

IN THE PUNJAB & HARYANA HIGH COURT, AT CHANDIGARH

Civil Writ Petition No.15348 of 1999

Date of decision: April 30, 2015

Zuber Ahmed

... Petitioner

Versus

The Union of India and others

... Respondents

CORAM: HON'BLE MR JUSTICE RAJIV NARAIN RAINA

Present: Mr Surinder Sharma, Advocate,
for the petitioner.

Ms. Puneeta Sethi, Addl. C.G.S.C.

Mr Anil Malhotra, Advocate, Amicus Curiae.

Mr R.S.Cheema, Senior Advocate, Special Amicus Curiae,
with Mr Anil Malhotra, Advocate.

1. To be referred to the Reporters or not? **Yes**
2. Whether the judgment should be reported in the Digest? **Yes**
3. Whether reporters of local papers may be allowed to see the judgment? **Yes.**

RAJIV NARAIN RAINA, J.

1. This writ petition is by Zuber Ahmed, an ex-constable of the Central Reserve Police Force against a punishment order dated March 19, 1993 inflicted by the Commandant, 84th Battalion, CRPF, Faridkot, Punjab dismissing him from service following an order passed earlier in the day awarding him sentence of simple imprisonment till the rising of the Court in a judicial trial held by the same Commandant-6th respondent concluding it in

ten days. The sentence was imposed on the petitioner by the Commandant after trial by virtue of powers vested in him by the Central Government under s. 16 of the Central Reserve Police Force Act, 1949 read with GSR-43 (F) dated January 26, 1978 ('CRPF Act' for short) which authorized him to act as the Chief Judicial Magistrate to try the commission of offences committed by a member of the Force including the one under the residuary clause in sub-s. (n) of s. 10 of the Act under which the petitioner was charged and tried for what in pith and substance amount to an attempt to molest and to outrage the modesty of a woman by leaving his call of duty for about 10 minutes by change of guard post with another constable though the charges are not exactly worded thus. This petition was admitted by the Division Bench on November 29, 2001 to be heard within one year but could not be for reasons beyond control of this Court in the face of mounting arrears of cases. Before he approached this Court the petitioner had already lost six years in pursuing his remedy in the Calcutta High Court only to be told at the end of the day that it lacked territorial jurisdiction in the matter. That is how he came to this Court in 1999 being the proper forum for vindication of his rights asserted against the CRPF for alleged wrongful dismissal from service in the year 1993 when the petitioner was a young constable aged about 24 years. His date of birth recorded in the dismissal order is December 14, 1967 which makes him about 48 years of age.

2. The Act reveals that s. 10 lists sixteen less heinous offences which invite imprisonment for a term which may extend to one year, or with fine

which may extend to three months' pay, or with both. Under s.10 (n) a member of the Force is punishable if he: "*is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline;*" The sentence till the rising of the court was imposed on the petitioner for committing offences defined in s. 10 (n) of the Act vide judgment of conviction and sentence dated March 19, 1993 on the following charge:-

"I, Pushkar Singh, Chief Judicial Magistrate, do hereby charge you Zuber Ahmed as follows:- Firstly- That you on 19.10.92 at about 2320 hrs. while on duty, left your duty place and entered in the house of Shri Kala Singh, Security aide of Shri P.S.Badal, Ex-Chief Minister of Punjab and caught hold of mouth of Smt Gurdev Kaur wife of Shri Kala Singh with malafide intention and ran away from the scene after hearing alarm from the children of Smt Gurdev Kaur and thereby, committed an offence punishable under s. 10(n) of CRPF Act, 1949 and within cognizance of this court. I, hereby direct that you be tried by me in this court on the above charge."

3. What followed was dismissal from service based on judgment of conviction on the charge framed by virtue of recording of finding of guilt and order of sentence of imprisonment till the rising of the court. The Office Order dismissing the petitioner from service carried further burdens. The period of suspension from October 22, 1992 to March 19, 1993 was ordered to be treated as period not spent on duty. The pay and allowances were restricted to the subsistence allowance already drawn. The period described as desertion from November 16, 1992 to January 1, 1993 (56 days) was treated as *dies non*. However, no charge was framed against Zuber Ahmed

for desertion from duty during any period including the period of suspension, which could have been a serious charge, if laid, on a member of the Force.

4. The statement of the history of facts, briefly put, are on the following lines: The petitioner was enrolled as a Constable in CRPF on April 30, 1987 and was allotted the 84th Battalion, CRPF. He served at different places in Pinjore and Jammu etc. and was, ultimately, posted to the 84th Bn., then stationed in Police Lines, Faridkot, Punjab. While posted on field duty at the CRPF Headquarters at Faridkot, the petitioner was deployed on guard duty to the private residence of Shri Parkash Singh Badal, the then former Chief Minister, Punjab to stand security and escort duty at his private residence in Chandigarh.

5. On the intervening night of 19th /20th October, 1992, the petitioner was deputed on guard duty at the front gate of the residence along with one Constable Himmat Singh posted on the fateful day to guard the backyard of the house. The case set up against the petitioner was that while the two guards were on duty from 2200 hours to 2350 hours, on the night of the occurrence, an unidentified person entered the servant quarters of one Kala Singh, a personal aide [in the charge framed on March 5, 1993 the nomenclature 'Security aide' is used] of the then ex-Chief Minister, Punjab who lived with his family in the servant quarters at the rear of the house. While the then ex-Chief Minister and Kala Singh were away on tour, it was alleged by Smt Gurdev Kaur wife of Kala Singh that a person whose face was covered had trespassed into her private family quarters and had tried to

outrage her modesty by muffling her mouth and threatening her with dire consequences if she did not keep her mouth shut. She alleged that the intruder was in 'CRP dress' holding a rifle.

6. On October 22, 1992, the Commandant, 84th Bn., CRPF placed the petitioner, Constable Himmat Singh and Lance Naik U.N.Gaikwar, Guard Commander, also posted at the residence for security duty, under suspension in exercise of powers conferred by r. 27(a) of the CRPF Rules, 1955 in contemplation of departmental proceedings. A preliminary enquiry/investigation was ordered vide office order dated October 27, 1992 for misbehaviour/manipulation of records regarding incident dated October 19, 1992 with Smt Gurdev Kaur. It was conducted by Shri P. Sivanandan, Assistant Commandant, CRPF who went into the incident and found that on the intervening night of 19th /20th October, 1992, Constable Himmat Singh was on guard duty on the rear side of the house where Smt Gurdev Kaur lived with her family. The petitioner is alleged to have approached and requested Constable Himmat Singh for swapping duties for a few minutes, which were agreed to by Constable Himmat Singh and accordingly, they exchanged places for a while. The incident is timed to the period as said before from 2200 hours to 2350 hours. Both the guards allegedly reported the incident to their senior officer/s thereafter. When the petitioner reported the matter to his Platoon Commandant, his demeanour was recorded by the Force official as in a "...fearsome state of mind and was unable to speak due to fear of the consequences of the act committed by him, which would ultimately point out that he was the person who had entered the room of

Shri Kala Singh with bad motives". The intention of Constable Himmat Singh in exchanging duties was seen as one without ill motive. However, it was found that he should not have done what he did without knowledge of his Guard Commandant. The then Platoon Commandant posted at the residence on that day/night was found to have concealed facts from his superiors and was said to have tried to hush up the matter. Till that time, nor thereafter was a CRPF police case or first information report under the criminal law registered on the incident against the petitioner.

7. The Commandant, 80th Bn. CRPF, Mr M.S.Sethi, who was not the petitioner's Commandant considered the preliminary enquiry report authored by Mr Sivanandan, Assistant Commandant, and recommended dispassionately on November 13, 1992 that *"No judicial trial is recommended as this will pave the way to unwanted publicity of the incident as well as there is a likelihood of tarnishing the fidelity of a woman through cross-examination etc"*. I should imagine that there was wisdom in this line of thinking. It was recommended by the officer that a departmental enquiry be conducted against the petitioner for gross negligence of duties in entering the house of Kala Singh with bad motive. Constable Himmat Singh was also recommended to be dealt with departmentally for swapping duties without permission of superiors. Constable Himmat Singh is said to have apologized to Smt Gurdev Kaur even though he was not at fault. Lance Naik U.N.Gaikwar was recommended to be absolved of the charges although he was posted on the spot as Guard Commandant but could not be imputed knowledge of the private arrangement between the two guards. It is the

stand of the respondent CRPF in paragraph 7 of the written statement that the preliminary enquiry report was examined and considered by superior authorities who ordered departmental enquiry against the defaulters vide office order "dated 30.1.1992 except Constable Zuber Ahmed as he had deserted the Force. The petitioner reported at his own on 11.1.1993 after desertion of 56 days and he was tried judicially". The reason stated for departure from domestic enquiry was by assumption of acts of desertion which would have been rather serious in nature with respect to a member of the disciplined force. But the charge framed was not of desertion.

8. It is the further case that on the intervention of the Personal Assistant to the then ex-Chief Minister, Punjab on October 20, 1992 the matter was decided to be reported to the 84th Bn., being the petitioner's parent battalion. This is how the matter fell to the lot of the 6th respondent/Commandant who would later on sentence and dismiss the petitioner from service on the same day. On February 12, 1993 the Comdt. 84 Bn. CRPF passed an order on the preliminary enquiry report, recommending suitable disciplinary action against Constable Zuber Ahmed in accordance with the rules on the subject for his gross negligence for entering the house of Kala Singh with bad motive while on duty. It was as a result of the said preliminary enquiry report that Sub Inspector M.J. Kujur and Lance Naik U.N Gaikwar were awarded minor punishment of "Severely Censure" while the regular departmental enquiry was pending against Constable Himmat Singh, which ended in the revocation of his suspension w.e.f April 28, 1993 and infliction of the punishment of

confinement to quarter guard for 28 days with forfeiture of pay and allowances for the period besides treating his suspension period not spent on duty. The mitigating factor in his case as recorded is: "The Constable has taken earnest efforts to avoid any bad name to the Force and apologized to Smt Gurdev Kaur, even though he was not at fault. This act had reduced the publicity to a great extend."

