

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.245 of 2006

Sri Karambir Singh,
son of Sri Musram Singh,
resident of Vill. Kulloo Khera, P.O. Paror,
P.S. Saurikh, District Farrukhabad, Uttar Pradesh.

..... Petitioner

–Vs–

1. The Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi.
2. The Director General of C.R.P.F.,
C.G.O. Complex, Lodhi Road, New Delhi.
3. The Inspector General of Police,
Southern Sector, C.R.P.F., Banjara Hills, Hyderabad-500034.
4. The Deputy Inspector General of Police, C.R.P.F.,
New Ground Centre, Hyderabad, Andhra Pradesh.
5. The Commandant, 113 Bn. C.R.P.F.,
Airport, Agartala, West Tripura.

.....Respondents

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. B. Das, Sr. Advocate
For the respondents	: Mr. P.K. Biswas, Asstt. S.G. Mr. P. Majumder, Advocate Mr. S. Chakraborty, Advocate
Date of hearing	: 25.11.2014

Date of judgment & order : 02.02.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

(Talapatra J.)

By means of this writ petition, the petitioner who was a Constable under the Central Reserve Police Force, for short 'CRPF', has challenged the office order under No.P.V.III.13/95-113-EC-II, dated 30.03.1996, Annexure-B to the writ petition, passed by the Commandant 113 Bn. CRPF, Narsingarh (Tripura), (the Disciplinary Authority), the Office Order under No.R.XIII-10/96-EC-3, dated 07.10.1996, Annexure-F to the writ petition, passed by the Dy. Inspector General of Police, CRPF, Hyderabad (the Appellate Authority) and the office order under No.R.XIII-37/96-ADM-I, dated 11.05.1997, Annexure-G to the writ petition, passed by the Inspector General of Police, Southern Sector, CRPF, Banjara Hills, Hyderabad (the Revisional Authority).

2. By the order dated 30.03.1996 (Annexure-B to the writ petition), the petitioner, on termination of a disciplinary proceeding, has been removed from the service w.e.f. 30.08.1996, whereas by the order dated 07.10.1996 (Annexure-

F to the writ petition), the appeal preferred by the petitioner under Rule 28 of the Central Reserve Police Force Rules, 1955, for short the '*CRPF Rules, 1955*', has been dismissed by the appellate authority, the Deputy Inspector General of Police, Hyderabad and, by the order dated 11.05.1997 (Annexure-G to the writ petition), the revision as filed by the petitioner against the order dated 07.10.1996, has been dismissed by the revisional authority, the Inspector General of Police, Southern Sector, CRPF. As such, the cumulative effect of these orders is that the petitioner stands removed from the service w.e.f. 30.08.1996.

For appreciating the challenge, it appears essential to revisit the facts leading to removal of the petitioner.

3. The petitioner while working as the Constable, being posted in the 'E' Coy. 113 Bn. CRPF at Mungiabari under Teliamura police station, was detailed for duties in the camp area of Platoon No.14 on 09.09.1995 at night behind the barrack. At that time, one Naik, namely Sri Ashok Kumar came towards the petitioner in a drunken condition and attempted to assault him. By the turn of events, the petitioner had to resist him without causing any harm. As a result, Ashok Kumar fell on the ground and allegedly received some simple injuries on his person. Ashok Kumar entered into the barrack and came out

with his rifle and he fired two rounds. After about two hours of that incident, Ashok Kumar appeared before a State Government Medical Officer, who on examination, found that said Ashok Kumar was under the influence of liquor and, there was no injury on his person. According to the petitioner, the said report has been deliberately suppressed by the respondents in order to punish him because he was holding a lower rank whereas Ashok Kumar was holding a superior rank. Thereafter, without any written communication the petitioner was immediately placed under suspension and was given the subsistence allowance. But he was not allowed to leave the battalion Headquarters at Narsingarh.

4. By the Memorandum dated 09.10.1995, a disciplinary act had been proposed against the petitioner for the purported misconduct as allegedly committed by the petitioner as a member of the force. The said Memorandum No.P.V.VIII-12/95-EC,II, dated 09.10.1995, Annexure-A to the writ petition, contains the articles of charge, which are as under :

ARTICLE-I

That the said No.913154778CT(GD) Karambir Singh while functioning as Constable (GD) during the period from Tripura committed "NEGLECT OF DUTY" in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 in that on 9.9.95 at about 1915 hours, when he was performing entry duties at 'E'/113 Platoon Post at Mungaibari (South Tripura) left his sentry post without permission or without being relieved.

