (DB) Jitendra Chandra Nath Vs Union of India and Ors.*
- 8. 2018 (1) SCC 231 Uttarakhand Transport Corporation Vs Sukhveer Singh”.*

18. The submissions of the learned counsels for the parties have been duly considered. The pleadings available on record have also been carefully produced. A reference to the relevant provisions of the C.R.P.F. Act and the Rules framed there under will be necessary. The C.R.P.F. was constituted under the C.R.P.F. Act, 1949 by the Central Government. It is an armed force maintained by the Central Government.

19. Under Section 7 of the C.R.P.F. Act, 1949, the general duties of the members of the force is to promptly obey and execute all orders and warrants lawfully issued to him by any competent authority, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend and for which sufficient grounds exist.

20. Under Section 8 of the C.R.P.F. Act, 1949, the Superintendents, Control and Administration of the Force vests, in the Central Government; and the force shall be administered by the Central Government in accordance with the provisions of the Act and of any rules made there under, through such officers as the Central Government may from time to time appoint in that behalf.

21. Under Section 9 defines- 'More heinous offenses', which includes-

(b) uses, or attempts to use, criminal force to, or commits an

assault on, his superior officer, whether on or off duty, knowing or having or having reason to believe him to be such; or

(j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessities to campo or quarters, or forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind.

22. Under Section 9 is for commission of the heinous offenses, every member of the force shall be punishable with imprisonment for a term which may extend to 14 years, or with imprisonment for a term which may extend to 14 years, or with fine which may extend to three months pay or with fine to the extent, in addition to such sentences of transportation and imprisonment.

23. Under Section 12, every person sentenced under this Act to imprisonment may be dismissed from the force and shall further be liable to forfeiture of pay, allowances and any other moneys due to him, as well as of medals, decorations received by him.

24. The procedure for imposition of punishment is prescribed under Rule 27 of the C.R.P.F Rules, 1955, the procedure has been elaborately prescribed under Rule 27 (C) (6).

25. Under Rule 27 (CCC) of the C.R.P.F Rules 1955, it is provided that where the member of a Force has been tried and acquitted by a Criminal Court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not, except with the prior sanction of the Inspector-General.

26. Although the original records have not been produced by the learned counsel for the respondent, an additional affidavit has been filed on behalf of the respondent authorities enclosing duly translated copies of the departmental enquiry proceedings conducted against the petitioner. From the said additional affidavit, it is seen that the questions were put to the petitioner as mandated under Rule 27 (C)(2). A specific query was asked to the petitioner whether he pleads 'guilty' or 'not guilty' for the allegation levelled against him in respect of all the 4 (four) Articles of the Charges to which the petitioner is stated to have refused to give any reply or answers. The answer recorded was that '*the petitioner refused to give any answer*'. These queries were asked to the petitioner and on 15.09.1999 the statement of Witnesses pursuant to the examination conducted in the enquiry proceedings were stated to have been sent to the petitioner by post since he did not participated in the enquiry after his

initial appearance before the Enquiry Officer. Acknowledgment receipts of the Postal Department are also enclosed to the said additional affidavit filed with the respondents. The report of the Enquiry Officer pursuant to the enquiry conducted is also enclosed to the State additional affidavit filed.

27. A perusal of the documents enclosed to the additional affidavit which are stated to be translated copies of the original records of the enquiry having carefully perused. The Enquiry Officer had elaborately considered the statements made by the prosecution witnesses. The statements of prosecution witnesses, Head Constable, Jeevnath Singh and Constable R.D. Yadav, which are available in the affidavit reveals that they were the eye witnesses to the charges levelled against the petitioner. It is also seen that the statements of both the witnesses had recorded in the presence of the present petitioner, Sri Rajpal Singh.

28. The original records of the proceedings were also placed before the Court at the time of hearing for perusal of the Court and which was also duly perused. In addition to that the translated copies of the statements put to the petitioner under Rule 27 (C) (2), as well as the statements of the eyewitnesses are filed before this court by way of the additional

affidavit by the respondent.

29. In response to this additional affidavit, the petitioner filed an affidavit in-reply. The averments made in the affidavit in-reply of the petitioner does not dispute the statements of the respondent authorities that the depositions of the prosecution witnesses as well as the notices requiring the petitioner to submit his list of documents and defense witnesses were sent to the petitioner at the address available in the records of the respondent by Post. The petitioner merely disputes that the signatures showing delivery does not belong to the petitioner or for that matter any other member of the family of the petitioner. He further maintained his averments already made in the writ petition that he was threatened and asked to plead guilty and put his signatures by the Enquiry Officer. However, since he did not accede to the demands of the Enquiry Officer, he was not allowed to sign in any of the documents. He reiterated his contentions that he was not provided with the help of any defense assistance and adequate opportunity to defend his case, and therefore the proceedings stands vitiated.