9. The petitioner was alleged to have confessed to entering the house of Smt Gurdev Kaur and of later asking for her pardon. He is alleged to have given a written admission of having committed the offence by way of a 'confessional statement'. The recommendation against holding a judicial trial and instead a departmental enquiry was not accepted by the Commandant, 84th Bn., CRPF, who decided to put the petitioner to judicial trial by invoking s.10 (n) in exercise of powers conferred by sub-s. (2) of s.16 of the Act, 1949 read with GSR-43 (F) dated January 26, 1978. S.16 (2) empowers the Central Government to invest the Commandant or Assistant Commandant with the powers of a Magistrate to try an offence committed by a member of the Force punishable under the Act notwithstanding anything contained in the Code of Criminal Procedure. The Central Government has invested such power in the Commandant to act as the Chief Judicial Magistrate, duly authorized by law to convict and pass sentence of imprisonment in a prescribed place as by warrant of the regular criminal courts of the land. Then on, vide order dated March 5, 1993, the Commandant/Chief Judicial Magistrate framed charge against the petitioner which read that the petitioner had left his place of duty and had entered in

the house of Smt Gurdev Kaur and caught hold of her mouth with mala fide intention and on an alarm raised by the children of Smt Gurdev Kaur, he ran away from the spot. Thereby, he committed an offence punishable under S. 10 (n) of the Act within the cognizance of that Court. Introducing the children of Smt Gurdev Kaur in the wording of the charge sheet, the handiwork of the Commandant/Chief Judicial magistrate, was perhaps ill thought out being potentially sinister and insidious in their context and therefore Mr Sethi's advise I should think was the more practical in not creating a situation which might subject the lady's fidelity to the vagaries of cross examination when produced in the witness box in a criminal trial. The children were never produced at the trial. Be that as it may, the charge sheet was framed and served on Zuber Ahmed who pleaded not guilty on March 9, 1993 and claimed trial.

10. Mere acquaintance with the bare Act manifests that s. 10 prescribes less heinous offences while s. 9 enumerates the more heinous ones. S. 10 (n) of the Act prescribes that a member of the Force shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to 3 months or with both, if he is guilty of any act or omission which, though not specified in the Act, is prejudicial to good order and discipline. Ten days after claiming innocence by pleading not guilty the trial was rushed through concluding it by conviction. The petitioner was then 24 years of age and had put in about 5 years of service as a constable in the Force. Today he is about 48 years of age. What is used against the petitioner in recording judgment of conviction by the Chief

Judicial Magistrate is a confessional statement in writing given when the preliminary fact finding enquiry was conducted.

11. The prosecution examined Constable Himmat Singh PW1, Lance Naik U.N.Gaikwar PW2, Sub Inspector M.J.Kujur PW3 while Smt Gurdev Kaur, the prime witness testified as PW4. The petitioner was not identified by Smt Gurdev Kaur in court. The statement of Smt Gurdev Kaur recorded on solemn affirmation during the trial in the petitioner's case titled *Union of India vs. Zuber Ahmed* reads as follows:-

“I, Gurdev Kaur W/o Shri Kala Singh, stay in the back portion in servant quarter of Shri P.S. Badal with my children. On 19.10.92 my husband had gone on duty along with Sh. P.S. Badal. On 19.10.92 night at about 2330 hrs, I felt that there is someone in my room. I saw one person with his **mouth covered** standing near to my cot. **He did not touch me or tried to tease or manhandle me.** Immediately my son also got up and raised an alarm. The man ran out. **I or my son could not recognise the person.** When this man was running, he had fallen down. After that I informed CPP Comdr present for Sh. P.S. Badal's Kothi protection. Next day morning around 0800 hrs S.I. came and enquired and narrated the whole story. Then around 1100 hrs on 19.10.92 S.I. brought 4 persons including who were on duty last night. I could not recognise nor any person as who had entered last night in my room. Then I told Sub Inspector that whosoever had entered in my room should ask pardon so that I do not report the matter to Sh. P.S. Badal. **After this S.I. told two persons who were on duty to ask pardon. On this both the sentry including Zuber Ahmed asked me the pardon.** After that one CRP officer had

come to enquire the matter.

Read over, explained in the language understood by her and admitted correct.”

12. The muffling 'squeezing' glossing given to the occurrence is mythical and stands belied by the statement on oath of Smt Gurdev Kaur herself that the man neither touched her nor teased her nor manhandled her in the room by the cot in the servant quarter. Though she deposed that the intruding man's 'mouth' was covered but she did not say that his head was also covered as is the view of the 6th respondent formed in the judgment of conviction. The confession or admission was clearly in the backdrop of pressure or duress seeking pardon on the condition of not reporting the matter to Sh. P.S.Badal himself as borne out from the deposition of Smt Gurdev Kaur in court. She sought pardon from the alleged culprits under veiled and extreme threat and on this insistence did the Sub Inspector ask the two persons [Constable Zuber Ahmed and Constable Himmat Singh] who were on duty to seek pardon anyhow. And if they did not confess to the crime/misconduct worse would follow, over which no one would have any control.

13. When the petitioner stepped into the witness box after conclusion of the prosecution evidence it is recorded by the 6th respondent in the trial proceedings that: “The prosecution has led certain evidence against you to the following effect what have you to say about it?” The following questions *inter alia* were put to Zuber Ahmed by the Commandant/CJM though there is no evidence on record that the petitioner knew or was made aware of what was recorded in writing in English by the court or that he was

made to understand it in the language known to him:-

“Q1- That on 19.10.92, you were on sentry duty from 2200 hrs to 2359 hrs on the main gate of Shri Prakash Singh Badal Ex-C.M. Punjab at Chandigarh. At about 2320 hrs Ct. Himmat Singh who was on sentry duty from 2300 hrs to 0100 hrs of 20.10.92 at the rear of the kothi of Shri P.S. Badal, had come to you to have contact with another sentry and you had asked him to stand at your duty place and you left your duty place without any reason?

Ans.1- It is incorrect. I had just gone in the back side of kothi as I was feeling dizziness.

Q.2- That on 19.10.92 at about 2320 hrs after leaving your duty place, you went to rear side of the kothi of Shri. P.S. Badal for about 10 minutes and entered in the house of Shri Kala Singh security aide to Shri P.S. Badal who was away from Chandigarh and squeezed the mouth of Smt Gurdev Kaur W/o Shri Kala Singh with some malafide intention and after hearing alarm from the children of Smt Gurdev Kaur you ran away from there and came to main gate?

Ans.2- It is incorrect.

Q.3- That upon interrogation by your guard Comdr and Pl. Comdr, you disclosed having left your duty place and having entered in the house of Smt Gurdev Kaur statement Ex-PA signed by you on 20.10.92 and another statement written in your own hand writing dated 20.10.92?

Ans.3- It is incorrect. On 20.10.92 I had given in writing to save me.”

14. A combined reading of the first question and its answer would reveal that when Constable Himmat Singh came to the front gate only then the petitioner left the sentry post as he was 'feeling dizziness'. It cannot be expected that at that moment the petitioner would seek permission to take a little rest when Constable Himmat Singh came as replacement on the alleged personal interchange of duty. The position may have been different had the petitioner left the front sentry post by abandoning it and would come later on to his post. Although in his statement, the petitioner did not depose or admit that he exchanged duty with Constable Himmat Singh.

15. On closing of the prosecution evidence the petitioner in his statement under s. 313 Cr.P.C. denied having given in writing any writing construable as a mea culpa of offence attributed to him and defended himself stating that he did not enter the house of Smt Gurdev Kaur nor had she recognized him as the intruder of her privacy. In this statement the petitioner also pleaded in defence that only after he left the 84th Bn. CRPF, Faridkot and during his absence, one Head Constable Ram Karan had incited Smt Gurdev Kaur to name him due to his personal quarrel with him. However, no defence evidence was led despite opportunity. But he had a right to keep silent and leave the prosecution to the prosecution.

16. There is no witness to the incident except to the extent of the deposition of Smt Gurdev Kaur and, therefore, the key prosecution witness who could not say with any absolute certainty as to who was the one who had tried to commit an offence upon her person. On his part Constable Himmat Singh deposed as follows at the trial :-

"The accused CT Zuber Ahmed was also on duty from 2200 hrs to 2359 hrs on the main gate of Khoti. At about 2320 hrs, I came to main gate to contact sentry CT Zuber Ahmed who was present there. CT Zuber told me that I should remain at main gate for some time to enable him to go behind in the lawn for sometime as he was feeling dizziness. After about 8 to 10 minutes, I heard some loud sounds from the back portion of Khoti. Immediately I saw CT Zuber Ahmed coming running to me. I asked him as what has happened behind, CT Zuber Ahmed told me of hearing 'CHOR-CHOR' voices from back portion of Kothi. I rushed to Khoti adjoining to Shri P.S.Badal to see and check if someone has entered the kothi or coming out of kothi to which we were protecting. I saw nothing and returned back to main gate of Sh.P.S.Badal where CT Zuber Ahmed standing. Later sent Gurdev Kaur w/o Sh.Kala Singh with her children came to main gate and asked me as to who was sentry of the back portion of kothi. I told her that I was the sentry at back but had come to contact main gate sentry. Smt.Gurdev Kaur further told me that one person in CRP dress with rifle had come to my room and caught hold of my mouth but when children raised alarm that person has run away. She asked me to call Pl Comdr and guard comdr. I called both of them. I alongwith CT Zuber Ahmed, Guard Comdt and Pl Comdr and Smt.Gurdev Kaur went to scene and after seeing the place, Pl Comdr, SI M.S.Khujur asked me and CT Zuber Ahmed to line up and after that SI asked Smt.Gurdev Kaur to recognize if some body out of two had entered in your house. Smt.Gurdev Kaur replied that she do not recognize but she only knows that person who had entered in his house was wearing uniform and was having rifle with him. Later all uniform and was having rifle with him. Later all we went to our respective place. Next day morning Pl. Comdr collected up again and enquired the matter. Then we all went to Smt.Gurdev Kaur where PS to Sh.Badal and her children were there and told her that we don not know who

had come last night in your room. Then Smt.Gurdev Kaur told us either to tell or else she will report the matter to Shri Badal. Then I and CT Zuber Ahmed thinking that we may be punished told her that thought did not come to your room and since we both were on sentry duty that time, we both apologies to end the matter. Then CT Zuber Ahmed and I apologized and Smt.Gurdev Kaur pardoned us. I still do not know as to who had entered in her house."