ARTICLE-II

That during the aforesaid period and while functioning in the aforesaid Platoon Pos, the said No.913154778 CT(GD) Karambir Singh was guilty of "MISCONDUCT" in his capacity as a member of the Force Section 11(1) of CRPF Act, 1949 in that on 9/9/95 at about 1915 hours, he assaulted No.751290519 NK(GD) Ashok Kumar of 'E'/113 with his 7.62 SLR butt, causing injury.

5. The petitioner has denied those charges. On the face of such denial, one Assistant Commandant, namely D.P. Singh, was appointed as the Enquiry Officer. The petitioner has alleged that the report was submitted by the said Enquiry Officer to the Commandant 113 Bn. CRPF, who being the disciplinary authority passed the impugned order dated 30.03.1996, Annexure-B to the writ petition, without furnishing a copy of the said report. According to the petitioner, the Memorandum dated 09.10.1995, Annexure-A to the writ petition, was issued proposing to hold an enquiry under Rule 27 of the CRPF Rules, 1955 for awarding minor punishment under Section 11 of the Central Reserve Police Force Act, 1949, for short 'CRPF Act, 1949', which contemplates imposition of minor punishment only. But, the petitioner has been removed from the service in complete disregard to the statutory provision. Even under Section 12(1) of the CRPF Act, 1949, the major penalty cannot be imposed unless someone is sentenced with imprisonment. That apart, the

petitioner has pleaded that he has suffered serious prejudice for not furnishing the enquiry report before the impugned order of removal was issued by the Commandant 113 Bn. CRPF. The petitioner has also been deprived of having the assistance for his defence or the opportunity of cross-examining the witnesses who were examined and questioned only by the Enquiry Officer. As such, the petitioner has asserted that no opportunity was afforded to the petitioner for his defence.

6. The petitioner has challenged the order dated 07.10.1996 and 11.05.1197 respectively, passed by the appellate authority and the revisional authority on the ground of non-application of judicious mind and passing a cryptic order without reasons.

7. It is to be noted that before approaching this court, the petitioner approached the High Court of Judicature at Allahabad by filing writ petition, being Civil Writ Petition No.3347/1998, but the said writ petition was disposed of by the order dated 03.12.2002, holding that the writ petition before the said High Court is not maintainable as that High Court lacks the territorial jurisdiction. However, liberty has been granted to the petitioner to challenge the impugned orders in the competent jurisdiction. Thereafter, an intra-court appeal, being Special

Appeal No.137/2003 was preferred by the petitioner against the said order dated 03.12.2002, but the said appeal was withdrawn subsequently and, the incident of such withdrawal has been recorded by the order dated 15.12.2005. Apparently there is no bar in filing this writ petition. It appears that within a short time, this writ petition has been filed.

8. In response to the allegations made in the writ petition, the respondents by filing a counter-affidavit, has stated that the entire proceeding has been carried out in terms of Rule 27 of the CRPF Rules, 1955 and it would be evident from the record that the petitioner had participated in the proceeding without raising any objection at all. It has been further asserted that Rule 27 of the CRPF Rules, 1955, does not oblige to provide the defence assistant or to afford opportunity of cross-examining the witnesses adduced for proving the misconduct. Therefore, the petitioner cannot, as a matter of right, claim the aid from a defence assistant. Further it has been asserted that the enquiry report as submitted by the Enquiry Officer, was furnished to the petitioner by the Office letter No.P.VIII-13/95-113-EC.II, dated 18.03.1996 and, as such, the allegation made by the petitioner that the disciplinary authority has not provided him the enquiry report, is totally false, baseless and, the other allegations made by the petitioner are baseless. They have further stated that the allegations made against the appellate authority and the

disciplinary authority are without any substance inasmuch as from a bare reading of the order dated 07.10.1996 and 11.05.1997, it would be apparent that both the appellate authority and the revisional authority had re-evaluated the evidence and on analysis they passed the reasoned orders. According to the respondents, the allegation of non-application of mind is absolutely unsustainable.

9. Mr. B. Das, learned senior counsel appearing for the petitioner has succinctly submitted as the additional plea that the petitioner has been awarded harshest penalty of removal, which is absolutely disproportionate. He urged this court for interfering with the impugned orders.