30. Having perused the pleadings on record as well as the original records which were placed before the Court at the time of hearing, it is

seen that the allegations made by the petitioner that the mandate of Rule 27 (C) (2) was not followed and therefore the enquiries to vitiated is incorrect on the facts available. It is also seen that at least two eyewitnesses supported the case of the prosecution and whose statements were recorded in the presence of the petitioner during the enquiry.

31. Mere fact that no medical documents were relied upon by the prosecution during the enquiry to sustain their allegations against the petitioner that he was under influence of liquor and had created the nuisance, will not alter the veracity of the charges in the face of the depositions of Head Constable, Jeevnath Singh and Constable, R. D. Yadav, who are the eye witnesses to the incident which had occurred.

32. Under Section 9 (j), of the C.R.P.F Act, 1949, use of Criminal Force or committing an assault on any person or breaking into any house or any other place for plunder or destroying or damaging property of any kind is shown to be one of the '*More heinous offenses*'. From the depositions of the eye witnesses, it is clear that the petitioner was involved in the allegations alleged. These depositions were recorded in the presence of the petitioner. The affidavit in-reply filed by the petitioner opposing the

averments made in the additional affidavit filed by the respondent enclosing English translations of the relevant portions of the enquiry proceedings, are mere omnibus denials and disputes in respect of the said documents and the procedure adopted during enquiry. No specific instance has been brought to the notice of the Court as to how prejudice was caused to the petitioner or that the proceedings in the enquiry, including the depositions of the witnesses, were never furnished to the petitioner. The only plea of the petitioner is that he had to leave the camp without informing the competent authority under dark and dire consequences meted out by the Enquiry Officer as well as other persons with vested interests. No complaint or any representation has been shown by the petitioner raising this issue before the competent authority in respect of the averments made in the writ petition during the enquiry proceedings or immediately thereafter. No FIR in any form or a complaint before any Police Station has also been lodged to support the contentions of the petitioner that he was meted out dark and dire consequences by the Enquiry Officer and other officers having vested interests. This being an allegation brought by the petitioner, the burden is on the petitioner to sustain the averments made. Mere omnibus statements and denials cannot be accepted in the absence of specific instances or details or

documents brought before this court in support of the averments made by the writ petitioner.

33. Under such circumstances, the claim of the petitioner that the enquiry proceedings were not conducted as per the provisions of law and in violation to section 27 (C) (2) cannot be accepted and the same is, therefore, rejected. The further contention of the petitioner that the entire proceedings were conducted in violation of natural justice also cannot be accepted in view of the statements/depositions made by the prosecution witnesses, Head constable, Jeevnath Singh and constable, R. D. Yadav, and which were recorded in the presence of the petitioner. There are materials before this court in the pleadings to show that sufficient opportunity was given to the petitioner to cross examine the witnesses which was denied. The questions put to the petitioner as required under Rule 27 (C) (2) as to whether he pleads guilty or not to the allegations, the petitioner refused to give any answer. Such refusal to provide answers to specific queries being put by the petitioner has been accepted by the respondent authority to be not in affirmative towards pleading 'guilty' and consequently the enquiry proceedings were initiated. From the pleadings it is seen that the Departmental proceedings were concluded and persuaded thereto the disciplinary authority dismissed the

appellant from service by imposing penalty of dismissal from service on 19.11.1999. The appeals and the revision preferred by the petitioner were also dismissed.

34. The law in respect of criminal proceedings and disciplinary proceedings has been elaborately enunciated by the Apex Court in a catena of judgments. While it is true that ordinarily if the person is acquitted on criminal charges, on the same set of charges, the disciplinary proceeding ought not to be initiated. However, in the facts of the present case, it is seen that while the disciplinary proceedings were initiated well prior to the conclusion of the criminal proceedings, the order of dismissal by the disciplinary authority was issued on 19.11.1999 whereas the order of the learned Additional Chief Judicial Magistrate, Morigaon acquitting the petitioners of the criminal charges have been passed by Judgment dated 30.06.2000.

35. Under such circumstances, it cannot be held that the disciplinary proceedings were held pursuant to the Judgment rendered by the competent criminal Court acquitting the petitioners. There is also no quarrel with the proposition that both criminal proceedings and disciplinary proceedings can proceed simultaneously. Reference may be

made to the judgment of the Apex Court in *Captain M. Paul Anthony Vs Bharat Gold Mines Limited and another* reported in (1999) 3 SCC 679.

The Apex Court succinctly laid down the conclusions deducible from various decisions of this Court in paragraph 22 of the Judgment, which are extracted below:-

“22. *The conclusions which are deducible from various decisions of this Court referred to above are:*

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get

rid of him at the earliest”.