Most certainly, the case is one of circumstantial evidence. The Chief Judicial Magistrate has relied solely on the handwritten statement of the accused [s. 161, Cr.P.C.] signed by him 'ROAC' though contents were not scribed by the accused, as found in the case papers of his allegedly admitting guilt before the police personnel investigating the incident. But the Chief Judicial Magistrate has held that since Smt Gurdev Kaur testified that the person was in uniform, therefore, it gave rise to suspicion on the accused of having entered her house. The Commandant/CJM reasoned as under in his judgment of conviction:-

"7. None of the said P.W.S is alleged or proved to be in any way hostile towards the accused and as such there is no ground to discard their sworn testimony. **From their statements having left the duty place by the accused is fully proved** and accused failed to prove that he left his duty place with some permission of the competent authority. He did not had any defence evidence that he was falsely implicated in this case. **Regarding entering in the house of Smt.Gurdev Kaur and squeezing her mouth, the P.W.S. could not say any thing as to who had entered in the house of Smt.Gurdev Kaur.** There is no eye witness also to have seen the accused entering in the house except the accused's hand written statement given in the preliminary enquiry. But the accused having his duty place

with rifle at 2320 hrs on 19.10.92 and at the same time some uniformed person with rifle entering in the house of Smt.Gurdev Kaur at 2330 hrs gives suspicion of the accused having entered in the house of Smt.Gurdev Kaur."

17. On this facile reasoning based on suspicion, the petitioner was held guilty of the charge. The order of sentence was also pronounced on the same day i.e. on March 19, 1993. The petitioner was sentenced by a flea bite punishment to undergo simple imprisonment on March 19, 1993 till the rising of the court. In this manner, the petitioner stands convicted of the offence attributed. It is common case that no appeal was filed against the judgment and order of conviction and sentence dated March 19, 1993. On March 19, 1993 itself, the petitioner was dismissed from service vide P-5 as a result of recording a judgment of conviction and order of sentence. The order of dismissal has been passed under s. 12 (1) of the CRPF Act. The provision reads as follows: -

“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 place as the Court or the Commandant may consider suitable.”

18. In the present case the Commandant/6th respondent has acted as both Chief Judicial Magistrate and Disciplinary Authority which may not be legally impermissible in terms of s. 16 read with r. 27 but at the same time raises a cause of serious concern of impartiality and bias in the mind of this Court of such dual exercise of jurisdiction, one fine evening, for the court to thoroughly satisfy itself on the question whether the punishment fits the offence or the offence the punishment or whether it was committed at all as alleged and whether there has been any miscarriage of justice in dealing with the petitioner and to apply extensively the rule against bias which ensures that no one should be a judge in his own cause. Here was a prosecutor, a judge and a disciplinary authority all rolled into one dynamite stick with three pins. The cause of worry really is whether such a triad of absolute, unbridled power of such wide amplitude may result in prejudice per se or a reasonable likelihood of bias or a substantial loss of probity and impartiality in the eyes, so to speak, of twelve good men and true who might always expect dispassionateness and non-arbitrariness in acts of holders of public office which if led astray may cause a permanent scar on the judicial mind leaving a bad taste in the mouth. But we can also not discount, as is equally well settled, that mere possibility of abuse of a provision of law cannot be a ground to declare the provision invalid and to say this while we are not on the *vires* of the provision. Yet, what disturbs this Court even more radically than anything else is that the so called 'confessional statement' before the police has solely been used against the petitioner as a ground for conviction which was stoutly denied at the trial while claiming innocence of

the charge framed. Smt Gurdev Kaur could not say with any certitude as to who the man was who trespassed into her privacy at night. It also seems rather peculiar that Smt Gurdev Kaur did not raise an alarm herself when her mouth was muffled [in the charge framed on March 5, 1993 read as: *'caught hold of mouth of Smt Gurdev Kaur'...* 'by an unidentified man 'in uniform'], face covered, holding a rifle and it was her 'children' to raise the alarm, as picturesquely recorded in the judgment of the Chief Judicial Magistrate. It is more plausible that a woman, whose modesty is being outraged, would herself raise the alarm, more so, the wife of none other than the personal aide of the then ex-Chief Minister, Punjab and residing in the rear side of the private residence in a servants quarter. However, since this Court is not exercising appellate jurisdiction against the order of the Chief Judicial Magistrate, nothing further can or should be said at least till the present stage of the discussion on facts. This Court has gone thus far to examine the case of the petitioner to satisfy itself that grave injustice has not been visited upon the petitioner and whether he is to be condemned for all times to come with an order of dismissal based on moral turpitude. It may be remembered all the time that the right to impose a penalty carries with it the duty to act fairly, justly and reasonably.

19. The issue of interposing duties is largely the statement of Constable Himmat Singh. The Chief Judicial Magistrate holds that since the petitioner did not lead defence evidence to rebut false implication in the case, this is a material circumstance against him. Trite it is to say that the prosecution has to depend on its own strengths to bring home the charge and

not depend on the strengths or weaknesses of the case of the accused when law permits him a right of silence. Burden of proving guilt in common law jurisdictions cannot be shifted on an accused who is not to prove his innocence. The reasoning adopted by the Chief Judicial Magistrate while recording the finding of guilt is based on the facile and wrong assumption that it must have been the petitioner alone who committed the offence since he was in 'uniform' with 'rifle' duly posted on guard duty and this lent credence and “*gave suspicion of the accused having entered the house of Gurdev Kaur.*” It is well settled that mere suspicion however strong cannot take the place of proof. To this extent the judgment is seriously flawed as it inverts onus which is not how our law works.

20. It would not be out of place to mention that the petitioner's statutory service appeal against the dismissal order was rejected by the DIGP, CRPF, Ferozepur vide order dated May 15, 1993. In the written statement filed by the CRPF on notice issued by this Court, an objection has been raised and pressed at the hearing that against the appellate order, a statutory remedy was available under r. 29 by a revision petition presented before the next superior authority to the appellate authority, which alternative remedy has not been availed of before approaching court in writ jurisdiction. I would keep my findings on this point for later discussion in this order.

21. It deserves a mention that the petitioner had earlier approached the Calcutta High Court against the order of dismissal in CO No.10503 (W) of 1993. The writ petition was dismissed on June 29, 1999 for lack of

territorial jurisdiction in the Calcutta High Court since the cause of action had accrued in Punjab though the alleged occurrence had taken place at Chandigarh. The Calcutta High Court found that the writ could not be entertained only because the appellate order passed in Ferozepur, Punjab was communicated to the petitioner at Calcutta. The appellate order may have given right of action but not cause of action to the petitioner. Liberty was granted to the petitioner to approach the appropriate forum of redress of his grievances but in the meanwhile the petitioner had spent six years before the Calcutta High Court without being told off in the first hearing that the writ did not lie for want of territorial jurisdiction. That is how the petitioner approached this Court by way of the present petition. The petitioner had impleaded Shri Pushkar Singh, Commandant/Chief Judicial Magistrate who was arrayed as the 6th respondent in the Calcutta proceedings under Article 226/227 of the Constitution, and in this petition as well he has impleaded him by name but he has not caused appearance and filed a response to the petition.

22. In view of the complexities of the matter emerging from the case papers and the original record of the trial, involving intermingling of service law issues with the criminal law of sentencing and in order to command full assistance, this Court appointed Mr Anil Malhotra to be the learned amicus which request he gracefully accepted. Since I found some thorny but significant issues involving criminal law interpretation which required due expert deliberation of a learned senior criminal practitioner as well, I requested Mr Malhotra on January 14, 2015 to request Mr R.S. Cheema,

Senior Advocate, learned Senior Counsel of this Court if he could find time from his current professional preoccupations at New Delhi to provide his valuable insights in the matter through the good offices of the learned amicus curiae for the consideration of this Court. This Court expresses its gratitude to Mr Cheema to have not only supplied inputs in writing through the amicus upon discussion held between them and reduced in writing per kind hand of the amicus but I am even more thankful that Mr Cheema has taken out his precious time on his own to address the Court as well on February 6, 2015 on the specific query posed by this Court as to the implications of the conviction and sentence imposed in criminal law till the rising of the Court of Chief Judicial Magistrate in the light of the charge framed in the criminal trial faced by the petitioner and further as to what were its implications on the punishment of dismissal from service separately imposed. Earlier, in addition to his detailed written submissions the amicus placed on record further additional written submissions dated January 21, 2015 containing the view point of the learned Senior Counsel as also the further supplementary submissions of the learned amicus. On January 28, 2015, the amicus also placed on record of this Court a 90 pages compilation comprising of 6 Judgements, extracts of the Criminal Procedure Code, 1898 (Cr.P.C., 1898) as also relevant parts of the 41st Report of the Law Commission of India, Volume 1, September 1969, suggesting changes to be made in the Cr. P. C., 1898. The learned senior counsel urged his thoughtful views on the aspects of criminal law and writ jurisdiction rolling into one before this Court lending considerable clarity on the intermingled

proposition arising in the present case whereby dismissal from service was based solely on a conviction till the rising of the court to which views I will refer at the appropriate place in the discussions in this judgment, and for which sagacious advice this court is indeed grateful.

23. The matter was thus re-heard at length on the contentions canvassed on either side and judgment was reserved for pronouncement and is being released today.