10. From the other side, Mr. P.K. Biswas, learned Asstt. Solicitor General of India appearing for the respondents, has submitted that the interpretation as advanced by the petitioner as regards Section 11 of the CRPF Act, 1949 cannot be acceded to, inasmuch as, the interpretation as advanced stands contrary to what has been provided in Section 11 of the CRPF Act, 1949. For reference, Section 11 of the CRPF Act, 1949 is reproduced :

11. (1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act award in lieu of or in addition to, suspension or dismissal any one or more of the following punishments to any member of the force whom he considered to be guilty of disobedience, neglect of duty, or

remissness in the discharge of any duty or of other misconduct in his capacity as a member of the force, that is to say -

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

(2) Any punishment specified in clause (c) or clause (b) of sub-section (1) may be awarded by any gazetted officer when in command of any detachment of the force away from headquarters, provided he is specially authorised in this behalf by the Commandant.

(3) The assistant commandant, a company officer or a subordinate officer, not being below the rank of subedar or inspector commanding a separate detachment or an outpost, or in temporary command at the headquarters of the force, may, without a formal trial, award to any member of the force who is for the time being subject to his authority any one or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act or which is not of a sufficiently serious nature to require prosecution before a criminal court that is to say,-

- (a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;
- (b) punishment drill, or extra guard, fatigue or other duty, for not more

than thirty days, with or without confinement to quarters, lines or camp.

(4) A jemadar or sub-inspector who is temporarily in command of a detachment or an outpost may in like manner and for the commission of any like offence award to any member of the force for the time being subject to his authority any of the punishment specified in clause (b) of sub-section (3) for not more than fifteen days."

11. From a bare reading of Section 11 of the CRPF Act, 1949, it clearly transpires that in addition to suspension or dismissal, anyone or more of the punishment as provided under the said sections (a) to (e), the Commandant or any other authority or officer, as may be prescribed, may award whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force.

12. While appreciating the rival contentions of the learned counsel, it appears to us that the following questions call for our consideration :

- (i) Whether the petitioner was given the reasonable opportunity to defend him?
- (ii) Whether the major punishment can be granted under Section 11 of the CRPF Act, 1949?

- (iii) Whether before imposing the penalty, the petitioner was furnished with the enquiry report for making the representation?

Before the response is recorded, it is to be noted that the petitioner did not file any affidavit-in-reply to the counter-affidavit filed by the respondents.

13. **WHETHER THE PETITIONER WAS GIVEN THE REASONABLE OPPORTUNITY TO DEFEND HIM?**

The petitioner, even though was present while the statement of the witnesses were recorded, but it is evident that he was not allowed to any question to those witnesses. It is the enquiry officer who had examined or put additional questions to the witnesses. The enquiry officer had introduced the records to prove the charges against the delinquent petitioner. In **Union of India & Ors. Vs. Kripesh Chandra Roy**, reported in **2012 (5) GLT 603**, the Gauhati High Court has held as under :

13. It is obvious that Mr. Biswas, learned Assistant SG taking support from the Bakhshish Singh (supra) tried to buttress that the attempt of the learned Single Judge by appreciating the evidence afresh has transgressed the well-defined limits of the judicial review. None of the learned counsel has responded to the eminent question that arose in the proceeding that whether absence of any provision in the statutory rules would entitle the disciplinary authority or the inquiry authority to exclude the fair principles of natural justice or not. For this purpose, it is

required that a brief journey is taken through the provisions of Rule 27 of the CRPF Rules and for that purpose, Rule 27(c), which is relevant is herein under profitably reproduced:

“(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 orders, where he has power to do so."

14. It would be apparent from the said provisions that the evidence shall be material to determine the charge and the evidence may be oral and documentary. If oral, it shall be direct, it shall be recorded by the officer conducting the inquiry himself in presence of the accused and the accused shall be allowed to cross-examine the witnesses. But, there is no provision as to whether the accused shall be allowed the Defence Assistant or whether the witnesses to prove the charge would be presented by a Presenting Officer or by the inquiry officer himself. Though Mr. Datta, learned counsel appearing for the writ petitioner submitted that the witnesses were examined by the inquiry officer acting as the presenting officer and as such, the probable bias

cannot be excluded against him. This aspect of the matter was considered by this Court in *Mutum Shantikumar Singh vs. Union of India & others* as reported in (2005) 3 GLR 243 wherein the Rule 27 of the CRPF Rules, 1955 was considered on the touchstone of the principle of natural justice. It has been held in reference to *A.K. Kraipak and Others v. Union of India and Others*, reported in AIR 1970 SC 150 that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. This Court has approved the proposition of law as enunciated in *A.K. Kraipak* (supra). It is reproduced hereunder:

