

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 1098 of 2018

Shri Sharubam Brojendro Singh, aged about 42 years having
F/No. 991150826 CT/GD of Andro Mayai Leikai, Manipur, P.O.
& P.S. – Andro, District – Imphal East, Manipur, Pin - 795149.

...Petitioner

- Versus -

1. The Union of India represented by the Secretary, Ministry of Home Affairs, Government of India, Shastri Bhavan, New Delhi, Pin No. - 110001.
2. The Director General of Police, CRPF, CGO Complex, New Delhi, Pin No. - 110001.
3. The Inspector General of Police, Manipur & Nagaland Sector, CRPF, Imphal (Manipur) – 795113.
4. The Dy. Inspector General of Police (OPS), CRPF, Kohima, Nagaland – 797001.
5. The Commandant 78 Bn. CRPF, Kohima, Nagaland – 797001.

...Respondents

With

WP(C) No. 395 of 2021

Shri Shiv Kishore Pathak, CT/GD No. 881141156, aged about 51 years, S/O Mahesh Pathak of Niyajeepur, P.O. Niyajeepur & P.S. Simari, District – Buxar, Bihar – 802131 presently posted at GC CRPF, Imphal, P.O. & P.S. Langjing, District – Imphal West, Manipur, Pin: 795113.

...Petitioner

- Versus -

1. Union of India represented through its Home Secretary (Ministry of Home Affairs), North Block, New Delhi, Government of India - 110001.
2. The Director General of Police, CRPF, CGO Complex, Lodhi Road, New Delhi – 110003.
3. The IGP, Manipur and Nagaland Sector, Group Centre CRPF Langjing, Manipur – 795113.

4. The Inspector General of Police, North East Sector, CRPF, Stoney Haven, Bishop Cotton Road, Shillong, Meghalaya.
5. The DIGP, CRPF, Khatkati Range, Gautam Basti, Karbi Anglong, Assam – 782480.
6. The DIGP, Group Centre CRPF Langjing, Manipur – 795113.

...Respondents

With

WP(C) No. 776 of 2022

Shri Raj Bahadur, Ex-CT/GD No. 015020269, aged about 42 years, S/O Ram Murat, a resident of Village Birwal, P.O. Nagarwar & P.S. Ghoorpur, District – Prayagraj, Uttar Pradesh – 212107.

...Petitioner

- Versus -

1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India, Shastri Bhawan, New Delhi - 110001.
2. The Director General of Police, CRPF, Head Quarters, CGO Complex, New Delhi: 110003.
3. The Inspector General, Manipur and Nagaland Sector, CRPF, Imphal, Manipur. Pin 795113.
4. The Dy. Inspector General of Police, G.C. CRPF, Imphal (Manipur) – 795113.
5. The Commandant, GC, CRPF, Imphal (Manipur).

...Respondents

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioners	: Mr. K. Roshan, Adv., Mr. Ng. Jagatchandra, Adv.
For the respondents	: Mr. S. Samarjeet, Sr. PCCG, Mr. Boyboy P, CGS Mr. W. Darakeshwar, Sr. PCCG, Mr. Kh. Samarjit, DSGI, Mr. N. Armananda, Adv.
Date of hearing	: 20-06-2024, 17-12-2024
Date of order	: 20.01.2025

ORDER

[1] Heard Mr. K. Roshan, learned counsel for the petitioners in WP(C) No. 1098 of 2018 and WP(C) No. 395 of 2021; Mr. Ng. Jagatchandra, learned counsel for the petitioner in WP(C) No. 776 of 2022; Mr. S. Samarjeet, learned Sr. PCCG for the respondents in WP(C) No. 1098 of 2018; Mr. W. Darakeshwar, learned Sr. PCCG for the respondents in WP(C) No. 395 of 2021; and Mr. Kh. Samarjit, learned DSGI assisted by Mr. N. Armananda, learned counsel for the respondents in WP(C) No. 776 of 2022.

WP(C) No. 1098 of 2018

[2] By this writ petition, the petitioner is praying for issuance of a writ in the nature of certiorari or mandamus or any other appropriate writ/order/directive(s) for quashing and setting aside the impugned order being No. P-8-01/2017-Adm dated 4th August, 2017 issued by the Commandant-78 BN CRPF and impugned letter being No. P. VIII. 1/2017-OPS-ESTT dated 10th October, 2017 issued by the DIGP (OPS), CRPF, Kohima coupled with the prayer for re-instating the petitioner back into the service in the facts and circumstances of the present petition.

[3] It is submitted that the petitioner was recruited as a Constable (GD) in the Central Reserve Police Force under due process of law/rules. Since his recruitment to the said post of Constable (GD), he underwent necessary trainings which completed successfully. However, unfortunately, a Departmental Enquiry was initiated against the petitioner for unauthorized absence and consequently, the respondent No. 4 issued an impugned order being No. P-8-01/2017-Adm dated 4th August, 2017 whereby dismissing the

petitioner from the service and thereafter, the respondent No. 3 issued another impugned letter being No. P.VIII.1/2017-OPS-ESTT dated 10th October, 2017 regarding the dismissal of the petitioner.

[4] The petitioner begs to submit that the petitioner was duly sanctioned leave for 6 (six) days with effect from 12-09-2016 to 18-09-2016 to visit his pregnant wife in Manipur but due to unavoidable circumstances, the petitioner could not report for duty even after the completion of his leave period.

It is pertinent to submit that while the petitioner was on leave, the wife of the petitioner was seriously ill due to the advance stage of her pregnancy. Consequently, the petitioner could not leave his family as there was no one to look after their children. Due to health condition of his wife, the delivery date of the petitioner's wife was preponed before the expected date/time of delivery and hence, was admitted at Jawaharlal Nehru Institute of Medical Science (JNIMS), Porompat for delivery of their fifth child on 06-10-2016. Fortunately, a baby boy was born on the same day i.e. 06-10-2016 at 11 pm but the health condition of his baby boy was deteriorated and was declared medical emergency and hence, his wife and the infant were then shifted to a Private Hospital i.e. Mother's Care Children Hospital & Research Centre, Imphal for further treatment on 07-10-2016. An operation/surgery of baby boy was also conducted on 08-10-2016 at the said Mother's Care Children Hospital & Research Centre, Imphal.

[5] It is submitted that in spite of utmost endeavour by the concerned Hospital Staffs and Doctors, his baby boy succumbed during his treatment on 15-10-2016. The said tragic incident has left the petitioner and his wife totally devastated beyond redemption. Since, there was no one to take care

of his wife and their four daughters, the petitioner had no other alternative but to remain stationed at home to comfort them emotionally and physically during the darkest moment of their lives. Thereafter, the petitioner had also submitted a representation dated 16-10-2016 regarding circumstances leading to delay in reporting the late from leave.

[6] It is pertinent to submit that the petitioner already has four daughters out of their wedlock and hence, the petitioner was desperately expecting a male child in their family. The petitioner was overjoyed when their baby boy was born but his happiness was short lived after his sudden demise. This sudden turn of events kept the petitioner captive to depression for several days/months. Consequently, the petitioner also went for treatment at the Hospital Management Society on 20-10-2016 and thereafter, the petitioner was advised for medication as well as further referred to the Psychiatry Department at RIMS, Imphal for further management. Mental disease such as depression is considered a huge stigma in the society and hence, it was enormously difficult for the petitioner to openly seek treatment which further aggravated and deteriorated his health and as such, the petitioner had continued the medicine which were advised by the Doctor of Hospital Management Society, Andro.

[7] The petitioner begs to submit that after holding ex-parte Departmental Enquiry against the petitioner, the respondent No. 4 sent the last show cause letter being No. P. VIII. 1/2017-OPS-Estt. dated 12-07-2017 along with the Departmental Enquiry Report through the registered post and the said letter dated 12-07-2017 was received by his wife only on 25-08-2017. In the said last show cause letter dated 12-07-2017, it is clearly mentioned that the petitioner has to submit the representation of his defence

if any within 15 days from the date of issue of the said letter dated 12-07-2017 but, very unfortunately, the petitioner received the said last show cause letter dated 12-07-2017 only on 25th August, 2017 which is after fifteen days given in the last show cause letter dated 12-07-2017 for his defence.

[8] After receiving the said letter dated 12-07-2017, somehow, the petitioner sent his representation dated 06-09-2017 along with medical documents and school documents of his children in reply to the said last show cause letter dated 12-07-2017 wherein the petitioner has submitted his defence by narrating the reasons in which the petitioner could not join his duty in time to the office of the respondents.

[9] Thereafter, no reply had been received from the respondent No. 5 and subsequently, the petitioner submitted another reminder representation dated 12-10-2017 to the respondent No. 5 but very unfortunately, after sending his reminder representation dated 12-10-2017, the petitioner received the order being No. P-8-01/2017-Adm dated 4th August, 2017 issued by the Commandant-78 BN CRPF wherein the petitioner was dismissed from his service.

The petitioner begs to submit that the order dated 04-08-2017 was issued without considering the defence of the petitioner submitted on 06-08-2017 in reply to the last show cause letter dated 12-07-2017 and as such, the said impugned order was issued in violation of the principles of natural justice.