24. First of all, Mr Surinder Sharma, the learned counsel appearing for the petitioner in his opening gambit submitted that his client has been denied a fair criminal trial which concluded in ten days without following due procedure established by law. No complaint by Smt Gurdev Kaur was served on him. None was made in writing for him to reply to. None exists on record. Had such an opportunity been afforded he could have cleared doubts and suspicions in the minds of his superior officers. Many other apparent flaws have been pointed out by the learned counsel in the trial record with reference to due process established by law in the Code of Criminal Procedure, 1973 which was mandatory for the trial court to follow even acting as Commandant-cum-Chief Judicial Magistrate under special powers conferred on him by the CRPF Act. He submits that there is no eye witness to the occurrence. He says that Constable Himmat Singh was awarded only 28 days quarter guard for involvement in the same occurrence and is still in service. He submits that the story does not appear plausible or believable where a person who is under threat of an alleged criminal assault, which charge is not laid, in the security of a private quarter in the private

residence of an ex-Chief Minister and the wife of a close personal aide would not bring the house down herself wailing but wait for her children to raise the alarm. He points out that the conviction is based on suspicion and suspicion has no place in the criminal law although it may have a hand in domestic proceedings. But no departmental enquiry was held on the charge before ordering the severest penalty of dismissal from service. On the same day i.e. on March 19, 1993, the trial was concluded; finding of conviction recorded; sentence of simple imprisonment imposed till the rising of the court followed ruthlessly by the dismissal order passed by the same person that held the trial and wore three hats. Such measures would not appear to be a fair, objective, proportionate or judicious exercise of disciplinary authority protected by the shield of what disciplined forces may do while the law courts have traditionally been perceived reluctant to enter into defence thickets. This may lend support to the action being dubbed rather vindictive, excessive and pre-meditated giving rise to a reasonable likelihood of bias, given that bias is inferential from a sequence of events and actions of a person vested with such potent power which appears to go almost unchecked unless there was a reasonable exercise by the appellate authority to do justice in rationalizing punishment in appeal, which element is also found is lacking in the order upholding the order of dismissal from service. The facts of the case and the lack of conclusive evidence did not warrant such magnitude of harm to be visited on a young constable only to deprive him of his livelihood. That justice must not only be done but should be seen to be done is not paying lip service to a platitude but is verily the

cornerstone of the edifice of justice-in-action. Every judge, unless he is a bad judge, knows that the right thing to do is to apply the oft-repeated saying of Lord Chief Justice Hewart in **Rex v. Sussex Justices; Ex parte McCarthy**, [1924] 1 KB 256: [1923] All ER Rep 233 : "It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

25. Section 16 of the CRPF Act empowers the Central Government to vest powers of a criminal court on either the Commandant or the Assistant Commandant to deal with offences committed by a member of the Force. These are two different people. The choice of the Central Government has fallen on the Commandant. But the Assistant Commandant is not the disciplinary authority of a constable under r. 27 which remains the Commandant. The question which then surfaces is where the Commandant is a *persona designata* of both the Trial Court/Chief Judicial Magistrate and the designated disciplinary authority and then would his actions while discharging functions of disciplinary authority be protected by the doctrine of necessity or would the principles of natural justice, natural law, fair procedure, fairness-in-action etc. stand above the doctrine of necessity and be the governing principle separating the two. If the Assistant Commandant were the designated trial court notified under s. 16 then there would be automatic separation of the disciplinary authority under r. 27 in the Commandant making exercise of both jurisdictions free of doubt and acquitting admirably the charge of partiality and reasonable likelihood of bias. This would be the ideal situation and the cherished goal. The

legislature perhaps must have foreseen such a crisis when it included a choice in delegation of authority between the Commandant and the Assistant Commandant in s. 16 of the Act. Therefore, to my mind the doctrine of necessity cannot be applied in the face of availability of choices, one to be the court, the other to act as the designated disciplinary authority under the rules. A rational via media may have to be found to avert such anomalous situations in the future. If a judicial trial were to be held it could easily have been entrusted to some other independent Commandant or Assistant Commandant to exercise powers of the Chief Judicial Magistrate. There would have been more transparency and less finger-pointing in such executive choice by delegation or sub-delegation of power to do acts and things for altogether purposes and intendments. Such a division of power would have been more in accord with Glasnost, openness, transparency and fairness-in-action which is an accepted facet of reasonableness in Article 14 of the Constitution. If it was known from day one that conviction and sentence may result in dismissal and the trial court would unhappily also be the disciplinary authority of Zuber Ahmed such a path ought to have been avoided. The more I ponder on this dual or rather triple role, the more my judicial conscience gets disturbed. One could fix a fellowman just like that in true Kafkaesque style at the trial by a surreal distortion of facts. Franz Kafka in *The Trial* tells the story of a man arrested and prosecuted by a remote, inaccessible authority, with the nature of his crime revealed to neither him nor the reader. But this hindsight to make the future safer for the CRPF man in the dock is for the legislature to visit, examine and debate or

at any rate at the highest echelons in CRPF to think over, re-visit and introspect that it may always be better that justice is seen to be done even-handedly and judiciously to avoid a situation altogether which may not recur by depositing uncontrolled authority in a single person and instead apply tenets of separation of powers, following the separation of the executive and the judiciary in the refurbished Code of Criminal Procedure, 1973 which ushered in an era where the last codified signs of the police State were dismantled forever leaving justice to be dispensed with by the judicial officers working under the control of the various High Courts, the rank and file of officers not employed under the State but discharging sovereign duties in connection with the affairs of the State, the Court itself qualifying as 'State' within Article 12 of the Constitution.

26. Here is thus a case where two irreconcilable stories were recounted by Mrs Gurdev Kaur in her two statements, one during 'investigation' in a preliminary enquiry, the other at the trial which twin have haplessly led to the conviction of Zuber Ahmed on account of the pre-determined mindset of the Commandant/Judicial Magistrate 1st Class who may have had scant judicial training albeit insufficient to handle a free and fair trial by applying established and rudimentary principles of the criminal law and procedure which only can guarantee a man not be dunked in the pool of crime without any probative evidence to fall on and the onus duly discharged by the prosecution beyond a reasonable doubt and to the satisfaction of the court, the court of law as known to the modern world judicial trial. Therefore, the Central Government and the CRPF ought to

examine this issue threadbare to see whether it is any longer safe and proper to leave a Commandant to conduct a judicial trial empowered to record findings of conviction and awarding of sentence to imprisonment on a member of the Force, even of till the rising of the Court. And whether the Commandant can be permitted to don the robes of a Chief Judicial Magistrate and disciplinary authority simultaneously, when holders-of-office should ever stand high above the trial in pursuit of truth and justice in making a disinterested, calm and rational judgment on facts and circumstances available and to desist from casually and callously passing orders which tend to visit terrible civil consequences on a fellow citizen with compassion and proportion so that no man in the dock goes away feeling he short-changed and wronged.

27. To return to the other facts of the case, the learned counsel for the petitioner admits that an appeal against the conviction was not filed and, therefore, the judgment is final. The conviction and sentence till the rising of the court is substantive imprisonment within the meaning of s.12 of the Act. The punishment awarded is the minimum in the range available even without looking to the mechanics of the Act and when the punishments described therein are read the sentence imposed is not found among the provisions of the Act and this flea bite sentence of till the rising of the court by itself shows that the charge, not to speak of a criminal charge, was not taken seriously in terms of penal measurement in sentencing. Nevertheless, Mr Sharma extricates his case from the criminal law angle and brings it within the fold of the limitations provided in r.27 of the CRPF Rules, 1955.

Rule 27 falls in Chapter VI of the rules which deals with discipline and procedure for holding departmental enquiries and enumerates the disciplinary authorities competent to impose punishment on persons in various ranks. This rule prescribes the procedure for award of civil punishment. In the Table under r.27, it is provided that dismissal or removal from the Force can be inflicted on a Constable by a Commandant but only after formal departmental enquiry. It is so expressly stated in column No.1 which lists out punishments and column No.7 of the Table pays due regard to the due process required to be followed; *“Dismissal or removal from the Force”- “To be inflicted after formal departmental enquiry.”* In the present case, no formal departmental enquiry was conducted. He submits that the 6th respondent seems to have pre-determined the end and then found means to justify the end. Therefore, it is urged that the dismissal order is legally bad and biased based on a fallacious conviction and sentence till the rising of the court only to somehow get rid of the petitioner. While r. 27 lays down the procedure for holding regular enquiries, s. 12 of the Act leaves it to the discretion of the disciplinary authority in which cases dismissal should follow sentence. This obviously means a careful reading of the judgment of conviction and the gravity of the misconduct arising from it by proper application of mind before proceeding further in the matter and making up the mind on conduct which led to conviction. But then the author of the judgment of conviction himself wears the glove of the disciplinary authority which may cloud objectivity in assessing the quantum of punishment and the correctness of taking the extreme step of dismissal from service.

28. A combined reading of s. 12 and r. 27 leaves serious doubt in this Court whether r.27 can be avoided altogether as unlike Article 311 (2) (a) of the Constitution which affords public servants certain protections on conviction and the statutory limitations prescribed therein but s.12 of the Act, which is pre Constitution, does not speak of conduct which led to conviction to be the operating rule of dismissal when it is discretion based by the use of the word 'may' therein. Mere incantation of the words “conduct which led to the conviction” is not constitutionally sufficient. There is more to it. Disciplinary authority cannot divorce itself from duty to disclose reason which weighed in its mind and led it to inflict the severest civil punishment of dismissal. The contours of criminal and civil liability by virtue of those words get merged in the final dispensation and remain inseparable. Toward this end there is nothing clearly noticeable in the impugned order of dismissal whether dismissal was alone the best choice or facts demanded so for the court to apply the well recognized principle of non-interference in the choice of punishment imposed by the executive authority. Even Article 311 (2) (a) does not confer automatic power to dismiss simpliciter on mere conviction except when conduct which led to conviction justifies the action taken. These words have been used in the dismissal order passed by the 6th respondent when he refers to conduct which led to conviction but then the order is bereft of reasoning, however brief they could have been, but surely indicative of process of reasoning and due application of mind. But substantive provisions of S. 12 do not speak of such express words as "conduct which led to conviction" and limit

themselves to the following expressions:

"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 place as the Court or the Commandant may consider suitable."

29. S. 12 has not been amended to fine tune it with Article 311 (2) (a) of the Constitution. It stands where it was in 1949, though the rules are post Constitution framed in 1955. However, the concept of misconduct in its constitutional protections and conduct which led to conviction on a criminal charge was introduced for the first time after more than three decades by sub rule (cc) to r.27 and inserted in r.27 of the CRPF, Rules by S.O 3117 dated July 15, 1971 through rule making power avoiding amendment process through Parliament. To appreciate its newfound setting in r.27 it would be profitable to reproduce the text of r.27 (cc) as it stands:-

"27 (cc) Notwithstanding anything contained in this rule:

(i) Where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a **criminal charge**: or

(ii) Where the authority competent to impose the penalty is satisfied for reasons to be recorded by it

in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules: or

(iii) Where the Director General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such order thereon as it deems fit."