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent year. In the past it was thought that it include just two rules namely (1) no one shall be a judge in his own cause (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to

administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala*, Civil Appeal No. 990 of 1968, ddt. 15.07.1968 (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law, under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

15. The Apex Court in *Punjab National Bank and Ors. v. Kunj Behari Mishra* reported in (1998) 7 SCC 81 made a well considered observation on applicability of principles of natural justice in the departmental inquiry and held that the principles of natural justice have to be read into regulation 7(2) (Punjab National Bank Officer Employee's (Discipline and Appeal) Regulations, 1977, though it is silent on that aspect. (emphasis supplied) Para 19 (of SCC) in *Punjab National Bank and Others* (supra) is extracted is hereunder:

"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 reason 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, 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."

16. Similar view was also taken in *State Government Houseless Harijan Employees' Association v. State of Karnataka and Ors.*, reported in (2001) 1 SCC 610 where it is held that the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication. Para 27 and 28 (of SCC) in *State Govt. Houseless Harijan Employees' Assn.* (supra) are extracted for appreciation hereunder:

"27. This Court has consistently held that the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication.

28. In the case of *Union of India v. Co. J.N. Sinha* this court said (SCC p. 461, para 8):

It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intent to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by the necessary implication

excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the 'statutory authority and read into the provision concerned the principles of natural justice."

17. In another decision as rendered in Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant and Ors., as reported in (2001) 1 SCC 182 wherein it is held by the apex Court that doctrine of natural justice is incapable of exact definition. However, it is synonymous with fairness. Compliance or non-compliance thereof has to be examined on the totality of the facts. The Apex Court in Kumaon Mandal Vikas Nigam Ltd. (supra) on enunciating the law in Para 22, held as under:

"22. The sixty-five page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge sheet only? The answer cannot possibly be in the affirmative, if the records have been considered, the immediate necessity would be to consider as to who is the person who the produced has same and the next issue could be as regards the nature of the records unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it-can it be termed to be in consonance with the concept of justice or the same tantamount to a total miscarriage of justice."

18. In Chelfremog v. State of Tripura and Ors. reported in (2000) 2 GLT 604 and Baharul Islam (CT) v. Union of India and Ors. reported in 2001

(1) GLT 62 I, this Court held that in the departmental proceedings where no presenting officer was appointed, the enquiry officer has assumed the role of the Judge as well as prosecution inasmuch as in the absence of presenting officer, the enquiry officer must examine the witnesses and exhibited documents. This will be a total violation of the rules and fundamental principles of natural justice. Therefore, the procedures adopted by the enquiry officer in holding the departmental enquiry does not fulfil the requirement of fair proceeding in conducting enquiry against the delinquent. In such circumstances "the reasonable opportunity of being heard" as emphasise in Article 31(2) of the Constitution of India had been denied to the concerned government employee (delinquent). The similar view is also taken by this court (Division Bench) in Pt. Rajyamalla Buzarbaruah v. Assam Administrative Tribunal, and Ors. reported (1983) 1 GLR (NOC) 71. The Apex Court in Dr. Rash Lal Yadav v. State of Bihar and Ors. reported in (1994) 5SCC 267 held that :

"the concept of natural justice is not a static one by is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely (i) no one shall be a judge in his own cause, and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of the rule of natural justice is to promote justice and prevent its miscarriage."

19. In Mutum Shantikumar Singh (supra), it has been reiterated that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, the Courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences. It was further held that the Rule 27 of the CRPF Rules, 1955 by expressly or by necessary implication does not exclude the

application of the rule of natural justice and the fair procedures.

20. This Court rightly did not take any cognizance of Union of India and others v. P. Thayagarajan as reported in (1999) 1 SCC 733 as this aspect was never considered by the Apex Court in that case. Mere reference to Rule 27 and its observance shall not create any binding precedent what usually is created under Article 1141 of the Constitution of India when it is found that a law has been declared by the apex Court.