[10] In the meanwhile, the petitioner was sent another letter being No. P.VIII.1/2017-OPS-ESTT dated 10th October, 2017 issued by the DIGP (OPS), CRPF, Kohima/respondent No. 4 whereby the respondent No. 4 treated the defence representation dated 06-08-2017 submitted by the

petitioner in reply to the last show cause notice as an Appeal under Rule 28 of the CRPF Rules, 1955 and same has been rejected.

The petitioner begs to submit that the petitioner is living at the remote village of Manipur and there is no proper postal service and as such, all the communications sent by the respondents were not received by the petitioner and his family in time.

It is pertinent to submit that the respondent No. 4 does not have any power to treat the defence representation of the petitioner as an appeal as per provisions provided by the CRPF Rules, 1955 and as such, the impugned letter dated 10-10-2017 is not sustainable in the eyes of law and liable to be quashed.

[11] Being aggrieved by the impugned order dated 04-08-2017 and impugned letter dated 10-10-2017 issued by the respondent No. 5 and the respondent No. 4 respectively, the petitioner approached the Hon'ble High Court of Manipur by filing a writ petition being WP(C) No. 942 of 2017.

Thereafter, the said writ petition being WP(C) No. 942 of 2017 was disposed of on 22-05-2018 with an observation to the extent that:

"In view of the above and having heard the learned counsel appearing for the parties, the instant writ petition stands disposed of with a liberty granted to the petitioner to approach the appropriate forum by way of revision under Rule 29 of CRPF Rules, 1955".

After obtaining the certified copy of the order dated 22-05-2018 of the Hon'ble High Court of Manipur, the petitioner came to know that there was a typographical mistake on a date mentioned in the said order dated 22-05-2018 and accordingly, the petitioner filed a MC(WP(C)) No. 146 of 2018 and same has been corrected by passing an order dated 01-06-2018.

[12] In compliance of the order dated 22-05-2018 of the Hon'ble High Court of Manipur passed in WP(C) No. 942 of 2017, the petitioner has submitted a revision petition to the respondent No. 3 i.e. Inspector General of Police Manipur & Nagaland Sector, CRPF, Imphal on 13-06-2018. However, the respondent No. 3 failed to consider the revision petition dated 13-06-2018 filed by the petitioner and same has been rejected on the same lines taken by the respondent Nos. 3 and 4 by issuing an impugned order being No. R.XIII-1/2018-M&N-Adm.II dated 4th September, 2018 by the respondent No. 3.

[13] The respondents in the affidavit-in-opposition have stated that:-

1. Force No. 991150826 Ex-CT/GD Sh. Brojendro Singh (petitioner) was appointed as CT/GD on 18-02-1999 and underwent basic training at RTC-IV, CRPF, Srinagar (Jammu & Kashmir). After completion of basic training, he has performed the duties in 27 BN, DIGP (OPS) Kohima, GC Imphal and further posted again at DIG (OPS) Kohima nearby from his home state. During his entire service, he overstayed from leave 14 occasions without prior intimation of competent authority and deserted from the camp once. As per service record details are as under:-

- (i) 08 days OSL w.e.f. 15-08-2001 to 22-08-2001.
- (ii) 38 days OSL w.e.f. 17-06-2002 to 27-07-2002.
- (iii) 42 days OSL w.e.f. 17-03-2004 to 27-04-2004.
- (iv) 02 days OSL w.e.f. 20-03-2008 to 21-03-2008.
- (v) 03 days OSL w.e.f. 17-04-2008 to 19-04-2008.
- (vi) 08 days OSL w.e.f. 14-12-2008 to 21-12-2008.
- (vii) 26 days OSL w.e.f. 29-04-2010 to 24-05-2010.
- (viii) Deserter from Line/Campus w.e.f. 28-10-2011 to 11-01-2012

Total 76 days.

- (ix) 1 day OSL on 12-08-2014.
- (x) 11 days OSL w.e.f. 24-08-2014 to 03-09-2014.
- (xi) 02 days OSL w.e.f. 26-04-2014 to 27-04-2014.
- (xii) 16 days OSL w.e.f. 02-11-2014 to 17-11-2014.
- (xiii) 78 days OSL w.e.f. 18-04-2015 to 04-07-2015.
- (xiv) 14 days OSL w.e.f. 07-03-2016 to 20-03-2016.
- (xv) 320 days OSL w.e.f. 19-09-2016 to 04-08-2017.

2. On the request of Force No. 991150826 Ex-CT/GD Sh. Brojendro Singh (petitioner), 06 days EL was sanctioned w.e.f. 12-09-2016 to 17-09-2016 with permission to avail 11-09-2016 and 18-09-2016 being Sunday for treatment of his daughter by DIG (Ops) Kohima. Accordingly, the petitioner should have reported back on duty on 18-09-2016 (AN) but said petitioner neither reported on duty nor made any communication with DIG (Ops) Kohima, CRPF. Subsequently DIG (Ops) Kohima, CRPF had been issued 02 letters vide letter No. L.II.1/2016-Ops-Estt dated 23-09-2016 and 24-10-2016 by directing the petitioner to report back on duty immediately otherwise disciplinary action will be initiated against him and also tried to contact him over telephone, but he did not bother to respond and not report on duty. The petitioner was given sufficient time to report on duty but he failed to do so. Hence, Shri Vezoto Tinyi, 2-1/C Staff Officer to DIG (OPS) Kohima lodged a written complaint to Shri Niraj Yadav, Commandant-78 BN, CRPF (Chief Judicial Magistrate cum Commandant) on 08-11-2016 being the disciplinary and appointing authority as per existing rules and procedure. Accordingly, the Chief Judicial Magistrate cum Commandant-78 BN CRPF, issued Warrant of Arrest against the petitioner vide order No. W.II.1/2016-EC-2 dated 13-11-2016 which was not executed due to various reasons.

3. The petitioner did not report on duty from leave and remained OSL w.e.f. 19-09-2016 to till date in spite of repeated directions issued by the DIGP (OPS) Kohima. Sufficient opportunities were given to the petitioner but he did not report on duty and remained OSL for which a Court of Inquiry had been ordered on 10-12-2016 by DIG (Ops) Kohima, CRPF as per the rules/procedure. As per COI findings, the petitioner had been declared deserter w.e.f. 19-09-2016 vide DIG (Ops) Kohima office order No. L.X.01/2017-Ops-Estt dated 15-01-2017 and copy of the same was also sent to his home address but the petitioner did not bother to respond. As a follow up action and as per rules/procedure a "Departmental Enquiry" was initiated against the petitioner vide memorandum No. P.VIII-1/2017-OPS-Estt dated 12-02-2017 with charge that,

"Individual had committed an act of indiscipline vide section 11(1) of the CRPF Act 1949 read with Rule 27 of the CRPF Rules, 1955 as he did not follow the department instructions and procedures, he has shown the negligency in which he remained absent from leave w.e.f. 18-09-2016 (AN) without proper permission from competent authority which is against the lawful command and grave negligence from bonafide Government duty which is punishable act in the accordance with Rule 27 of CRPF Rule, 1955".

Subsequently, the Commandant-78 BN CRPF vide DIG (Ops) Kohima office order No. P.VIII.1/2017-Ops-Estt dated 12-02-2017 issued Memorandum of charge against him with 10 days' time to submit representation or appear before the competent authority otherwise Departmental Enquiry will be initiated against him. When the petitioner

neither reported nor submitted any representation to the competent authority, the competent authority issued office order No. P.VIII.1/2017-Estt dated 27-03-2017 to conduct a Departmental Enquiry against the petitioner and Shri R. Saravana, Asstt. Comdt. of 78 BN had been appointed as Enquiry Officer to conduct the Departmental Enquiry.

4. The Inquiry officer had sent a registered letter to the petitioner vide his letter No. G.II.1/2017-RSV dated 30-03-2017 by directing him to report before Inquiry Officer within 20 days otherwise Ex-parte Departmental Enquiry will be initiated against the petitioner or to submit if any objection for detailing of enquiry officer. Neither the petitioner responded nor reported for which the Inquiry Officer started the departmental enquiry as per existing rules/procedure w.e.f. 20-04-2017. When the petitioner failed to appear before Inquiry Officer, the Inquiry Officer conducted Ex-parte Departmental Enquiry as per procedure. After recording the statements of all witnesses, Shri R. Saravana, Asstt. Comdt. (Inquiry Officer) issued registered letter No. G.II.1/2017-RSV dated 29-04-2017 along with statements of prosecution witnesses and all related documents submitted by prosecution witnesses with directions to submit his defence/witness within 36 days i.e. on or before 05-06-2017 or appear in person before the Inquiry Officer or submit any written representation but the petitioner did not bother to respond. Further, the petitioner failed to produce the list of defence witnesses as well as written statement. The Inquiry Officer had submitted enquiry proceedings to the competent authority with report for further necessary action.