30. In my humble view the CRPF Act is a special law and a complete code in itself governing the relationship between the parties, where in the rules lies enacted substantive law in its procedural part in r.27 (cc) echoing the theme of Article 311 of the Constitution which is rare to find. It is also not known or understood as to how the disciplinary authority views the word 'may' in s.12 and why the Commandant would not suffer limitations prescribed by r.27 and whether he could completely sidetrack, by pass or circumvent the provision. The rule is part of the Act and is supplemental in nature. It appears to fill a gap left in s.12. Rule 27 by itself creates a substantive procedural right to due process incorporating a valuable safeguard against arbitrary action. Criminal conviction and disciplinary action are severable and are not ipso facto mother and child that cannot be separated in their relationship except by event of death. Having conducted the trial and concluded it and recorded sentence of imprisonment till the rising of the Court, fairness-in-action then demanded that the petitioner should have been heard before dismissal on his rights protected by r. 27. While passing the dismissal order on his administrative side, the 6th respondent was acting as a disciplinary authority and not as Chief Judicial

Magistrate. He would, therefore, suffer restrictions on his powers as are imposed by law or available to him to exercise in a reasonable manner. He could act only within the limitations of the statutory framework of which he was a creature, both as court and administrator.

31. The learned counsel for the respondents Union of India, on the other hand submits, that s. 12 itself authorizes and justifies dismissal from service since sentence till rising of the Court is substantive criminal sentence and it matters little if a person has not suffered actual physical imprisonment in a 'prescribed prison' under s. 12(2) of the Act. For this, insofar as sentence of simple imprisonment till the rising of the Court is concerned he relies on a decision of the learned Single Judge of the Delhi High Court in Writ Petition Civil No.3357A of 2000, **Leela Ram v. Union of India and others**, to submit that this is part of jurisprudentially recognized minimal power of sentencing which is within the jurisdiction of the Commandant acting as the Chief Judicial Magistrate. This was also a case involving imprisonment till the rising of the Court inflicted upon a paramilitary Force personnel. He submits that there can be no doubt that a person convicted and sentenced to undergo only a simple imprisonment till the rising of the Court would come within the ambit and purview of the word 'imprisonment' found in s.12 and the Commandant is empowered to pass such order. S. 12 is structured somewhat akin to Article 311 (2) (a) which provides that any person holding a civil post who is convicted and sentenced by a criminal court can be dismissed, removed or reduced in rank on the ground of conduct which led to the conviction on a criminal charge.

32. That it may be significant here to quote the valuable insights of Mr R.S. Cheema, learned Senior counsel, as contained in the written submissions of the amicus presented before this Court in January 2015 and emphasized in his oral address to the Court:

33. [1] **Submissions of learned senior counsel -Mr Cheema.**

I. Whether the question of the conviction/ punishment of the petitioner resulting from the trial can be raised and examined in the present writ petition under Article 226 of the Constitution of India?

(i) Mr Cheema contends that in the peculiar facts and circumstances of this case, it needs to be appreciated that the order of conviction as also the order of dismissal impugned in the present petition were passed by the same authority, though in different capacities, on the same date. The order of conviction which became the sole basis for the order of dismissal from service passed without a formal departmental enquiry. The order of sentence passed, following the order of conviction on the same day, was for imprisonment till the rising of the court. In other words, upon the sentence being pronounced, the petitioner had already undergone the punishment for the purported offence, irreversibly.

(ii) It is beyond cavil that the order of dismissal is justiciable and is under challenge in appropriate proceedings before the appropriate Writ Court. Any scrutiny of the order of dismissal shall require examination of the order of conviction on which the former is based. Therefore, in exercise of its jurisdiction under Article 226 this Court shall be required to examine the validity of the order of dismissal and the basis thereof. It shall not be just and fair to permit the Union of India to raise a hyper technical objection

regarding the order of conviction and sentence not having been challenged separately. It is submitted that since the order of sentence had already run itself out simultaneously with the pronouncement of the order of conviction and dismissal, the petitioner may have not felt the necessity to challenge the same under the impression that having suffered the sentence, nothing could be undone subsequently faced with a fiat accompli. To that extent, the limited period of notional punishment of imprisonment cannot be brought back. However, while challenging the order of dismissal from service, it is necessary and open to the petitioner to question the basis of his dismissal which is essentially an order of conviction. Hence, in the totality of the present facts and circumstances, it is well within the scope of the present petition to raise the question of conviction for determination as the dismissal from service is solely based on the premise. Accordingly, it would be apt for this Court to examine the validity of the trial, the judgment of conviction, as also the order of sentence closely. In exercise of such a process of law, the validity and legality of the order of conviction can be gone into by this Court in its extraordinary jurisdiction under Article 226 of the Constitution to act ex debito justitiae. Hence, the question of conviction can be raised and examined in the present petition for the first time while the order of dismissal from service is under examination and scrutiny before this Court. Resort in writ proceedings can be had to principles of justice, equity and good conscience.

34. [II]. The view taken by the Commandant that the alleged misconduct falls within the purview of s. 10(1) (n) of The Central

Reserve Police Force Act, 1949, is apparently incorrect. The reasons for the same are stated as under:-

2(i) A careful scrutiny of s. 10 would show that the same deals with 15 kinds of transgressions of the Code of Discipline and Conduct, excluding clause (p), which deals with some of these acts of misconduct when the same are commissioned by an accused while he is not on active duty. Barring clause (n) and (o) of s. 10, all the clauses deal with specific situations which are described with sufficient precision so as to give the accused a clear notice. Clause (o) of s. 10 specifically deals with conduct involving contravention of any provision of the Act for which no punishment is expressly provided. Therefore, even when an accused is stated to fall under clause (n), it shall have to be spelt out as to which provision of the CRPF Act has been contravened. In other words, there shall be a specific charge which would satisfy the test of definiteness and which a criminal charge must necessarily satisfy.

2(ii) The pertinent question here is as to the correct interpretation of s. 10 clause (n) of the Act. Senior counsel reasons that s. 10 clause (n) shall essentially derive its colour and support from the other clauses in the section. Accordingly, any correct interpretation thereof would have to fall within the four corners of the perspective, boundaries and parameters of the provisions of s. 10 as a whole and in entirety. No other interpretation is possible in this regard.

2(iii) It is a well settled principle of interpretation of statutes that the words in a statute must be given their plain meaning unless the same either

lead to a perverse inference or an absurd result or militates against the other provisions in the Statute. The words “good order” and “discipline” essentially deal with the conduct of an employee of CRPF as a Member of the Force. It is for this reason that clauses (a) to (m) of s. 10 clearly and precisely deal with the fact situations touching upon the facets of the Code of Discipline or self regulation in relation to the duties of an accused as a Member of the Force. In other words, all these alleged acts of misconduct, though transgressions are conducted in the purported discharge of official duties.

2(iv) Even clause (p) of s.10, which creates an exception, making the offences specified in clauses (e) to (l) of s. 9 punishable as “less heinous offences” u/s 10, essentially deals with the Code of Duty and the Rules of Conduct as a Member of the Disciplined Force and envisage consequences which reflect by the said conduct. It is noteworthy that even though these offences directly fall u/s 9 if the delinquent employee is on duty, the same fall u/s 10 if they are committed while the employee is not on active duty. Hence clauses (e) to (l) of s. 9 which are covered u/s 9 when committed on duty and u/s 10 while off duty are directly and closely related with duties as a Member of the Disciplined Force and the Code of Conduct applicable to a person as a Member of the Disciplined Force.

2(v) Then there is clause (n) of s. 10 with which we are directly concerned, which has to be interpreted in the context and within the parameters of the other clauses of s. 10 on the principle that a Jackdaw always sits by a jackdaw or the latin *noscitur a sociis*. As a necessary

corollary, the words “good order” would mean adherence to discipline or Code of Duty or Rules of Conduct as a Member of the Force. Similarly, the words “discipline” has to be similarly interpreted to mean discipline as Member of a Disciplined Force. Therefore, under clause (n), we should not adopt and accept an unduly wide interpretation which could include any unbecoming behaviour by a Member of the Force at any time while on or off duty; at any place whether within the precincts of an office or official residential area; or with any person, private or official. If we choose to adopt such interpretation, we are reading into the words ‘good order’ and ‘discipline’ much more than the statute stipulates and the rules of interpretation provide.

35. It is a settled principle of criminal jurisprudence that the crime being a matter of strict liability, a provision should be capable of concise interpretation and ought to be read to look for a precise meaning and to further ensure that the alleged misconduct falls within the four corners of the mischief contemplated by such a precise interpretation. It is also settled by binding precedent that vagueness renders a penal provision void and, therefore, the Court must adopt a course so as to read the provision eliminating the element of vagueness.

36. For illustrative purposes, it would be interesting to enquire as to whether a brawl between a constable and another citizen when he is visiting his village on leave could be covered by s. 10 clause (n). Similarly, a situation may arise where a constable living in a colony has an altercation with his neighbour. It appears to be reasonable to argue that such instances

of misconduct or misbehaviour as a citizen shall not be covered by s. 10, clause (n). In the facts of the present case, an argument may be raised by the other side to the effect arising out of s. 10 (n), notwithstanding the nature of the misconduct. The petitioner had switched off his duties and was allegedly away from duty for a short while. It is essential to appreciate that all such cases of dereliction from duty are covered in precise terms in various clauses of s. 9 and 10. In fact, the situations contemplated there are much more serious in nature. Had it been the legislative intention to cover the slightest dereliction from duty in either s. 9 or 10, the residuary clause would have explicitly referred to other derelictions or deviations from duty. It, therefore, again appears that in its natural meaning and following the principles of legal interpretation, the alleged misconduct would not be covered under the residuary clause incorporated in clause (n) of s. 10 of the Act.

37. It is then urged by Mr Cheema that the authority in the present case has interpreted the provision too widely, rather loosely, to include good behaviour and conduct as a citizen beyond any specific facet of an Offence under the CRPF Act. In other words, the authority has given it an ethical complexion in making it so wide so as to transcend beyond the permissible boundaries of the provisions of s. 10 (n). Thus, the applicability of s. 10 (n) is wholly unwarranted and uncalled for in the present case.

38. In support of the above contentions advanced, reliance is placed by Mr Cheema on the following decisions, and for purposes of ready reference, a relevant extract of the judgments are extracted and reproduced.

39. In re: **Richard Grayned vs City of Rockford**, 1972 SCC online US SC 157 : 408 US 104 (1972) the Supreme Court of the United States of America in para. 11 succinctly laid dicta which can be profitably applied to the present case on the expansive sweep of s. 10 (n) with no controlling guidance on the universe it may encompass on good order and discipline.