It has held that there is no impediment for the respondent authority to proceed with the departmental proceedings, notwithstanding criminal proceedings before competent Court of criminal jurisdiction are pending or have been proceeded with against the petitioner in respect of the same charges. Therefore, the contention of the petitioner that the disciplinary proceeding stands vitiated in view of the acquittal to the petitioner by the competent Court of criminal jurisdiction will have to be rejected and the same is accordingly rejected.

36. In so far as the averment made by the petitioner that he did not receive the copies purportedly stated to have been sent by the department in respect of the disciplinary proceedings conducted, besides the burden not being specifically discharged by the petitioner that no such copies were received at his residence by referring to any relevant records which may be available in the postal department near his residence. The same also cannot be accepted in view of the law laid down by the Apex Court that where notices served by registered post at the home address, it is to be considered to have been properly served under Section 27 of the General Clauses. Reference in this may be made to the Ratio laid down in *Harihar Banerji and Others Vs Ramsashi Roy*

and Others reported in (1918) AIR PC 102 and the Judgment of the Apex Court in *Income Tax Officer, Etawah Vs Dharam Narain* reported in 2018 (13) SCC 499.

37. A writ court is not an appellate forum for deciding the punishments awarded pursuant to disciplinary proceedings. A writ court is only required to examine process of the decision arrived at by the Enquiry Officer, as well as by the disciplinary authority, and whether the procedure prescribed has been duly followed and the basic requirements of natural justice have been complied with and also whether such enquiry was conducted on the basis of evidences induced before the Enquiry Officer. These salutary principles have been laid down by the Apex Court in *State of Karnataka and Anr. Vs Umesh* reported in (2022) 6 SCC 563.

38. Salutary principles culled out by the Apex Court in the case of *Deputy General Manager (Appellate Authority) and Others Vs Ajai Kumar Srivastava* reported in (2021) 2 SCC 612 reiterates that the limits for judicial review under Article 226 or Article 32 or Article 136 of the Constitution of India circumscribed in matters of disciplinary enquiries conducted by departmental or Appellate authorities. The Apex Court in the Judgment after examining the earlier judgments of the Apex Court

rendered, reiterated the principles for exercise of judicial review under *inter alia* Article 226 of the Constitution of India. The Apex Court held that in respect of disciplinary enquiries conducted or alleged misconduct against public servant, the Court is to examine and determine the following:-

“25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:

- (i) Whether the enquiry was held by the competent authority;*
- (ii) Whether rules of natural justice are complied with;*
- (iii) Whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion”.*

39. It was held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegations against the delinquent must be established by some evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against a delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in Departmental enquiry proceedings. A Constitutional Court while exercising jurisdiction under

Article 226 would not interfere with the findings of fact arrived at in departmental enquiry proceedings except in a case of malafides or perversity, namely, where there is no evidence to support a finding or where a finding is such that no man reasonable and with objectivity would have arrived at those findings. No interference is called for so long there is some evidence to support the conclusion.

40. In *State of Karnataka and another Vs Umesh reported in (2022) 6 SCC 563*, the principles for exercise of judicial review by Constitutional Court while exercising jurisdiction under Article 226 of the Constitution of India has yet again been reiterated. The Apex Court, while examining the challenges made in respect of findings of the disciplinary authority, held that the court does not act as appellate forum over the findings of a disciplinary authority and does not appreciate evidence on the basis of which findings of misconduct have been arrived at in the course of disciplinary enquiry. The Court in exercise of judicial review must restrict its review to determine whether- i) rules of natural justice have been complied with, ii) findings of misconduct based on some evidence, iii) statutory rules governing the conduct of disciplinary enquiry were followed, iv) findings of disciplinary authority suffer from perversity, v) penalty disproportionate to proved misconduct.

It is only when all or any of these findings are arrived at by a Constitutional court in exercise of judicial review, that it would warrant and interference of the disciplinary proceedings conducted and as well as consequential orders of penalty imposed on the delinquent personal and any personal.

41. In the facts of the present proceedings and in the face of the materials placed before this court by the respondent department, it is seen that the procedure prescribed under the rules, more particularly, Rule 27 (C) (2) rules have been adhered to, and the procedure adopted cannot be said to be in conflict with the procedure prescribed under the rules. The specific questions put to the petitioner under Rule 27 (C) (2) were not answered. In the face of such position maintained by the petitioner before the Enquiry Officer, it has to be held that the requirement under Rule 27 (C) (2) has been duly complied with and there is no infirmity in the enquiry proceedings proceeded with by the respondent authorities. It is also seen from the materials before the court that opportunities were granted to the petitioner to cross examine the prosecution witnesses as also the statements of the prosecution witnesses, more particularly, prosecution witness, Head Constable, Jeevnath Singh and Constable R. D. Yadav were recorded in the presence

of the petitioner. Opportunities granted to the petitioner to cross examine have not been availed of. There are materials available on the record to show that notices were issued to the petitioner after he discontinued to participate in the enquiry proceedings, to which no replies have been seen to be furnished by the petitioner. These notices were sent in the address which is available in the records of the respondent department and which address has not been disputed by the petitioner. Consequently, the mere omnibus denial of the petitioner that no notice was received cannot be accepted in view of the position in law under Section 27 of the General Clauses Act as the postal receipts sent under registered post with A/D were shown to be addressed to the correct address and endorsements on these receipts were also available.