5. On receipt of enquiry proceedings from Inquiry Officer, Disciplinary

Authority issued registered letter No. P.VIII.1/2017-Ops-Estt dated 12-07-2017 along with enquiry report to the petitioner with directions to submit representation if any within 15 days from the date of issue of said letter. Neither the petitioner submitted his defence in time nor any written statement timely. Accordingly, the disciplinary authority has taken disciplinary action as per existing rules and final order had been passed on 04-08-2017 in which the petitioner had been dismissed from service w.e.f. 04-08-2017.

6. Vide DIG (Ops) Kohima office order No. P.VIII.1/2017-Ops-Estt dated 04-08-2017 had been given 30 days' time to the petitioner to submit any representation to the competent authority in connection with Para-10 of final Office order No. P.VIII-1/2017-Ops-Estt dated 04-08-2017, but the petitioner did not bother to submit his representation within target date or make any communication up to 03-09-2017.

7. The first application/communication had been made by the petitioner vide his letter No. nil dated 06-09-2017 which was received in the office of DIG (Ops) Kohima, CRPF on 25-09-2017 with the request to pardon and exonerate the petitioner from all charges through the Commandant 78 BN CRPF. Vide the DIG (Ops) Kohima, CRPF letter No. P.VIII.1/2017-Ops-Estt dated 10-10-2017 the petitioner had been informed that his application had considered by the competent authority but has rejected due to devoid of merit. The petitioner again had sent a representation vide letter No. Nil dated 12-10-2017 which was received in the office of DIG (Ops) Kohima CRPF on 20-11-2017 through Commandant 78 BN, CRPF but again the

petitioner had been informed that his request for pardon on humanitarian ground had been considered but had been rejected due to devoid of merit.

8. In view of above explained facts, it is conspicuous that the petitioner is a habitual offender of OSL as he had overstayed from leave 14 (fourteen) occasions without permission of competent authority and had deserted from campus once while posted in GC-Imphal during his 17 years of service. Further, the petitioner had faced three enquiries due to OSL. In the first instance during 2011-12, the disciplinary authority had taken a lenient view and an OSL period of the petitioner had been regularized without any Major/Minor punishment. In the second instance during 2015-16, the petitioner had been found guilty in Departmental Enquiry but keeping in view of his long service and his family condition, the disciplinary authority had taken a lenient view on humanitarian grounds and the petitioner had been awarded punishment i.e. "withholding of increment for 2 years without cumulative effect". Since the petitioner is a habitual offender of OSL, he never bothered to be a disciplined worker and committed offence continuously. Now this time he was OSL for 320 days which sets a bad example for other member of the Force. So, the disciplinary authority has gone through all the pros & cons of the case and taken the correct decision i.e. "Dismissal from service".

9. The petitioner had filed WP(C) No. 942 of 2017 before the Hon'ble High Court of Manipur against his dismissal from service, which had been disposed of on 22-05-2018 with a liberty to the petitioner to approach the appropriate forum by way of revision under Rule 29 of CRPF Rules, 1949.

Further, the petitioner had filed a revision petition to the Inspector General of Police, Manipur & Nagaland Sector against his dismissal from service which has been rejected being devoid of merit vide order dated 04-09-2018.

WP(C) No. 395 of 2021

[1] By the present petition, the petitioner is praying for quashing/ setting aside the impugned order bearing No.P.VIII-2/05-06-EC-II dated 29th June, 2007, order bearing No. P.VIII-2(1)/07-DA-2 dated 17th December, 2007 and the impugned order bearing No. R-XIII-2/2021-NES-Adm- III dated 9th March 2021 coupled with the interim prayer for staying/suspending the said impugned order bearing No. P.VIII-2/05-06-EC-II dated 29th June, 2007, order bearing No. P.VIII-2(1)/07-DA-2 dated 17th December, 2007 and the impugned order bearing No. R-XIII-2/2021-NES-Adm-III dated 9th March 2021 pending disposal of the present petition, in the facts and circumstances of the present petition.

[2] While the petitioner was serving in the 'A' Coy 25 BN, CRPF, at Umrangso, N.C. Hills, Assam allegedly committed an act of misconduct/indiscipline, neglect of duty, disobedience and remissness in the discharge of his duty in his capacity as a member of the force under Section 11(1) of the CRPF Act, 1949 while performing sentry duty on 22-07-06 in Morcha No. 4 from 1200 hrs to 1400 hrs. And on this ground the petitioner was placed under suspension vide order bearing No. P.VIII-2/06-25- EC-II dated 22nd July, 2006 in contemplation of a departmental proceeding.

[3] Subsequently, the respondents issued a Memorandum bearing No. P.VIII-2/06-25-EC-II dated 22nd Aug, 2006 proposing to hold enquiry against the petitioner on the grounds of misconduct and remissness in discharge of duty in his capacity as a member of the force. Along with the

Memorandum the article of charges, list of witnesses and list of documents were furnished for commencement of the enquiry. The Memorandum dated 22-08-2006 further directed the petitioner to make any reply/representations against the charges framed within 4 days from the date of receipt of the Memorandum.

[4] The Departmental Enquiry pursuant to the Memorandum dated 22-08-2006 had commenced with the appointment of the Enquiry Officer vide order bearing No. P.VIII-2/2006-25-EC-II dated 25th Aug, 2006. The petitioner in response to the article of charges vide the Memorandum dated 22-08-2006 submitted his reply dated 10-09-2006 denying the charges made against him stating that, 2 (two) bullets were indeed fired from his service rifle but were not fired over S.I. Ramsay Singh, HC Mangeram and Constable AP Singh and that alcohol was not consumed by the petitioner and neither medical examination conducted nor any kind of enquiry made by the Medical Officer.

[5] During the departmental enquiry, the witnesses contained in the list of witnesses vide Memorandum dated 22-08-2006 were examined and they gave their statements but none of the witnesses had stated in their statements that the petitioner was in an intoxicated state on the day when the alleged firing occurred and the Medical Officer alleged to have medically examined the petitioner was not called as a witness and was not examined by the disciplinary authority during the enquiry. Then, in the year 2007 the petitioner submitted his reply/objection dated 05-01-2007 to the report of the Enquiry Officer wherein petitioner had mentioned that none of the witnesses had stated in their statement that the petitioner had barrelled towards them. It was stated that the barrel of the rifle was towards the ceiling.

It was further stated that the witnesses had deposed before and during the enquiry only hearsay and none of them had stated that petitioner was intoxicated and that the petitioner was not examined by the Medical Officer and the medical report was not made known to the petitioner. And most importantly on the day of question petitioner had not consumed alcohol.

[6] Consequently, the respondents issued an order bearing No. P.VIII-2/05-06-EC-II dated 29th June, 2007 awarding the penalty of stoppage increment stating inter-alia that,

"6. After considering all the pros and cons of the entire case report of the Enquiry Officer, I, the undersigned come to the conclusion that he committed an offence of misconduct and as per gravity of offence he is liable to get a major punishment under section 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955 but considering his long service and young age, I, the undersigned taking a lenient view and in exercise of power vested upon me vide Rules 27 of CRPF Rules, 1955, I hereby impose the following punishment upon No. 881141156 CT/GD S.K. Pathak of A/25 BN CRPF:-

1. Stoppage of annual increment for one year with cumulative effect.
2. He is hereby revoked from suspension from the date of issue of this order and his suspension period w.e.f. 22-07-06 to the date of issue of order treated as such."

[7] Surprisingly and much to the consternation the respondents particularly the DIGP Khatkhathi Range issued show cause notice bearing No. P.VIII-2/07-DA-2 dated 7th Sept, 2007 stating inter-alia that the penalty

imposed vide order dated 29-06-2007 is not commensurate with the gravity of the offences committed because the gravity of the charge is such as to warrant the imposition of a major/severe penalty and propose to enhance the penalty awarded earlier in exercise of the powers vested upon me vide Rule-29(d) of CRPF Rules, 1955.

The notice further states that by the notice the petitioner is being given an opportunity to be heard and to make representations against within 15 days from the date of receipt of the show cause notice.

[8] The petitioner submitted his representation dated 26-09-2007 praying not to enhance the penalty. But the respondents rejected the representation and issued order bearing No. P.VIII-2(1)/07-DA-2 dated 17th December, 2007 stating inter-alia that, "In view of the foregoing, I the undersigned, in exercise of powers conferred on me vide rule 29(d) of CRPF Rules, 1955, hereby set aside the penalty of "stoppage of annual increment for one year with cumulative effect" awarded by the Commandant-25 Bn vide o/o quoted in para-2 above and award the penalty of "Reduction to a lower stage in the time scale of pay for a period of four (4) years" from the date of service of this order. It is, therefore, ordered that the pay of No. 881141156 CT/GD S.K. Pathak of 25 Bn CRPF, be reduced by one stage from Rs. 3875 to Rs. 3800 in the time scale of pay for a period of four (4) years with effect from the date of service of this order. It is further directed that he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increment of pay. The regularisation of the suspension period, ordered by the CO-25 Bn, vide O/O No. P.VIII-2/06-25- EC-2 dated 29.6.2007 will stand."