The relevant passage in the judgment reads:

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute ‘abut(s) upon sensitive areas of basic First Amendment freedoms’, it ‘operates to inhibit the exercise of (those) freedoms.’ Uncertain meanings inevitably lead citizens to “steer far wider of the unlawful zone’...than if the boundaries of the forbidden areas were clearly marked.”

40. The illuminating passage from the above judgment has been touched up by the Supreme Court in **Kartar Singh vs State of Punjab**, (1994) 3 SCC 569 and applied to local conditions and is found in para. 130,

though without acknowledgement and has, therefore, become a part of our living law. The Supreme Court rephrased the American precedent delivered in 1972, observing that:

“130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasised that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to “steer far wider of the unlawful zone...than if the boundaries of the forbidden areas were clearly marked”

41. These judgments have been applied recently by the Supreme Court in the celebrated case in re. **Shreya Singhal v. Union of India**, WP (Crl) 167 of 2012 pronounced on March 24, 2015 striking down s. 66A of the Information Technology Act, 2000 as amended in 2008 as foul in its 'overbreath' and unconstitutional as it infringes the right to free speech protected by Article 19 (1) (a) of the Constitution and is not saved by Article 19(2). The Court also noticed, among the many past global precedents, the following passage from a US precedent holding, and which can profitably be quoted in the present context, which reads as follows:-

"52. The U.S. Supreme Court has repeatedly held in a series of judgments that where no reasonable standards

are laid down to define guilt in a Section which creates an offence, and where no clear guidance is given to either law abiding citizens or to authorities and courts, a Section which creates an offence and which is vague must be struck down as being arbitrary and unreasonable. Thus, in Musser v. Utah, 92 L. Ed. 562, a Utah statute which outlawed conspiracy to commit acts injurious to public morals was struck down."

42. **Supplementary submissions on the legality of criminal charge, conviction and sentence.**

Still further and more importantly, Mr Cheema submits before this Court on the question of the legality of the charge, conviction and sentence imposed by the 6th respondent acting as Chief Judicial Magistrate under the CRPF Act that a reading of the charge sheet dated March 5, 1993 shows that as per the charge, Zuber Ahmed allegedly entered the house of Kala Singh, Security Aide of Shri P.S. Badal, then former Chief Minister of Punjab and caught hold of the mouth of Smt Gurdev Kaur with mala fide intention and ran away from the scene upon hearing the alarm from children of Smt Gurdev Kaur and, therefore, committed offence punishable u/s 10 (n) of the Central Reserve Police Force Act, 1949.

(ii) A reading of the trial judgment shows that while dealing with the facts of the case in para. 2 of the judgment, the Commandant, exercising the powers of Chief Judicial Magistrate, stated that Constable Zuber Ahmed had asked Constable Himmat Singh to stand for some time in his place for his duty at the main gate and left his place of duty without any permission from the competent authority and remained absent for about 10 minutes. During this period of 10 minutes, he allegedly entered the house of Kala Singh and

squeezed the mouth of Smt Gurdev Kaur. It is noteworthy that the charge sheet was clearly defective and did not specifically mention that the delinquent Constable was being prosecuted for having remained absent from duty for a short period of 10 minutes after having deputed another official to stand in his place.

(iii) A reading of the findings recorded in para. 7 of the judgement make an interesting reading. As per the findings recorded therein, it stood proved that the accused had left his place of duty for some time without due permission from the competent authority. This significantly was not a part of the charge sheet though such conduct would be implicit for what he was charged with, namely, entered into another house and misbehaved with a woman. Be that as it may, the charge was not framed for absence from duty presumably because some other competent person was put in place and the post was not abandoned.

(iv) That while dealing with the charge as framed in the charge sheet, the Commandant, exercising the powers of Chief Judicial Magistrate, did not record a finding of guilt in conformity with the formal charge incorporated in the charge sheet. In other words, he did not record a finding that Zuber Ahmed had trespassed into the house of Kala Singh and he was the person who had misbehaved with his wife in the manner alleged. The finding is extracted hereunder:-

“ ...But the accused having his duty place with rifle at 2320 hrs on 19.10.92 and at the same time some uninformed person with rifle entering in the house of Smt Gurdev Kaur at 2330 hrs gives suspicion of the accused

having entered in the house of Smt Gurdev Kaur...”

43. It is, therefore, patently clear that the charge as framed was not proved. The finding recorded was that a suspicion arose that the accused had entered the house of Smt Gurdev Kaur. Therefore, the charge purportedly framed u/s 10 (n) of the Act was not proved as per the judgment.

B. There is another angle which is relevant to the present controversy. Section 11 of the Act deals with minor punishments. It spells out the acts of omission or commission which would attract these punishments. It is stated therein that where the Commandant or any other authority or person as may be prescribed, considers the delinquent official guilty of disobedience, neglect of duty, remissness in the discharge of duty or other misconduct, he was competent to award minor punishments. In the present case, what has been finally found on the conclusion of the trial is temporary absence of 10 minutes from duty having deputed somebody else to hold the charge, though without due authority. It is apparent from reading of s. 11 that such misconduct is specifically punishable u/s 11 and is not covered either under sub-clause (n) of s. 10 as earlier submitted or under sub-clause (o) thereof.

44. Once this interpretation is accepted, the conviction and the sentence awarded are without jurisdiction as s. 11 of the Act neither contemplates a trial nor award of any sentence of imprisonment.”

45. The above thoughtful and considered submissions of the learned Senior counsel, have contributed significantly in assisting this Court to

come to a consensus, and I would tend to agree, that while examining the punishment of dismissal from service imposed on the petitioner, based on the conviction under the CRPF Act, this Court can go into the basis of such a punishment in proceedings under Article 226 of the Constitution of India which itself rests on a conviction and sentence which are wholly without jurisdiction. Be that as it may, to do complete justice under the powers vested in this Court under Article 226, the legality and validity of the order of conviction and sentencing dated March 19, 1993 has to be necessarily examined as issues relating to the violation of Articles 14, 16 and 21 of the Constitution directly arise for determination in these intermingled and cross-dependent orders of conviction/sentence and dismissal from service. Thus, this Court is not fettered by any limits or boundaries in testing the legality of the conviction/sentence order, which not only infringe the protection of Articles 14 & 16 of the Constitution, but also jeopardise the protection of life and liberty guaranteed to the petitioner under Article 21 by not following the due process of law and procedure established by law. In such a process of constitutional inquisition, there are no barriers on the powers of this Court exercised under Article 226 of the Constitution where rules of prudence preside. In a criminal court a charge has to be proved beyond any reasonable doubt. This means, a charge which is specifically laid, worded and framed for trial. We are not dealing with probabilities in this case since the subject matter is not a departmental enquiry. Suspicion must be reasonable with all links in the chain pointing to the guilt of a person in the dock. Mere suspicion is of no consequence and has no place in a criminal

court.

46. I am reminded of the indelible mark left on criminal jurisprudence by the famous passage in the argument of Sir Geoffrey Lawrence, then King's Counsel, remembered in legal memory as a fine judge appointed on the King's Bench Division, to be later elevated as Lord Justice of Appeal in 1944 and who later was destined to Preside over the Tribunal set up to try war crimes at the Nuremberg Trials in 1946-1947 and who remarkably was a relative stranger to the criminal court but was engaged as defence counsel in his first murder trial to defend Dr John Bodkin Adams, a notorious serial killer of his age and accused of murder of a patient in "one of the greatest murder trials of all times" in his concluding address to the jury explained with startling simplicity and clarity how reasonable doubt operates in a criminal case:

"Justice is of paramount consideration here, and the only way in which this can be done is for you to judge the matter on what you have heard in this court and in this court only. What you read in the papers, what you hear in the train, what you hear in the cafés and restaurants, what your friends and relations come and tell you; rumour, gossip, all the rest of it, may be so wrong. The possibility of guilt is not enough, suspicion is not enough, probability is not enough, likelihood is not. A criminal matter is not a question of balancing probabilities and deciding in favour of a probability. If the accusation is not proved beyond reasonable doubt against the man accused in the dock, then by law he is entitled to be acquitted, because that is the way our rules work. It is no concession to give him the benefit of the doubt. He is entitled by law to a verdict of not guilty."

I should imagine this profound statement to be the quintessence of much that composes the criminal law.

47. In **Union of India vs. Tulsiram Patel**; AIR 1985 SC 1416 the Constitution Bench of the Supreme Court in partly overruling *Challappan* case held that when the provisions of Article 311 (2) (b) are invoked, there is no place for opportunity of hearing to a delinquent since the punishing authority is only to examine the conduct which led to the conviction. However, the Court held that if penalty imposed by the impugned order is arbitrary or grossly excessive or out of proportion to the offence committed or unwarranted by the facts and circumstances of the case or the requirement of that particular government service, the Court will strike down the impugned order. Therefore, the Court can examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person and that if the penalty imposed is apparently unreasonable or uncalled for in a given case, having due regard to the nature of the criminal charge, the Tribunal or the Court may step in to render substantial justice. The Court may remit the matter to the competent authority for re-consideration or by itself substitute one of the penalties provided. In **Tulsi Ram Patel** it has been held as follows:

"Where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal Court and consider all the

facts and circumstances of the case and the various factors set out in Challappan's case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too has to be done by itself and without hearing the concerned Government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review as the case may be that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the Court's power of judicial review subject to the Court permitting it. If the Court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the Court finds that the penalty imposed by the impugned order is arbitrary grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service the Court will also

strike down the impugned order."

48. Following the above dictum of law, the impugned dismissal order passed without assigning any reasons for dispensing with the enquiry and that too on a non-existent ground, as also dismissing the petitioner on a ground which is not a conviction on a criminal charge, does not stand the test of law and deserves to be set aside. For being guilty of an alleged act which is prejudicial to good order or discipline, the petitioner could not have been dismissed from service without a formal enquiry under r. 27 (c) of the rules framed under the Act.

49. In the decision of the Delhi High Court in **Leela Ram v. Union of India and others**, supra relied upon by the respondent/UOI, the peculiar issue arising under r.27 alongside the power under s.12 was neither noticed nor dealt with. Counsel submits that not only Constable Himmat Singh but Sub Inspector M.G.Kujur have also been punished. Mr Kujur has been awarded severe censure. Himmat Singh was confined in quarter guard for 28 days with forfeiture of pay and allowances with effect from April 27, 1993. The order against Constable Himmat Singh was passed on April 27, 1993 and the punishment order against M.J.Kujur on December 30, 1992. Lance Naik U.N.Gaikwar was reverted to the rank of Constable from Lance Naik for one year with severe censure.