42. As discussed above, the disciplinary proceeding records were placed before the court for perusal and an opportunity was also granted to the learned counsel for the petitioner to peruse the said records in the presence of the Departmental counsel. Upon due perusal, any infirmity in the disciplinary proceedings conducted or in the notices sent to the petitioner or the steps taken by the Department towards issuance of notice as well as the statements recorded of the prosecution witnesses for being delivered to the petitioner under registered post with A/D were

not disputed. In the reply affidavit filed by the petitioner to the additional affidavit filed by the respondents enclosing the translated copies, except for the omnibus averments made by the petitioner denying receipt of any documents, no other averment is available. As as also discussed above the depositions of the two prosecution witnesses, namely, Head Constable, Jeevnath Singh and Constable R. D. Yadav revealed that they were eye witnesses to the alleged episode and their depositions remained unshaken in the absence of any cross examination of the said prosecution witnesses, by the petitioner.

43. The absence of any medical document or report to prove that the petitioner conducted the alleged misconduct under the influence of liquor, would also not vitiate the proceedings or persuade the Court to come to a conclusion that the charges have not been proved inasmuch as the depositions of the eyewitnesses that the petitioner did commit the misconduct as alleged has not been shaken due to the absence of any cross examination. Such evidence available on record cannot be disregarded by the Enquiry Officer merely because the petitioner did not avail the opportunity to cross examine the witnesses.

44. Under such circumstances, the findings of the Enquiry Officer cannot

be held to be perverse or without any evidence. The purpose of disciplinary proceedings is to inquire into the truth of the allegations made against the delinquent personnel. The standard of proof required in a criminal trial is proof beyond reasonable doubt would not be applicable to an enquiry disciplinary proceeding conducted by the Department. Rather the principle of preponderance of probabilities will have to be resorted to while appreciating evidence adduced during any departmental proceedings. Under such circumstances, in the facts of these present proceedings, it cannot be said that there was absolutely no evidence to sustain the charges against the petitioner or commission of misconduct. It must not be lost sight of the fact that the petitioner is a member of an Armed Force constituted under the Central Reserve Police Force Act, 1949. The Force as defined under Section 3 of the Act is an 'Armed Force' maintained by the Central Government and to be called the Central Reserve Police Force. The charges levelled against the petitioner fall under 'more heinous offenses' as described under Section 9, namely, using or attempting to use criminal force or commits an assault on the superior officer, whether on or off duty. It is expected that members of Armed Forces are required to maintain strict discipline and therefore, an assault or an attempt to assault to a superior officer, if found to be

proved and consequential action thereto are not taken, there is a danger of the morale of the forces being affected. The fact that 'discipline' is the implicit hallmark of a member of the Armed Forces and therefore, is held to be a non-negotiable condition of service by the Apex court in a recent Judgment in case of *Ex Sepoy Madan Prasad -Vs- Union of India and others* reported in (2023) INSC 656.

45. In the facts of the present case, this court is of the considered opinion that the disciplinary proceedings have been conducted as per the procedure prescribed and from the materials available before this court, it is seen that the petitioner refused to answer questions specifically put to him during the disciplinary proceedings, as well as further refused to cross examine the witnesses or participate in the proceedings by bringing in evidence or defense witnesses. No plea was raised whether any defence Assistance is required by the petitioner. Mere omnibus averment that he had to leave the camp premises under dark and dire consequences also cannot be accepted in the absence of any supporting documents or evidence brought before the court. No submission or averment has been made on behalf of the petitioner as to why these issues were never brought before the superior authority or at least before the concerned or the local Police Station in respect of these threats stated

to have been issued by the petitioner. A copy of the appeal filed before the authority also does not reveal such grounds being urged before the appellate authority.

46. In that view of the matter the judgments referred to and relied upon by the petitioner does not come to his aid and is therefore not applicable in the facts and circumstances of the case. This court does not find any merit in the contentions and submissions of the writ petitioner that the disciplinary proceedings were conducted contrary to the provisions of the act and the rules as well as to the principles of natural justice and fair play.

47. In view of all these discussions, this court does not find any merit in the contentions made in the present proceedings by the writ petitioner and the same therefore stands dismissed as being devoid of any merit.

48. Interim order, if any, stands vacated.

49. No order as to cost. Any pending Interlocutory Applications also stands dismissed.

JUDGE

Comparing Assistant