21. In another decision as rendered in Maibam Ibohal Singh vs. State of Manipur and others as reported in (2009) 6 GLR 507, the same principles was re-enunciated wherein it has been held that:

"...the findings in the departmental enquiry were made on the basis of the statements of witnesses almost all of whom were never cross-examined. Though it would have been fair and just on the part of the enquiry officer to have given a reasonable opportunity to the writ petitioner-appellant to appoint a defence assistant for his defence, no such opportunity was given. No presenting officer was appointed by the authority in connection with the enquiry. In our opinion, the proceeding of the said enquiry as against the writ petitioner-appellant was not proceeded fairly inasmuch as the same was made in violation of the principles of natural justice. The impugned dismissal order passed on the basis of the findings in the said enquiry is not sustainable in the eye of law. On perusal of the impugned order of the appellate authority dated 7.4.2003, we have ascertained that the appellate authority considered neither any of the ground of the appeal nor any of the point required to be considered under Rule 66(vi) of the Assam Police Manual Part-III. Thus, the impugned order of the appellate authority, dated 7.4.2003, was passed without application of his mind by the appellate authority. In the light of the decision of the Hon'ble Apex

Court in Narinder Mohan Arya v. United India Insurance Co. Ltd. and Ors., (2006) 4 SCC 713, wherein the Hon'ble Apex Court held about the need of passing the appellate order after due application of mind by the concerned authority, the impugned order of the appellate authority, dated 7.4.2003 is not also sustainable in the eyes of law."

The similar consequence has visited the writ petitioner in the present case. [Emphasis added]

14. It has been further held in **Union of India & Ors.**

Vs. Kripesh Chandra Roy as under :

25. It is therefore crystallized that in the statutory provisions, unless the law expressly or by necessary implications excludes the principles of natural justice can be read as the supplement and the departmental proceeding has to be devised and conducted accordingly. This Court is in agreement with Maibam Ibohal Singh (supra) that the inquiry officer cannot in any manner act as the presenting officer for purpose of admitting documents in the proceeding or for examining the witnesses to prove the charge or any other act, usually shouldered by the presenting officer. If it is found that the inquiry officer had played such role then it has to be held the delinquent was not proceeded with fairly. Since the inquiry officer admittedly, in the instant case, has acted, as the presenting officer to admit the documents and present the witnesses to prove the charge by oral testimony. The entire proceeding has become vitiated in the eye of law and accordingly, the same is required to be interfered with. [Emphasis added]

15. Even though there is no provision under Rule 27 of the CRPF Rules, 1955 to provide the defence assistant or right to

cross-examine these are the fundamental facets of the principles of natural justice. If the delinquent officer is deprived of those rights without a reasonable substitute, that would turn the entire procedure unfair and such proceeding cannot be sustained in law, as fairness in action is the inalienable attribute, in contradistinction to arbitrariness, in view of Article 14 of the Constitution. Hence, we are of the view that the petitioner was not given the reasonable opportunity to defend him.

16. **WHETHER THE MAJOR PUNISHMENT CAN BE GRANTED UNDER SECTION 11 OF THE CRPF ACT, 1949?**

This issue had fallen for consideration in **Deen Dayal Yadav Vs. The Deputy Inspector General of Police, C.R.P.F.**, reported in **1974 LAB. I.C. 929** and, approvingly that has been quoted in **Union of India & Ors. Vs. Kripesh Chandra Roy** as under :

..... Force can not only be under Section 12 of the Act, but also can be based under Section 11 of the said Act. The following passages are profitably extracted from Deen Dayal (supra):

"9. It will be better that before I take up a discussion of the points involved, I may refer first of all to the scheme of the Act. The Act is called the Central Reserve Police Force Act, 1949, and Section 3 thereof lays down the constitution of the Force. According to this section there shall continue to be an armed force maintained by the Central Government and called the

Central Reserve Police Force, and the Force shall be constituted in such pay, pension, and other remuneration, as may be prescribed. Section 4 is also important in this connection, because it lays down that the Central Government may appoint to the Force a Commandant and such other persons as it thinks fit to be assistant commandants and company officers. There is a heading in the Act dealing with offences and punishments. Section 9 deals with more heinous offences. These offences have been categorized under this section from Section 9 (a) to Section 9 (1) and it has been laid down that these offences shall be punishable with transportation for life for a term not less than seven years or with imprisonment for a term which may extend to fourteen years or with fine which may extend to three months' pay etc. Section 10 deals with less heinous offences i.e., to say offences which are not so grave and so serious as those enumerated and categorized in Section 9. Section 10 also lays down that the offences enumerated thereunder shall be punishable with imprisonment with a term which may extend to one year or with fine which may extend to three months' pay. It is obvious that all these offences are triable by a competent court of law.