50. Ms Puneeta Sethi appearing for the CRPF/UOI has then relied on a decision of the High Court of Andhra Pradesh at Hyderabad in WP No.10430 of 1992; **Shiv Narayan Singh v. Commandant 32 Bn and others**, in which, it was observed as under: -

“CRPF Act is a special enactment by the parliament under the constitution of India to regulate the various conditions of service of CRPF personnel like Pay & allowances etc. s. 12 (1) of the Act authorizes the dismissal of a person who is found guilty of any offence prescribed u/s 9 & 10 of the Act. Undoubtedly, the petitioner was found guilty of an offence u/s 10 (m). s. 1 of the Act does not exclude the punishment of dismissal from service, depending on the nature of the offence committed by the delinquent. Though the act makes a distinction between more heinous and less heinous offences which are categorized under Ss. 9 & 10 respectively, it is for the authority to decide whether to retain such a delinquent into service or not. No doubt, the authority is vested with discretion while exercising such a power. As such discretion cannot be interfered with, unless it is established that such discretion is exercised absolutely arbitrarily and no arbitrariness is found in the present case. It is a question of discipline of an Armed Force and it is settled principle that the court should go very slow to interfere with administration of the Armed Forces.”

51. Counsel for the official respondents, points out to the affidavit filed by the respondent CRPF explaining the factual position as was called for by interim order dated September 12, 2013. In para. 14 five instances have been given where Constables, Naiks and Lance Naiks have been sentenced to imprisonment till the rising of the Court and were dismissed from service for justifiable reasons and those orders stand implemented and are final.

52. Counsel for the petitioner in rebuttal places reliance on a decision of the Uttarakhand High Court in **Bhaskar Chandra v. Union of India**,

2012 Lab.I.C 4583, in which both s. 12 and r.27 (1) of the CRPF rules were considered and dealt with. The Court interpreted s. 12 as directory and not mandatory. In this case, the police constable was convicted and sentenced by the Commandant exercising the powers of the Chief Judicial Magistrate for picking up a quarrel after consuming liquor. The sentence had become final and irrevocable. The dismissal order based on sentence was set aside being contrary to the provisions of r. 27(1) of the CRPF Rules which provides that penalty of dismissal or removal from service can be imposed after formal departmental enquiry.

53. Rule 27 provides the procedure for award of punishment and is the code on disciplinary proceedings. A formal departmental enquiry is mandatory. After all the charge was not such a grave that could not await disciplinary proceedings or brook no delay. The Commandant as trial court also did not think the offence/misconduct serious enough to impose anything beyond simple imprisonment till the rising of the Court.

54. In **Mohd Zakir v. Union of India and others**; 1996 (5) SLR 788, the Allahabad High Court while dealing with the provisions of the CRPF Act and rules in question held that no order of dismissal can be passed in a routine manner. A dismissal order can be passed only if the charges are serious in nature. It was held as under: -

“17. The authority awarding the punishment under s. 12 of the Act, it appears did not consider this aspect of the matter and without applying his mind in a routine manner dismissed the petitioner from service, merely because an action under s. 10(m) was taken against him. It may also be considered that the use of word

'may' is also significant in s. 12(1) of the Act which indicates that the authority must apply his mind objectively before awarding the punishment of dismissal from the Force. The action of dismissal being very severe major punishment has to be awarded only if there are very serious charges and the action of dismissal from service should be commensurate to the gravity of the charges. Merely because a person has been directed for imprisonment would not automatically mean that his services are liable to be dismissed from the Force or he would be deemed to be dismissed from service in view of the provisions of s. 12 of the Act. The authority has to apply his mind and provide reasons as to why in case he is dismissing the incumbent from service on the ground that he was imprisoned and an action of dismissal from service was necessary on the facts and circumstances of the case."

55. In **Surinder Singh v. Union of India**; 1999 (1) SCT 726, Jammu & Kashmir High Court while dealing with conviction under s. 10 of the CRPF Act, 1949 has held that where a dismissal order is based on the conviction, an opportunity is required to be given to the personnel concerned to show cause since he would be required to be given consideration and hearing on the issue of conduct which led to conviction. Failure to do so would render the order bad. The Court applied the principle evolved by the Supreme Court in **Managing Director, ECIL, Hyderabad v. B. Karunakar**, AIR 1994 SC 1074 to return the parties to where the error occurred and to call for a reply from the delinquent and to proceed further.

56. In re. **P. Arvindan Ex Constable GD , CRPF v. Union of India**, [2005] RD-AH 1385 (23 May 2005) [Civil Misc. Writ Petition No 2997 of

2002, Allahabad High Court] is also a case of conviction till the rising of the court and dismissal from service under s. 12 (1) of the Act. The Commandant found Arvindan guilty of misconduct in leaving the camp without permission; entering the office/residence of the Commandant; shouting and threatening him, which is a minor offence, punishable with imprisonment up to one year and fine for three month's salary under s. 10 (n) of the C.R.P.F. Act 1949. However taking into account his past seven years services, and taking a humanitarian view he was sentenced under s. 10 (n) of the Act, till the rising of the Court. Allowing the petition the learned single judge of the Allahabad High Court held:-

"The question raised in this writ petition is whether such a small sentence for a 'less heinous offences', could be a ground for extreme penalty of dismissal from service. In the reply to the show cause notice the petitioner pleaded for pardon. The observations that his conduct shows that he is not inclined to be a disciplined soldier, does not take into account his past services and the circumstances which led him to have reacted in a manner which breached the good order and discipline. Every sentence of imprisonment may not call for dismissal from service, otherwise the discretion given under s. 12 (1) of the Act will have no meaning at all. This discretion must be exercised fairly and reasonably after taking into account all the attending circumstances in which the offence was committed and the quantum of sentence awarded. The disciplinary authority, the appellate and revisional authority have not taken into consideration these circumstances and have mechanically applied the provisions of s. 12 (1) in dismissing the petitioner from service only on the

ground that he was subjected to a sentence for imprisonment. It has indeed shocked conscience of the Court. I find that in the facts and circumstances no reasonable person could have taken a view to dismiss the petitioner from service."

Discrimination suffered by the petitioner.

57. In his address to the court Mr Malhotra, the learned amicus submits, as in writing, that even though a departmental enquiry was recommended to be conducted against the petitioner by the Commandant 18 Bn. on November 13, 1992 it is a matter of record that no departmental enquiry was conducted against the petitioner. This is despite the fact Constable Himmat Singh, Lance Naik U.N. Gaikwar and Sub Inspector M.J. Kujur were proceeded against departmentally and accordingly punished commensurate to their offences as is confirmed at page 62 of paperbook and in the written statement dated March 28, 2000. Hence, no departmental enquiry was conducted against the petitioner and a "Judicial Trial" was conducted against him resulting in his conviction and consequent dismissal from service without conducting any separate enquiry. No reasons or justification was given for this arbitrary and discriminatory treatment meted out to the petitioner leading to the presumption that it was preconceived to dismiss the petitioner from service after convicting him. Hence, the protection of Articles 14 and 16 was not afforded to the petitioner and he was the only one singled out to face judicial trial without any departmental enquiry even though the other three personnel were not tried judicially and especially Constable Himmat Singh who exchanged duty which led to the alleged occurrence.

Bias meted out to the petitioner:

58. Mr M.S. Sethi, the Commandant 18 Bn CRPF by his order dated November 13, 1992 Annexure R-1 at page 78 had recommended that no “Judicial Trial” is recommended. However, Sh. Pushkar Singh i.e. the 6th respondent, as Commandant 84 Bn decided unilaterally to conduct a “Judicial Trial” and framed a charge sheet against the petitioner as Chief Judicial Magistrate on March 5, 1993. No reasons, assigned or recorded, find mention in pleadings on record as to why a departmental enquiry was not preferred in comparison to a “Judicial Trial”, as was done in the case of the other three Force personnel. This clearly amounts to selective invidious bias and discrimination with mala fide intentions violating Articles 14 and 16 of the Constitution of India. The punishment of dismissal from service at the hands of the 6th respondent who dominated the proceedings to dispose of the matter with a preconceived mind to punish the petitioner with an unreasonable attitude clearly establishes bias. Mr Malhotra places reliance on the judgment of the Supreme Court in **Ranjit Thakur Vs. Union of India & Ors.**, (1987) 4 SCC 611 in support of this contention. In this case the court considered the legality of punishment imposed upon trial by court martial. The court held that judicial review was directed against the decision making process while the choice of quantum of punishment was within the jurisdiction and discretion of the court martial. The court held that sentence must suit the offence and the offender, and should not be so disproportionate to the offence so as to shock the conscience of the court and amount to conclusive evidence of bias or in outrageous defiance of logic then the

sentence would not be immune from correction. The court observed in para.

25 of the report:

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be A vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of B logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for The Civil Service, [1984] 3 Weekly Law Reports 1174 (HL) Lord Diplock said:

"... Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community.

In Bhagat Ram v. State of Himachal Pradesh, A.I.R. 1983 SC 454 this Court held:

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

The point to note, and emphasise is that all powers have legal limits."

Dismissal from service without enquiry is illegal and unwarranted:

59. That the dismissal from service of the petitioner by orders dated March 19, 1993 is not in accordance with s. 12 CRPF Act read with r. 27 of the CRPF Rules. This dismissal without conducting a departmental enquiry which is mandatory under r. 27(c) could not have been dispensed with since the petitioner had not been convicted on a "Criminal Charge" *stricto sensu* as carefully urged by Mr Cheema to take the trial out of the charge framed against the accused. Therefore, any power exercised of dismissing the petitioner without an enquiry and invoking r. 27 (cc) is not permissible since the petitioner was convicted of an offence under s. 10 (n) i.e. of an act or omission "*prejudicial to good order and discipline*". Hence, the impugned order passed without enquiry only on the ground of conviction under s. 10 (n) cannot be sustained since the petitioner has not been convicted on a criminal charge by a Court of a criminal offence under the Indian Penal Code.