[9] The petitioner thereafter submitted revision petition dated nil to the revisional authority against the actions of the DIGP, CRPF, Khatkhathi Range and the IGP, North East Sector, CRPF issued order bearing No. R.XIII-2/2021-NES-Adm-III dated 9th March, 2021 upholding the order dated 17-12-2007 stating inter alia that, "Now, therefore, in the light of above facts and having regard to all other aspects of the case, the undersigned does not find any cogent reasons to interfere with the orders passed by the Appellate Authority i.e. DIG, Range, CRPF, Khatkhathi vide order No. P.VIII-2(1)/07-DA-2 dated 17-12-2007. The punishment of "Reduction to a lower stage on the time scale of pay for a period of four (4) years" awarded to the petitioner is just and proportionate to the gravity of the offence committed by him. Thus, the undersigned hereby rejects the revision petition of No. 881141156 CT/GD Shiv Kishor Pathak of 25 Bn, CRPF (presently posted at GC Imphal) being devoid of any merit."

[10] The petitioner is aggrieved by the order dated 17-12-2007 for the reason that by the earlier order dated 29-06-2007 penalty of stoppage of annual increment for one year with cumulative effect was awarded but that was enhanced by the DIGP, CRPF, Khatkhathi Range by issuing order dated 17-12-2007 stating that, "Reduction to a lower stage in the time scale of pay for a period of four (4) years" from the date of service of this order. It is therefore, ordered that the pay of No. 881141156 CT/GD S.K. Pathak of 25 Bn CRPF, be reduced by one stage from Rs. 3875 to Rs. 3800 in the time scale of pay for a period of four (4) years with effect from the date of service of this order. It is further directed that he will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increment of pay."

The ground taken by the DIGP was that the punishment awarded by the Commandant 25 Bn was found not commensurate with the gravity of the offences committed. This was the only ground taken but the respondents failed to consider the statements made by the witnesses during the Departmental Enquiry. Indeed 2 (two) shots were fired from the rifle of the petitioner while on guard duty at Morcha No. 4 but that was not fired due to remissness on his part nor the petitioner under the influence of alcohol while on duty. The firing was not intentional but the disciplinary authority had distorted the facts completely and projected the petitioner to be under intoxication at the time of the firing, he was produced before the medical officer but was not examined medically and the medical report was not made to the petitioner, thereby violating the principles of natural justice illegally and arbitrarily.

[11] The petitioner during the Departmental Enquiry never denied that he fired the 2 (two) shots but he has stated clearly in the written statements submitted to the respondents the circumstances and the respondents were well aware of the position of the rifle at the time of the shooting but had distorted the facts to make it look like petitioner had fired over the personnel and officers. The statements of the witnesses during the departmental proceedings were based only on hearsay and based on the hearsay evidences the respondents came to the conclusion that the petitioner had fired over the officer and personnel and was intoxicated while on duty. As such, the conclusions of the Disciplinary Authority is perverse and cannot be sustained. The Medical Officer who alleged to have examined the petitioner was not called upon as a witness during the departmental proceeding and was not examined. This goes to show that the departmental proceeding against the petitioner was fraught with illegalities and the order

dated 17-12-2007 was issued without proper application of the mind to the facts and issues involved and the penalty prescribed therein is very harsh in comparison to the offences alleged to have committed. The penalty prescribed is not commensurate with the offence alleged to have committed.

[12] The revisional authority has not considered the revision petition dated nil and passed the order dated 09-03-2021 without proper application of the mind to the facts and issues involved. In fact, the revisional authority has not perused the statements of the witnesses during the departmental proceeding. The respondents had distorted the facts and were misled by the false narrative and based primarily on the perverse findings of the Disciplinary Authority and the Appellate Authority had passed the order dated 09-03-2021 illegally and arbitrarily. The revisional authority had not perused the departmental proceeding record and has summarily passed the order dated 09/03/2021 upholding the order dated 17-12-2007 illegally and arbitrarily.

[13] The respondents have filed an affidavit-in-opposition which stated as follows:-

1. No. 881141156 CT/GD Shiv Kishore Pathak was performing sentry duty in Morcha No. 04 in A/25 Bn CRPF, located at Umrangso, under P.S. Umrangso, district N.C. Hills (Assam) from 1200 to 1400 hours on 22-07-2006. Suddenly at about 1250 hours he started weeping and cocked his personal weapon i.e. AKM Rifle Butt No. 2, Body No. 8862. On hearing/seeing the abnormal activity of the above individual. No. 690280108 SI/GD R.S. Singh and No. 913129213 CT/GD A.P. Singh rushed toward Morcha No. 04 but in the meantime on seeing above personnel No. 881141156 CT/GD S.K. Pathak became angry and suddenly fired two (2)

rounds from his rifle but fortunately, nobody was injured and No. 690280108 SI/GD R.S. Singh, No. 830755302 HC/GD Mange Ram (CHM) and No. 913129213 CT/GD A.P. Singh over powered CT/GD S.K. Pathak and snatched his personal weapon and kept in coy. Kote and individual was also kept under guard. He was taken to civil Hospital for medical checkup and found under the influence of liquor.

2. The above individual was placed under suspension w.e.f. 22-07-06 (AN) vide this office O/O No. P.VIII-2/06-25-EC-II dated 22-07-06. A Memorandum of charges leveled against him along with a statement of articles of charges, imputation of misconduct, list of documents and list of witnesses was served to the delinquent through OC HQ/25 Bn CRPF. On 22-08-2006 with direction to submit his reply/representation, if any. Subsequently Shri. D.B. Jhakar, Asst. Comdt. of this unit was appointed as Enquiry Officer vide this office order No. P.VIII-2/2006-25-EC-2 dated 25-08-2006 and an copy of said order also served to the delinquent through OC HQ/25 Bn, CRPF, on 28/08/06. The above delinquent has submitted his representation against D.E. in writing on 10-09-2006 which was not sufficient to give him weightage. The Enquiry Officer has served the copy of the statement of all prosecution witnesses etc. and directed the delinquent vide letter No. P.VIII-1/06 dated 22-11-06 to appear before the Enquiry Officer in person with defence witnesses etc. if any within 15 days to defend against charges leveled against him, failing which the enquiry report shall be submitted to the disciplinary authority. Since no reply was received from the delinquent, the Enquiry Officer prepared his report and submitted to the disciplinary authority vide his letter No. P.VIII-1/2006-07-D/25 dated 10-12-06.

3. To meet the natural justice the copy of report of Enquiry Officer was served to the delinquent through OC HQr/25 Bn CRPF Halfong (Assam) vide letter No. P.VIII- 1/2006-EC-2 dated 16-12-06 with direction to submit written representation/reply if any on enquiry report within 15 days, failing which the disciplinary authority will presume that the delinquent has nothing to say in his defence and the decision will be taken based on departmental proceedings report. The delinquent has submitted written representation/reply received through OC HQr/25 Bn vide letter No. P.VIII-1/2007-HQ dated 05-01-07 in which he has not come up with any new facts, which have already been covered up in the report of Enquiry Officer or during the course of enquiry.

4. Enquiry Officer has conducted the departmental enquiry in accordance with the procedure laid down in Rule-27(c) of CRPF Rules, 1955. The delinquent was given ample opportunity to defend himself as per rule. As such the Enquiry Officer in his enquiry report has clearly brought out the facts and drawn the conclusion the charges leveled against the delinquent are "Proved" based on the documents and witnesses mentioned in the enquiry report. After considering all the pros and cons of the entire case, as per the report of the Enquiry Officer, he committed an offence of misconduct and as per the gravity of offence, he is liable to get a major punishment under 11(1) of CRPF Act 1949 read with Rule-27 of CRPF Rules, 1955. Accordingly, the following punishment has been awarded to No. 881141156 CT/GD Shiv Kishore Pathak of A/25 Bn by competent authority vide this unit office order No. P.VIII-2/05-06-EC-II dated 29/06/2007:-

- i) Stoppage of annual increment for one year with cumulative effect.

- ii) He is hereby revoked from suspension from the date of issue of this order and his suspension period w.e.f. 22/07/06 to the date of issue of order treated as such.

5. Thereafter, IG NES vide his signal No. 1.X-25/2007-NES-EC-III dated 26-07-2007 has intimated to the DIG Range Khatkhathi that punishment of stoppage of annual increment for one year with cumulative effect awarded to No. 881141156 CT/GD Shiv Kishore Pathak vide 25 Bn Office order No. P.VIII-2/05-06-EC-II dated 29-06-2007 is not commensurate with the gravity of the offence. Competent authority desired to review the punishment of aforesaid CT/GD under Rule-29(d) of CRPF Rules, 1955.