10. Rules have also been framed under Section 18 of the Act and are known as Central Reserve Police Rules, 1955 (hereinafter referred to as 'the Rules') and it will be relevant here in this connection to refer to Rule 36 which deals with judicial trials and lays down that all trials in relation to any of the offences specified in Section 9 or Section 10 shall be held in accordance with the procedure laid down in the Code of Criminal Procedure. Section 11 is very

important for the purpose of this present matter and it deals with minor punishments. I may quote here only the relevant portion of Section 11, and it reads as under:-

"11, Minor Punishments:

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

(a) reduction in rank;

(b) fine of any amount not exceeding one month's pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter-guard for not more than twenty-eight days; with or without punishment drill or extra guard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the Force." Section 12 is also important and I may quote it also here:-

"12. Place of imprisonment and liability to dismissal on imprisonment. -

(1) Every person sentenced under this Act to imprisonment may be dismissed from the Force, and shall further be liable to forfeiture of pay, allowance and

any other moneys due to him, as well as of any medals and decorations received by him.

(2) Every such person shall, if he is so dismissed, be imprisoned in the prescribed prison, but if he is not also dismissed from the Force, he may, if the Court or the Commandant so directs, be confined in the quarter-guard or such other places as the Court or the Commandant may consider suitable."

The scheme of the Act, therefore, shows that as far as punishments for offences and misconduct are concerned, they have been classified into three types; those which have been categorized under more heinous offences and less graver than those are the offences categorized under Section 10 and the minor punishments under Section 11. The main contention of the learned counsel for the petitioner is that under Sec. 11(1) it was only the Commandant who could impose the punishment and the punishment which could be imposed by him would be other than the removal or dismissal from service; meaning thereby that under Section 11 (1) no punishment of removal or dismissal from service could be passed and it has also been urged that the respondent was not empowered under the Act or under the Rules to impose any such punishment. I may refer here now to Rule 4 which is one of the Rules framed under the Act. It deals with the general powers of certain officers and R.4 (b) is important. It lays down that the Deputy Inspector-General shall have the powers of supervision and control with respect to the training, discipline and general administration of the Force. The Deputy Inspector-General of Police has also been defined under Clause (c) of

Rule 2 and this definition says that 'Deputy Inspector-General of Police' means an officer who has been notified by the Central government as Deputy Inspector-General of Police for the Forces. Reading these two provisions together, in my opinion there can be no doubt that if a Deputy Inspector-General of Police has been notified by the Central Government as Deputy Inspector General of Police for the Force, then he will be regarded as the Deputy Inspector-General of Police for the Force and will have the powers as contemplated by Rule 4(b) above quoted. It may also be mentioned here that no such plea has been taken that the respondent (the Deputy Inspector-General of Police concerned) in this case had not been notified by the Central Government as the Deputy Inspector-General of Police for the Forces. Rule 7(b) lays down that prior approval of the Dy. Inspector-General of Police for the appointment of Jamadar (Sub-Inspector) has to be obtained. It would be evident from this that the Deputy Inspector-General of Police is the appointing authority.

11. Now I may also turn here in this connection to Rule 27 which deals with the procedure for award of punishment and there is a table given under this rule which has different columns and it is clear from the Deputy Inspector-General of Police has the power to impose a punishment such as dismissal or removal from the Force but this punishment has to be inflicted after a formal departmental enquiry. This enquiry has already been held in the present case.