6. Thereafter, case was reviewed by the DIG Range Khatkhathi under Rule-29(d) of CRPF Rules, 1955 and awarded the penalty of **"REDUCTION TO A LOWER STAGE IN THE TIME SCALE OF PAY FOR A PERIOD OF FOUR(4) YEARS"** to No. 881141156 CT/GD Shiv Kishore Pathak from the date of service of order of the DIG Range Khatkhathi vide officer order No. P.VII-2(1)/07-DA-2 dated 17-12-2007 and ordered that pay of said CT/GD be reduced by one stage from Rs. 3875 to Rs. 3800 in the time scale of pay for a period of four (4) years with effect from the date of service of order and he will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. The regularization of the suspension period, order by 25 Bn vide O/O No. P.VIII-2/2006-25-EC-2 dated 29-06-2007 will stand vide the DIG Range Khatkhathi Officer order No. P.VII-2(1)/07-DA-2 dated 17-12-2007.

7. Further, a revision petition dated nil was submitted by No. 881141156 CT/GD Shiv Kishore Pathak (petitioner) of 25 Bn (now

posted at GC Imphal) to the next appellate authority (i.e. IG NES Sector) against DIG Range KKT O/order No. P.VIII.2(1)/07- DA-2 dated 17-12-2007. The same was considered by the competent/appellate authority and was rejected due to devoid of any merit vide IG NES O/order No. R.XIII-2/2021-NES-Adm-III dated 09/03/2021 as the punishment of "Reduction to a lower stage on the time scale of pay for a period of four (4) years" awarded to the petitioner is just and proportionate to the gravity of offence committed by him.

WP(C) No. 776 of 2022

[1] By the instant petition, the petitioner is praying for quashing and setting aside the departmental proceeding initiated against the petitioner and the dismissal order bearing No. P-VIII-5/2012-Estt-2 dated 12-03-2016 as the Departmental Enquiry was proceeded without appointing a Presenting Officer, without issuing notice or summon for Departmental Enquiry, without issuing the Memorandum of Charge, without giving an opportunity to defend himself and also without furnishing the dismissal order to the petitioner in violation of the principles of natural justice, in the facts and circumstances of the present petition.

[2] The petitioner was appointed as the Constable at the Central Reserve Police Force (CRPF) in the year 19-04-2001. Thereafter, he received his basic Force training from Group Centre, CRPF, Phaphamau, Allahabad and after receiving his training he had the opportunities to serve at the following places;

1. 23 Bn CRPF at Mawana New Delhi - Till April 2002.
2. 23 Bn CRPF at Baramula Sector (J&K) - May 2002 to April

2005.

3. 23 Bn CRPF, Agartala (Tripura) - May 2005 to April 2008.

4. 23 Bn CRPF (J&K) - May 2008 to September 2009.

5. GC, CRPF, Imphal (Manipur) Oct 2009 to till dismissal.

[3] The petitioner while he was serving as CT/GD in the Group Centre CRPF, Imphal, applied for 15 days of casual leave and he was sanctioned leave from 18-07-2012 to 04-08-2012 with permission to avail 22-07-2012, 29-07-2012, 05-08-2012 as Sunday, 02-08-2012 as RH and joining time w.e.f. 06-08-2012 to 07-08-2012.

[4] The petitioner proceeded on leave, however, unfortunately while on leave he started feeling unwell by developing headache, uneasiness and behaving abnormally and restlessly. On 31-07-2012, the petitioner was taken to a local doctor and the doctor suggested to refer a Neuro Physician or Psychiatric Doctor immediately. Thereafter, the petitioner was taken to "Dayal Nursing Home and Maternity" where facilities of Psychiatric treatment as well as Neuro treatment were available. Thereafter, the petitioner was diagnosed with a case of "Anxiety Neurosis C Depression" for which the treatment would be for a longer duration. During this whole time, the petitioner was not in full senses therefore he could neither report to the unit even after the expiry of leave nor he could send any information to the unit about his sickness and Psychiatric treatment.

[5] The medical treatment of the petitioner was carried out from 02-08-2012 to 08-09-2013 and he was declared medically fit on 09-09-2013. After having become medically fit, he made up his mind to join the duty and

he sent a letter to the unit but no reply was received. And during September 2013, the petitioner received a letter dated 16th September, 2013 through which he was intimated about his dismissal from service with effect from 27-04-2013. However, after apprising of all his grievances to the concerned higher authorities he was again reinstated in service on 24-08-2015.

[6] When the petitioner had joined back to the Group Centre, CRPF, Imphal Manipur on 29-10-2015, with high hopes and commitment, he was unofficially informed that a Departmental Enquiry was pending against the petitioner for reasons not known to the petitioner. The petitioner was of the impression that all the investigations pending against him were over and he was reinstated only after he was forgiven and cleared of all the charges. Thereafter, the petitioner having the pressure all over returned again, applied for leave and was given leave from 12-12-2015 till 31-12-2015.

Thereafter, while the petitioner was at home unable to decide on his future steps regarding all the conundrums falling over his career, a letter was received from the office of Deputy Inspector General of Police, Group Centre, CRPF, Imphal bearing No. P.VIII-5/2012 dated 19th January, 2016 thereby informing the petitioner that due to his service being reinstated the erstwhile Departmental Enquiry pending against him is revived and the copies of Enquiry Report along with the copies of the statement of witnesses were also attached with the letter.

[7] The departmental proceedings against the petitioner proceeded by appointing only the Enquiry Officer but the Presenting Officer was not

appointed. However, the Commandant Group Centre, CRPF, Imphal allegedly communicated letter bearing No. P.VIII-5/2012-Esst-II dated 19th January, 2016 stating inter-alia that the Enquiry Officer completed the D.E. proceedings and submitted his report with proceedings. The communication made in the said letter is reproduced herewith:-

“The following charges were made against you: No. 015020269 CT/GD Raj Bahadur of Group Centre, CRPF, Imphal while functioning as CT/GD committed an act of misconduct in his capacity as a member of the Force under section 11 (1) of the CRPF Act, 1949, in that he made some heavy transactions of money through his bank A/C No. 30235938333 during the year 2010 and 2011 which is beyond his known sources of income which is highly prejudicial to the good order and discipline of the Force and violation of Rule-18(12) CCS conduct Rules, 1964.

Shri K. Sonni Singh, Deputy Commandant was designated as the Enquiry Officer for the investigation of the above allegation. After completing the Departmental Enquiry on 15/03/2013 by the Enquiry Officer, the enquiry report was submitted to this office under his letter No. G.II-04/2015-KSS dated 16/03/2013. But as a result of another Departmental Enquiry, you were dismissed from the service. Accordingly, this D.E. was kept under suspension with the condition that if you are reinstated in service this D.E. will be revived. Since now the Office of the Special Director General, North East Zone, CRPF, Guwahati Office Order No. R.XIII-04/2015-NEZ-Esst-II, you have been reinstated vide dated 24/08/2015 and you have reported for duty on 28/10/2015. Therefore while re- implementing/resuming the

suspended Departmental Enquiry, the copy of the report of the Enquiry Officer is sent to this office vide Office Memorandum No. P.VIII-5/2012- Estt-II dated 16/08/2012 along with the statements of the witnesses.

The enquiry report submitted by the Departmental Enquiry Officer has been studied thoroughly by the undersigned. Item of the allegation levelled against you has been found by the Enquiry Officer to be 'completely proven without any doubt.'

You are, therefore, being given another opportunity for your defence and directed to submit your written representation and the report of Enquiry Officer if any within 15 days time for taking further action on D.E.

In case you fail to submit your written representation along with authenticated documents on the report within the stipulated period, it will be presumed that you do not wish to submit any factual statement or representation in your defence against the E.O.'s report and the D.E. proceedings will be finalised."

[8] On minute perusal of the enquiry report, the petitioner came to learn that the Departmental Enquiry proceeded against the petitioner for his alleged heavy transaction of money amounting to Rs. 4 lakhs 25 thousand rupees in total way back in the year 2010 and 2011, by appointing Enquiry Officer/Inquiry Authority vide order bearing No. P.VIII-05/2012-Estt-II dated 10th October, 2012. At this juncture, it may be worth mentioning that during this particular period from which the procedures for Departmental Enquiries were initiated against the petitioner, he was already on leave and further overstaying from leave as mentioned in paragraph No. 5. As such, none of

the procedural steps taken up against the petitioner were made known to him directly or indirectly.

Further, from the perusal of Para No.3 of the enquiry report, it can be seen that none of the official letters alleged to have been sent to the home address of the petitioner were delivered. However, the D.E. proceeded ex-parte without considering the fact that none of the official letters sent to the petitioner was delivered.

[9] On perusal of the enquiry report again, the petitioner also came to learn that the memorandum/article of charge framed against him was about a money transaction that happened way back in the year 2010 and 2011, the article of charge is reproduced herewith more fully;

“Article-1

No. 015020269 CT/GD Raj Bahadur of Group Centre, CRPF, Imphal, while functioning as CT/GD committed an act of serious misconduct in his capacity as member of the force U/s 11 (1) of CRPF Act-1949, in that he made some heavy transaction of money through his bank A/c no.30235938333 during the year 2010 and 2011 which is beyond his known source of income for which he could not give proper justification. He had deposited Rs. 4 lakhs in cash in his above bank account as per following details and immediately after depositing these amounts were withdrawn quickly through ATM. He had also failed to intimate source of such heavy transactions and came with up fabricated /baseless stories, which is highly prejudicial to the good order and discipline of the force and violation of Rule-18 (12) of CCS (Conduct) Rules, 1964.