12. The contention of the learned Counsel for the petitioner that no punishment such as removal or dismissal from service could be passed, does not seem to be correct. I have already quoted the section above and it is significant to note that in this

section the important words are “in lieu of or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers” may be passed. The words ‘in lieu of or in addition to’ in my opinion clearly indicate that in addition to the punishment of dismissal from service the punishments prescribed in Section 11 could be passed or in lieu of a punishment for dismissal. It has also been urged that the punishment such as removal or dismissal from the Force could be passed only under Section 12 which I have quoted above but I think this contention also does not seem to be correct because this section clearly lays down that if any person has been sentenced to imprisonment under the Act, then he can be dismissed and shall also be liable to forfeiture of pay etc. The heading of the section also shows that it deals with ‘place of imprisonment and liability to dismissal or imprisonment’. In my opinion it cannot be said that a punishment of removal or dismissal from Force can only be passed under Section 12 of the Act i.e., to say only when a person has been sentenced to imprisonment. I am strengthened in my view because a similar view has been taken by a Division Bench of Rajasthan High Court in the case of Shyam Singh v. Dy. Inspector-General of Police, Central Reserve Police, Ajmer reported in AIR 1965 Raj 140 where also it was held that from a perusal of Section 12 it is clear that the punishment of dismissal under the section may be given to a delinquent in addition to the sentence of imprisonment awarded to him under the law. If the authorities mean to proceed under the section, it will not be necessary to observe the formalities of a regular disciplinary inquiry and action may be taken up after a persons conviction and punishment of imprisonment under the

Act. It has also been further held that Section 12 does not lay down that a person could not be liable to dismissal if he is not convicted or sentenced under Act. Similarly with regard to Section 11 it was held that the words 'in lieu of or in addition to suspension or dismissal' appearing in sub-sec. (1) of Sec. 11 before cls. (a) to (e) show that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to or in lieu thereof, the minor punishments mentioned in clauses (a) to (e) may also be awarded. It was also held that a perusal of Sections 9, 10 and 11 would clearly show that a delinquent can be punished with dismissal even if he has not been prosecuted for an offence under Section 9 or 10 of the Act. I am therefore, of opinion that the Dy. Inspector General of Police under Section 11 of the Act read with Rule 27 of the Rules could impose a punishment of dismissal or removal from service." [Emphasis supplied]

17. We reiterate our approval of the law as enunciated by the High Court of Jammu & Kashmir in **Deen Dayal Yadav Vs. The Deputy Inspector General of Police, C.R.P.F.** and hold that major punishment of removal from the service can be awarded under Section 11 of the CRPF Act, 1949.

18. **WHETHER BEFORE IMPOSING THE PENALTY, THE PETITIONER WAS FURNISHED WITH THE ENQUIRY REPORT FOR MAKING THE REPRESENTATION?**

On the face of the averments made by the respondents in para 11 of their counter-affidavit that by the

Office letter No.P.VIII-13/95-113-EC.II, dated 18.03.1996, the petitioner was furnished with a copy of the enquiry report and he was also asked by the said letter to make representation, if any, within fifteen days of receipt, this court is unable to accept the contention that the petitioner was not furnished with the enquiry report, as the averments in the counter-affidavit filed by the respondents has not been contested by the petitioner by filing the affidavit-in-reply.

19. Having held so this court deems it appropriate to hold that the impugned orders are to be interfered with for non-compliance of the principles of natural justice as stated and, accordingly, the office order dated 30.03.1996 (Annexure-B to the writ petition), office order dated 07.10.1996 (Annexure-F to the writ petition) and office order dated 11.05.1997 (Annexure-G to the writ petition), are set aside and quashed. The disciplinary authority shall re-commence the enquiry proceeding from the stage of the examination of the witnesses by the Enquiry Officer, by affording the petitioner to cross-examine or to lead evidence in his defence. Such cross-examination shall be permitted to be carried out by the petitioner himself or by a Defence Assistant, preferably from the CRPF or from any other offices of the Central Government. It is further directed that, if such Defence Assistant is engaged by the petitioner, he will be allowed to cross-examine, file written submission or argument or

may represent the petitioner in any other suitable manner having regard to a fair enquiry. To that limited extent, the enquiry be started afresh and, if necessary, and, if the former Enquiry Officer is not available for any reason, the Disciplinary Authority may appoint a new officer for conducting the enquiry, to take the same to its logical conclusion in accordance with law having due regard to this order. The disciplinary proceeding shall be completed within a period of 6(six) months, but by any rate, before 31.08.2015. Accordingly, the disciplinary proceeding initiated by the Memorandum dated 09.10.1995, Annexure-A to the writ petition, is remanded. It is made clear that till the disciplinary proceeding comes to its finality, the petitioner shall not be entitled to any benefit whatsoever. But, if the petitioner is exonerated from the charge, he will be entitled to all service and financial benefits.

20. In the result, the writ petition stands partly allowed.
No order as to costs.

JUDGE

CHIEF JUSTICE

ROY