1. 25/11/2010 - Rs 1,25,000
2. 26/11/2010 - Rs. 1 lakh
3. 18/05/2011- Rs 2 lakhs".

In the last sentence of the said "Article-I" it is clearly seen to have mention that *"He had also failed to intimate source of such heavy transactions and came with up fabricated/baseless stories, which is highly prejudicial to the good order and discipline of the force and violation of Rule-18 (12) of CCS (Conduct) Rules, 1964."* and however, in para 3 of the same enquiry report, it is all clearly mentioned that the petitioner was failed to appear before the E.O. and hence the enquiry was conducted ex-parte. Such a blatantly false narrative being made in the article of the charge itself shows that the Enquiry Officer had already decided the fate of the petitioner thereby giving a perverse finding to the report.

[10] On further perusal of the statements alleged to have been given by the witnesses, it was also clearly seen that none of the witnesses has made a single iota of facts or information to support the charges made against the petitioner. However, the E.O. draws the conclusion of the D.E. against the petitioner by solely relying on those irrelevant statements of the witnesses.

[11] Since the charges levelled against the petitioner were of the incidences that happened 5/6 years before in his bank account transaction, he could not possibly remember any of the details to make an effective reply within the stipulated period of 15 days. Hence, the petitioner lost all hope of defending his case within the stipulated time. And consequently, vide office order bearing No. P-VIII-5/2012-Esst-II dated 12/03/2016 was issued

thereby dismissing the petitioner from service as per CRPF Act, 1959 and CRPF Rules, 1955 Rule No. 27.

[12] It is submitted that the impugned dismissal order of 12-03-2016 was passed by respondent No. 5 mechanically and in a routine manner without due application of mind and without any basis or cogent materials. It is worth mentioning that respondent No. 5 issued the impugned order of dismissal without even considering the facts that the Departmental Enquiry proceeded without appointing a Presenting Officer, without issuing notice or summon for Departmental Enquiry, without issuing the Memorandum of Charge to the petitioner and most importantly without given an opportunity to defend himself. It is all clearly mentioned in the enquiry report that none of the official letters said to have been sent through the home address of the petitioner was delivered and yet the respondent No. 5 appreciated the enquiry report blindly and formulated the decision to enable himself to reach upon a satisfaction for passing the said dismissal order.

This factum also becomes lucidly evident from the fact that though in the last sentence of the said "Article-I" the enquiry report is clearly seen to have mentioned that "*He had also failed to intimate source of such heavy transactions and came with up fabricated/baseless stories, which is highly prejudicial to the good order and discipline of the force and violation of Rule-18 (12) of CCS (Conduct) Rules, 1964.*" and however in total contrary, in para 3 of the same enquiry report, it is clearly mentioned that the petitioner was failed to appear before the E.O. and hence the enquiry was conducted ex-parte. Even after finding such a blatant false narrative by the Enquiry

Officer, the respondent no. 5 does not find any fault in the enquiry report thereby confirming the fact that the dismissal order was passed mechanically and without due application of mind.

Moreover, the dismissal of the petitioner is based on no materials, the documents mentioned as statements of the witnesses do not hold any water to stand the allegation level against the petitioner. The Respondent No. 5 purported to have passed the impugned order of dismissal against the petitioner in a casual, mechanical and in routine manner without applying his judicious mind. Hence, the impugned order of dismissal is liable to be quashed.

[13] Later on 24-06-2017, after making a discreet enquiry and investigation of all the alleged transactions made by the petitioner in the years 2010 and 2011, he preferred an appeal address to respondent No. 4. In the said appeal, the petitioner has minutely explained all the charges made under the memorandum of charge quite satisfactorily.

The relevant paragraph of the Appeal is reproduced herewith;

"Sir, when I received this letter, it was written in it that as soon as we get the letter, reply within 15 days. But we didn't answer it because of the investigation but I didn't know how much trouble comes after leaving the job. Now it is difficult to run the family. Sir, I may be forgiven, now I will not make such mistake in future, we are presenting the answer document of your various inquiry and letter.

Article-I

1. 25/11/2010 - Rs. 1,25,000/- (one lakh twenty-five thousand)
2. 26/11/2010 - Rs.1,00,000/- (one lakh)

3. 18/05/2011 – Rs.2,00,000/- (two lakhs)

4. 04/02/2011 to 11/02/2011 - Rs. 2,53,260/- (two lakhs fifty-three thousand two hundred and sixty)

1. Sir, on 25/11/2010 and 26/11/2010 the total money was Rs. 2,25,000/- in our Account No. 30235938333 and we ourselves deposited the said money in our account when we deposited this money, I was on holiday. This money belongs to our father Shri Rammurat. He had sold his land in Shankargarh Bara Allahabad to Ravi Shankar Yadav son of Koshram Yadav Birwal, police station Ghurpur, Allahabad, whose amount was fixed Rs. 2,50,000/- on the date of sale 24/11/2010. Sir, we do not have land registry because we are from SC caste. The land taker is OBC, so we do not have the documents of the registry. At that time we had signed a receipt stamp on a plain paper and sold it to them. I am presenting that document and am attaching its photocopy.

2. We had taken 2 lakhs rupees from our relative and from whom we had taken. His name is Kapil Dev, son of Dashmati Prasad, tribal village Khetarpalia Gadha Tehsil Kauron in the hands of Allahabad. Kapil's brother Brihaspati Dev had deposited 2 lakhs in my account on 18/05/2011 at Allahabad. We paid their money on 17/09/2015. We had returned Rs. 2 lakhs to his brother Brihaspati Dev on stamp paper of one hundred rupees. A copy of the said paper is attached. The stamp paper bears the signature of Brihaspati Dev, elder brother of Kapil Dev. I had taken this money because we had to go home on holiday, at that time I was in Imphal, Group Centre and our family was with us, we had to get air tickets but at that time we did not have money. So we had borrowed money from our relatives.

That's how we had withdrawn money from Group Centre CRPF Imphal ATM.

3. Rs. 2,53,260/- was withdrawn by our younger brother. We were on duty in Imphal GC when this money was withdrawn from Rohtak Charki Haryana. Our brother came to Imphal took the ATM card and he withdraw the money from Rohtak Charki Haryana. This money belongs to our father, our father and brother had withdrawn money from there in Rohtak for some business.”

However, the same was rejected in a routine manner without even considering the explanations made thereunder by the petitioner.

[14] On 12/08/2017, the appeal preferred by the petitioner was rejected by respondent No. 4 stating thereunder, “(6) The petition of the appeal was carefully studied along with all the relevant records and it was found that the petition made by him has become lapsed. Under Rule 28 of the CRPF Rules, 1955 there is a provision to appeal within 30 days. But in this, case the appeal has been filed by the appellant after 1 year and 3 months. But keeping in mind the principle of natural justice and on humanitarian grounds, the timeless petition is reconsidered.

(7) The appellant has not been able to present any new facts, evidence and documents in the petition which would help in proving his innocence. Therefore, no compelling reason was found to interfere with the sentence of dismissal of the said appellant from service under the Commandant's Group Centre, CRPF, Imphal office vide order dated 12/03/2016.

(8) Therefore, after perusal of the appeal of the appellant, on the basis

of the power conferred by Rule 28 of the CRPF Rules, 1955, the appeal of the appellant is dismissed."

[15] Thereafter, the petitioner preferred a revision representation before respondent No. 3 on 26-06-2020 to consider his appeal for reinstatement and the same was rejected vide order dated 02-12-2020.

[16] Thereafter, again on 05-04-2021, the petitioner preferred another appeal against respondent No. 2 to reconsider his appeal and however, the same was rejected as devoid of merit vide order dated 22-09-2021.

[17] Finally, the petitioner submitted another representation dated 27-12-2021 before respondent No.1 and the same was rejected vide order dated 19/05/2022.

[18] It is submitted that during the particular period from which the procedures for Departmental Enquiries were initiated against the petitioner, he was already on leave and due to further overstaying from leave as mentioned in paragraph No. 5 none of the procedural steps taken up against the petitioner were made known to him directly or indirectly. Further, none of the official letters alleged to have been sent to the home address of the petitioner were delivered to the petitioner. However, the Departmental Enquiry was proceeded ex-parte without considering the fact that none of the official letters sent to the petitioner were even delivered.

The Disciplinary Authority during the Departmental Enquiry against the petitioner has taken undue advantage of the situation and circumstances which was beyond the knowledge of the petitioner. And finally passed the dismissal order thereby violating the principles of natural

justice illegally and arbitrarily.

[19] The respondents have filed an affidavit-in-opposition which stated as follows:—

1. The writ petitioner, Raj Bahadur, No. 015020269 CT/GD was awarded the penalty of "Dismissal from Service" w.e.f. 12-03-2016 (AN) vide order No. P.VIII-5/2012-Estt-2 dated 12-03-2016 as a result of DE on the following charges:—

ARTICLE-I

No. 015020269 CT/GD Raj Bahadur of Group Centre, CRPF, Imphal, while functioning as CT/GD committed an act of serious misconduct in his capacity as a member of the Force U/S 11 (1) of CRPF Act-1949, in that he made some heavy transaction of money through his bank A/C No.30235938333 during the year 2010 and 2011 which is beyond his known source of income, which is highly prejudicial to the good order and discipline of the force and violation of Rule-18 (12) of CCS (Conduct) Rules, 1964.

2. The petitioner while functioning as CT/GD in GC, CRPF, Imphal, Manipur was attached to Composite Hospital, CRPF, Imphal and performing the duty of security aide of Dr. (Mrs) Sharada Sahani, SMO, CH Imphal, wife of Dr. S.C. Kushwaha, SMO, CH Imphal. The petitioner has made some transactions which are beyond his known sources of income in his bank account No. 3023593833, SBI Akbarpur Branch, Code No. 0003, in which a sum of Rupees One Lac Twenty Five Thousand on 25-11-2010, Rupees One Lac on 26/11/2010 and Rupees Two Lacs on 18-05-2011 were deposited in Cash. Further, a total of Rs. 2,53,260/- was withdrawn through ATM from Rohtak, Charkhi Dadri and Bhiwani in a span of 05 days i.e. from 04-02-2011 to 11/02/2011 by No. 025150646 CT/Dvr Anil Kumar of GC,

CRPF, Imphal who was then attached with CH, CRPF Imphal, performing the duty as a driver to DIG, CH, Imphal.

3. The Memorandum of charges along with statement of articles of charges were served to the petitioner with direction to submit his statement of defence vide Memorandum No. P.VIII- 5/2012-EC-II dated 16-08-2012 through AC (Adm) of this GC directing him to submit a written statement of his defence and also to state whether he desired to be heard in person within 15 days of receipt of the aforesaid memorandum, failing which enquiry shall be held ex-parte. The petitioner was on leave and he remained overstayed from leave w.e.f. 08-08-2012 without prior permission/sanction of leave by the competent authority during the course of D.E, this memorandum mentioned above was sent to his home address through registered post with A/D vide this office letter No. P.VIII-5/2012-EC-II dated 10-09-2012.

4. Thereafter, Shri K. Sonny Singh, Deputy Commandant of GC, CRPF, Imphal, Manipur was appointed as Enquiry Officer to inquire into charges framed against the petitioner vide office order No. P.VIII.05/2012-EC-II dated 10-10-2012 and a copy of the said order was also sent to the petitioner's home address through registered post with A.D. But the same was received back undelivered from the postal authority on 19-11-2012 with the remark that **"The receiver is now out of station"**. The petitioner was given an opportunity to engage a Defence Assistant to assist him during the proceedings of DE vide this office Letter No P-VIII- 5/2012-EC-II dated 17-12-2012 as per circular order No 05/2011. But, the petitioner neither submitted any reply nor he had turn up for enquiry within the given time and

failed to avail it.

5. The Enquiry Officer summoned the petitioner vide his registered letter No. G.II-4/12-KSS dated 22-10-2012 at his home address with the direction to appear before the Enquiry Officer at GC CRPF Imphal on 08-11-2012 (Thursday) at 1000 hours for the preliminary hearing failing which Departmental Enquiry will be held ex-parte. However, the petitioner did not appear on due date. Further, Enquiry Officer again summoned the petitioner vide his letter No. G.II-4/12-KSS dated 08-11-2012 and directed the petitioner to present before the Enquiry Officer at GC, CRPF, Imphal on 16-11-2012 (Friday) at 1000 Hrs for recording of his statement and for the cross examination. Since the petitioner neither submitted any representation nor appeared before the Enquiry Officer, the Enquiry Officer started ex-parte proceeding against the delinquent as per existing instruction. The Enquiry Officer completed the Departmental Enquiry in accordance with the existing instructions and submitted the proceedings along with his report to DIGP, GC, CRPF, Imphal vide his letter No. G.11-4/2012- KSS dated 16-03-2013.

6. While the Departmental Enquiry was under process, the petitioner No. 015020269 CT/GD Raj Bahadur had been dismissed from service w.e.f. 27-04-2013 as a result of Departmental Enquiry in another disciplinary case (OSL case) by Commandant, GC, CRPF, Imphal vide Office Order No. P.VIII-7/2013-Estt-II dated 27/04/2013 for committing an offence of misconduct in his capacity as a member of the Force under section 11(1) of CRPF Act 1949, in that he overstayed from leave w.e.f. 08-08-2012 (FN) without obtaining prior permission from the competent authority.

7. Accordingly, Departmental Enquiry report against the individual submitted by Shri K. Sonny Singh, D/C as Enquiry Officer kept suspended subject to review as and when the petitioner is re-instated in service on appeal by this office vide order No. P.VIII- 5/2012-Estt-II dated 09-05-2013.

8. Aggrieved with the penalty imposed by Commandant, GC, CRPF, Imphal vide O/O No. P.VIII-7/2012-Estt.II dated 27/04/2013, No. 015020269 Ex. CTGD Raj Bahadur, submitted appeals dated 11-01-2014 and 04-03-2014, which was considered but rejected being time barred and devoid of merit by DIGP, GC, CRPF, Imphal (Appellate Authority) vide order No. R.XIII-1/2014- EC.II dated 31-03-2014. Not satisfied with the above order, Ex. CT/GD Raj Bahadur submitted a revision petition dated 21-07-2014, which was also considered but rejected by IGP, M&N Sector, CRPF, Imphal (Revisioning Authority) vide order No. R.XIII- 7/2014-Adm.2 dated 16-09-2014.

9. Dissatisfied with the above order, No. 015020269 Ex. CT/GD Raj Bahadur of GC, CRPF, Imphal preferred petition dated 10-04-2015 before the Special Director General, North-East Zone, CRPF, Guwahati (Assam), SDG, NEZ, Guwahati after taking a lenient view, considering the punishment imposed on the petitioner to be on the higher side, 11 years of service put in by the petitioner and his poor condition, set aside the above orders and reinstated him into service vide order No. R.XIII-04/2015-NEZ-Estt-II dated 24-08-2015 with the penalty of reducing his pay by two stages in the time-scale of pay for a period of two years from the date on which he reports at GC, CRPF, Imphal on his reinstatement. Accordingly, petitioner was

reinstated in service w.e.f. 29-10-2015 (FN) by the office vide order No. P.VIII-7/2012-Estt-II dated 07-11-2015.

10. Further, the petitioner proceeded on 10 days C/L w.e.f. 21-12-2015 to 31-12-2015 and again absented himself from 01-01-2016. Since the enquiry was already completed/submitted by the EO, copy of EO's report was sent to the Petitioner at his home address vide letter No. P.VIII-5/2012-Estt-II dated 19-01-2016 through speed post No. EE-441156578IN dated 20/01/2016 with direction to submit his representation if any in his defence within 15 days for consideration before passing the final order. But no representation was received from the petitioner. The petitioner remained absent w.e.f. 01-01-2016 to 12-03-2016. Warrant of arrest was also issued against him.

11. Accordingly, disciplinary authority examined enquiry report and find that the enquiry was conducted strictly in accordance with the laid down procedure, rules & instructions. The charge levelled against the delinquent has been fully proved shadow of any doubt. Since the offence committed by the delinquent was of very serious nature and delinquent deserves stringent punishment, he was awarded penalty of "DISMISSAL FROM SERVICE" with effect from 12-03-2016 (AN) by competent authority vide O/O No. P.VIII-5/2012-Estt-II dated 12-03-2016.

12. Aggrieved with the order of dismissal from service, Ex. CT/GD Raj Bahadur Singh preferred an appeal dated 24-06-2017 addressed to the appellate authority i.e. DIGP, GC CRPF, Imphal. In turn, DIGP, GC, CRPF, Imphal vide order No. P.VIII-1/2017-EC.II dated 12-08-2017 had considered

and rejected the appeal dated 24/06/2017 being devoid of merit. A copy of said order was also sent to him vide registered post No. AR45321200IN dated 16-08-2017 and again on 13-11-2017 through his advocate.

13. The petitioner being aggrieved with the order No. P.VIII- 5/2012- Estt-II dated 12-03-2016 issued by the Commandant, GC CRPF Imphal imposing thereby penalty of 'Dismissal from Service' w.e.f. 12-03-2016 (AN) and rejection of his appeal dated 24-06-2017 by DIGP, GC, CRPF, Imphal vide O/O No. P.VIII- 5/2017-EC-2 dated 12-08-2017 had submitted revision petition dated 26-06-2020 after lapse of more than 03 (three) years addressed to IGP, M&N Sector, CRPF, Imphal which was considered but rejected by IGP, M&N Sector, CRPF, Imphal (Revisioning Authority) vide order No. R.XIII-6/2020-Adm.2 dated 02-12-2020 being devoid of merit. He further submitted an appeal dated 05-04-2021 to Addl. Director General, North East Zone, CRPF, Guwahati which was also been rejected by the ADG, NEZ, CRPF office order No. R.XIII-01/2021-NEZ-CR& VIG-1 dated 22-09-2021 being devoid of merit.

14. The common issue involved in the present cases is whether the whole departmental proceedings is vitiated for non-appointment of the Presenting Officer and its role has been undertaken by the Enquiry Officer by examining witnesses and exhibiting documents when Rule 27 of CRPF Rules, 1955 is silent on this aspect.

Mr. K. Roshan, learned counsel for some of the petitioners submits that the impugned departmental proceedings and termination/reduction in rank orders are ultra vires due to violation of natural of principles of natural justice. In all the cases, the Presenting Officers were not appointed and the Enquiry

Officer himself took up the role of the Presenting Officer by examining the witnesses and exhibiting the documents. In other words, the Enquiry Officer himself acted both as a judge and a prosecutor violating the basic edifice of the principles of natural justice. Learned counsel refers to a series of judgments passed by the Gauhati High Court. The then Imphal Bench (now, High Court of Manipur) held in the case of **Mutum Shantikumar Singh v. Union of India [WP(C) No. 297 of 2002; Order dated 08.02.2005]** that “..... *for complying with the rule of natural justice and fair procedures, appointment of presenting officer is a must in a disciplinary proceedings against a CRPF Constable and the Rule 27 of the CRPF Rules, 1955 by expressly or necessary implication does not exclude the application of the rule of natural justice and fair proceedings....*” and the disciplinary proceedings along with the termination order was quashed. The decision of the learned Single was upheld by the Division Bench in an appeal filed by the Union of India in **order dated 27.07.2010 WA No. 30 of 2005: Union of India v. Mutum Shantikumar Singh** giving liberty to conduct fresh inquiry after complying with principles of natural justice. Hon’ble Supreme Court upheld the findings of both Single and Division Bench by dismissing the appeal filed by the **Union of India being Civil Appeal No. 2607 of 2012 vide order dated 08.06.2018 in the case of Union of India v. Mutum Shantikumar Singh**. Reliance is also placed on the decision of this Court in the case of Kumar Pandey v. Union of India [Order dated 24.08.2023 in WP(C) No. 715 of 2015 where removal order was set aside on technical ground for non-appointment of Presenting Officer with liberty to conduct fresh inquiry. The order dated 24.08.2023 has been complied by re-instating the personnel and fresh inquiry has been initiated.

15. Mr. K. Roshan further refers to a landmark judgment in the case of **Union of India v. Ram Lakhan: (2018) 7 SCC 670** arising out of batch of cases involving similar issue of non-appointment of Presenting Officer under Rule 27 of CRPF Rules from Gauhati High Court (including the then Imphal Bench, now High Court of Manipur). Hon’ble Supreme Court upheld the decisions of the High Court to the effect that the same vitiated the whole

inquiry proceedings, if the Enquiry Officer acted as a Presenting Officer by examining and cross-examining the witnesses invoking the principles of natural justice even if the statute is silent on the appointment of Presenting Officer. The dismissal orders passed in the departmental proceedings were set aside invoking the biasedness doctrine. Relevant para are reproduced below:

34. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context, reference is made of a case of this Court in *Punjab National Bank v. Kunj Behari Misra: (1998) 7 SCC 84*. In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in para 10 of the judgment is as follows: (SCC p. 90)

“10. ... **‘7. Action on the enquiry report.—**(1) The disciplinary authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.’ ”

35. The question which was debated before this Court was that since Regulation 7(2) does not contain any provision for giving an opportunity to the delinquent officer to represent before disciplinary authority who reverses the findings which were in favour of the delinquent employee, the rules of natural justice are not applicable. This Court held that principles of natural justice have to be read in Regulation 7(2) even though rule does not specifically require hearing of delinquent officer. In para 19, the following was held: (SCC p. 97)

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

36. Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.

37. The High Court having come to the conclusion that the Enquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost while adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases.

38. In result, all the appeals are dismissed subject to the liberty as granted by the High Court that it shall be open for the appellants to proceed with the inquiry afresh from the stage as directed by the High

Court and it shall be open for the appellant to decide on arrear pay and allowances of the respondents.

16. It is pointed out that in compliance of the various judicial decisions, the Union of India issued Circular No. 7/2018 dated 23.05.2018 amending Circular No. 5/2011 dated 21.10.2011 making it mandatory to appoint the Presenting Officer in any disciplinary proceedings against CRPF personnel. Relying on the above decisions and circulars, it is submitted that the disciplinary proceedings in all the writ petitions are vitiated for non-appointment of the Presenting Officers and the Enquiry Officers acted as Presenting Officers by examining the witnesses in violation of the principles of natural justice. It is prayed that the disciplinary proceedings and punishments imposed in such proceedings be set aside being violative of the principles of natural justice.

17. On merit, it is submitted that fair chance of defense was not given to the petitioners and the charges are not proved and the Enquiry Officer arrived at the finding of the guilty on conjectures and the impugned orders of removal from service and reduction in ranks are not commensurate with the charges alleged against the petitioners. Mr. Ng. Jagatchandra, learned for some of the petitioners adopts the submission of Mr. K. Roshan.

18. Mr. S. Samarjeet, learned Sr. PCCG (as he was then) and Mr. Boyboy Potshangbam, learned CGC for the respondents in WP(C) No. 1098 of 2018 submit that Rule 27 does not postulate the appointment of the Presenting Officer and hence the disciplinary proceedings do not suffer from

any illegality. Attention of this Court is drawn to the contents of para 28 in the case of **Ram Lakhan (supra)** where the Hon'ble Apex Court makes observation in this regard and learned counsel for the Union of India try to impress that non-appointment of the presenting Officer does not affect the legality of the proceedings and no interference is warranted from this Court. It is also pointed out that Circular No. 5/2011 does not make it mandatory for such appointment and it has been introduced by Circular No. 7/2018 after the impugned proceedings. On merit, it is submitted that the petitioners are habitual offenders having absent without leave for a long period repeatedly, indulged in unethical monetary transactions and acted cowardly. The punishments imposed are just and proper to uphold the discipline in the force. Mr. W. Darakeshwar, learned Sr. PCCG and Kh. Samarjit, learned DSGI make submissions on similar lines and pray for dismissal of the writ petition.

19. This Court considers the materials on record, the submissions of the parties and the case law in this regard, specially the ratio in the case of **Ram Lakhan (supra)**. It will be relevant to reproduce the provisions of Rule 27(c) of CrPC Rules, 1955 which provides for the procedure for conducting a departmental enquiry as below:

“27. (c) The procedure for conducting a departmental enquiry shall be as follows—

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least

48 hrs before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of Guilty or Not Guilty after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral:

(i) it shall be direct;

(ii) it shall be recorded by the officer conducting the enquiry himself in the presence of the accused;

(iii) the accused shall be allowed to cross-examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If the accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty", he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry

considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward his report together with the proceedings to the Commandant who shall record his findings and pass order where he has power to do so.”

20. This provision has been discussed in a catena of cases by the Gauhati High Court including the then Imphal Bench (now, High Court of Manipur) and held that appointment of presenting officer is mandatory even if Rule 27 is silent in this aspect as the application of the principles of natural justice has not been expressly excluded by Rule 27 or any other rules. This view has been arrived on the principle that as the same person cannot be a judge as well as a prosecutor based on the dictum that a person cannot be judge of his own cause which is an ingredient of the principles of natural justice. This finding has been upheld by the Hon'ble Apex Court in the case of **Ram Lakhan (supra)**. This important aspect has been made mandatory by introducing appointment of presenting officer by Circular No. 7/2018 dated 23.05.2018. There is no force in the submission of the respondents that Circular 7/2018 will not be applicable to the facts of the present cases, as appointment of presenting officer was not mandatory during the relevant time. In such situation, the judicial decisions in **Shanti Kumar (supra)** and **Ram Lakhan (supra)** will hold the field requiring appointment of presenting officer.

21. In the circumstances, the impugned disciplinary proceedings and impugned orders of removal from service and reduction in ranks are set aside as violative of the principles of natural justice as held in the cases of **Shanti Kumar (supra)** and **Ram Lakhan (supra)** on the technical ground of non-appointment of the presenting Officer. It is directed that the petitioners in WP(C) Nos. 1098 of 2018 and 776 of 2022 be re-instated in service forthwith and the period of suspension and termination be treated as in service with all consequential benefits including seniority. However, the authority may decide the entitlement of back wages. The petitioner in WP(C) No. 395 of 2021 be restored to his earlier position with all consequential benefits. The respondents are at liberty to initiate fresh inquiry de novo, if so advised, after complying all relevant provisions, the directions in **Ram Lakhan (supra)** and Circular 7/2018 by giving opportunity of being heard to the petitioners. Since the alleged misconducts happened almost a decade ago, the respondents may consider the feasibility and practicability of holding fresh inquiry and availability of witnesses.

22. In terms of the observations and directions in para 21, the writ petitions are disposed of. No cost.

JUDGE

FR/NFR

Victoria

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by RAJKUMAR
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