60. Mr Malhotra submits that under s. 4 Cr.P.C. all offences under the IPC shall be investigated, inquired into, tried and dealt with according to the provisions contained in the Cr.P.C., 1973. Section 26 prescribes that any

offence under the IPC may be tried by a Court, which such offence is shown in the First Schedule of the Cr.P.C. to be triable. Under the First Schedule to the Cr.P.C., any offence under s. 354 IPC i.e. assault or use of criminal Force upon a woman with intent to outrage her modesty, is triable by a Magistrate which as per the explanatory note No. 2 to the First Schedule means a Magistrate of First Class / Metropolitan Magistrate, but not an Executive Magistrate. Hence, the petitioner could neither be tried nor was he tried or punished under s. 354, IPC by the 6th respondent acting as Chief Judicial Magistrate by virtue of being a Commandant in CRPF. Therefore, the petitioner was not convicted on a *criminal charge* under the IPC. Hence, r.27(cc) of the CRPF Rules was wrongly invoked by the 6th respondent in passing the impugned order dated March 19, 1993 as the petitioner was neither charged, nor tried or convicted of any offence under the IPC, much less s. 354, IPC. Therefore, the petitioner could not have been dismissed from service without compliance of r. 27(a) and r. 27(c) requiring holding of a departmental enquiry.

61. Submits that the order of dismissal from service has been passed by the 6th respondent in a routine manner without any application of mind. The action of dismissal being a severe major punishment, it has to be awarded only if there are very serious charges and the action of dismissal from service should be commensurate to the gravity of the charges. In the case of the petitioner, he was not tried or convicted of a *more heinous offence* under s. 9 of the CRPF Act. In fact, even under s. 10 stipulating less heinous offences, a residuary charge i.e. s. 10 (n) prescribing an act or

omission, which, though not specified in this Act, which is prejudicial to good order and discipline, was levelled against the petitioner. The 6th respondent did not level any serious allegations against the petitioner under s. 9 CRPF Act. Therefore, dismissing the petitioner from service, which is a major punishment for *a less heinous offence* without holding any departmental enquiry which is mandatory under rls. 27 (a) and (c), clearly shows non-application of mind and evidence of bias. See **Ranjit Thakur** and **Mohd. Zakir** cases supra. Therefore, the impugned order of dismissal from service of petitioner cannot be sustained in law.

Disproportionate and excessive punishment imposed on petitioner:

62. That the punishment of dismissal from service is grossly disproportionate, excessive and is not commensurate with the alleged charge which does not establish any proved misconduct which is defined or identified under the CRPF Act. There is no charge proved which is remotely made out alleging use of criminal force with intent to outrage the modesty of a woman. Hence, an undefined act which is stated to be prejudicial to good order and discipline is highly subjective. The opinion of the 6th respondent in alleging this charge as prosecutor, judge and disciplinary authority is highly opinionated and biased. The powers given to one individual to judge the parameters for this offence as a residuary clause without any reasons being given or justification to support it, makes of award of punishment of dismissal highly inequitable and unjust. It was unfair to impose this punishment without even giving a hearing or holding a

departmental enquiry in the service matter. Therefore the punishment imposed shocks the conscience of any individual and in terms of the law laid down in **Union of India v. Parma Nand**, AIR 1989 SC 1185 and also reiterated in **Commandant, 22 Battalion, CRPF Srinagar Vs. Surinder Kumar**, (2011) 10 SCC 244, the punishment of dismissal from service on the petitioner is strikingly disproportionate and warrants interference by this Court as being perverse and irrational having regard to the nature of the charge of misconduct which was not a criminal charge, molestation attempt not having being established when the complainant resiled from her previous statement and failed to recognize Zuber Ahmed as the person charged. For judicial treatment of difference between 'strikingly disproportionate' punishment and 'merely disproportionate', see **Union of India v. R.K.Sharma**, AIR 2001 SC 3053. Hence, the dismissal from service of the petitioner cannot be sustained for this reason as well.

Impermissible concurrent exercise of powers by respondent

No 6:

63. That the simultaneous exercise of power in three different capacities by Sh. Pushkar Singh i.e. the 6th respondent in his separate official positions as Chief Judicial Magistrate and Commandant is unjustified, impermissible and legally untenable in accordance with the prevailing provisions of the Cr.P.C., 1973 on account of the following reasons which are supplemented by the description in written submissions.

64. Even though there is no formal amendment incorporating the provisions of Cr.P.C., 1973 in the CRPF Act, 1949 and the CRPF Rules,

1955, the provisions of Cr.P.C., 1973 may have to be read into the various provisions of the CRPF Act and Rules as a substitute to the Cr.P.C., 1898, which stands repealed by s. 484 of the Cr.P.C., 1973. Hence, by necessary implication, the 1973 Code shall stand automatically substituted.

65. That in terms of the judgment of the Supreme Court in **Suresh Kumar Koushal & Anr. Vs. NAZ Foundation & Ors.**, 2014 (1) SCC 1, in respect of any pre-Constitutional law, the Court has laid down the following principles:

“31. From the above noted judgments, the following principles can be culled out :

(i) The High Court and Supreme Court of India are empowered to declare as void any law, whether enacted prior to the enactment of the Constitution or after. Such power can be exercised to the extent of inconsistency with the Constitution/contravention of Part III.

(ii) There is a presumption of constitutionality in favour of all laws, including pre-Constitutional laws as the Parliament, in its capacity as the representative of the people, is deemed to act for the benefit of the people in light of their needs and the constraints of the Constitution.

(iii) The doctrine of severability seeks to ensure that only that portion of the law which is unconstitutional is so declared and the remainder is saved. This doctrine should be applied keeping in mind the scheme and purpose of the law and the intention of the Legislature and should be avoided where the two portions are inextricably mixed with one another.

(iv) The court can resort to reading down a law in order to save it from being rendered unconstitutional. But

while doing so, it cannot change the essence of the law and create a new law which in its opinion is more desirable.”

66. Following the aforesaid settled position of law, and keeping in view that Article 50 of the Constitution clearly prescribes that “**the State shall take steps to separate the judiciary from the executive in the public services of the State**” and bearing in mind that the CRPF Act, 1949, is a pre-Constitutional law, as also the detailed scheme in the Cr.P.C., 1973, requiring that Judicial trials shall only be conducted by Judicial Magistrates duly appointed by the High Court concerned, any existing provisions in the CRPF Act designating powers of Judicial Magistrates on Commandants, as was permissible under the Cr.P.C., 1898, may no longer be legally tenable under the Cr.P.C., 1973.

67. That the authority and powers of Chief Judicial Magistrate exercised by the 6th respondent as a Commandant of CRPF by virtue of s. 16 CRPF Act in accordance with Ss. 30, 32,34, 36 and 37 of the Cr.P.C., 1898, can no longer be exercised in view of the provisions of sections 11,12,13,20,24,26,29 of Cr.P.C., 1973. Section 3 Cr.P.C., 1973 clearly defines that *unless the context requires otherwise, any reference in any enactment passed before the commencement of this Court to a Magistrate, shall be construed as a reference to a Judicial Magistrate*. It is further stated in s. 3 of the Criminal Procedure Code, 1973 that, *"where under any law, other than this Court, the functions exercisable by a Magistrate relate to appreciation of evidence, formulation of any decision which exposes any person to penalty or punishment pending investigation, enquiry or trial or*

would have the effect of sending him for trial before any Court, they shall be, subject to the provisions of the 1973 code, be exercisable by a Judicial Magistrate." Hence, the exercise of powers of the Chief Judicial Magistrate by the 6th respondent is not permissible or legally tenable in view of the current provisions of the Cr.P.C., 1973.

68. The petitioner was dismissed from service in the year 1993 without holding an enquiry for a less heinous offence, on the basis of simple imprisonment till the rising of the Court, and his unwarranted period of suspension w.e.f October 22, 1992 to March 19, 1993 was treated as period not spent on duty, the fundamental rights guaranteed under Articles 14 and 16 to the petitioner were severely curtailed. Provisions of Article 33 of the Constitution falling in Chapter III [Articles 12 to 35] with special application to armed and para-military Forces etc. in their relation to precious and fundamental human rights secured by the remaining provisions of Part III of the *suprema lex*, I am inclined to think must admit minimal protections against arbitrary and unreasonable action with arbitrariness, unreasonableness, classification and discrimination as explained in the all time classic verdicts of the Supreme Court in its formative years in **Charanjit Lal Chowdhury v. The Union of India and others**, AIR 1951 SC 41 and **State of West Bengal v. Anwar Ali Sarkar and another**, AIR 1952 SC 75 securing such far reaching rights for citizens in young India that secured a democratic nation. If those cases did not deal with Article 33 is of no moment. It does not mean that rights of countrymen declared in those decisions should not be revisited in understanding the scope and dimensions

of human rights available to men in fatigues, faceless but protecting our country and people. Article 33 is thus revisited and is reproduced for ready reference:-

"33. Power of Parliament to modify the rights conferred by this Part in their application etc.-

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses

(a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

Needless to say that Parliament has not yet modified the pre Constitution CRPF Act, 1949 by an amendment of the statutory law on the subject which still refers to antiquated Criminal Procedure Code, 1898 which I would necessarily have to read down to mean the present law, 1973 to save the Act from being declared ultra vires the established law. Parliament not having intervened, the extent of rights in Part III stand curtailed. The argument is slim but meritorious which should be tilted towards the ex member of the Force in upholding his inalienable rights under the Constitution when the Supreme Court declares in a coram of a 9

Judge Bench in **M. Nagaraj v. Union of India & Ors.**, (2006) 8 SCC 212 holds that:- "A Constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges. This principle of interpretation is particularly apposite to the interpretation of fundamental rights. It is a fallacy to regard fundamental rights as a gift from the State to its citizens."

The Constitution gives no gifts to anyone in its generosity; it gives no gifts for the asking, with a beggars bowl in the hands of a citizen who happens to be a person dressed in fatigues 'charged with the maintenance of public order' in Article 33 read with Chapter 10 of the Cr.P.C., 1973 which provides measures for "Maintenance of Public Order and Tranquillity"; it gives no solace to a man wronged, in fatigues or in civil clothes, what it gives is a very precious right to knock at the open doors of the constitutional court asking for redressal redemption and determination of relief for a perceived constitutional or statutory tort committed upon him. At any rate, Article 33 is an enabling provision while it uses the word 'may' in its text in relation to restrictions and abrogation of rights for proper discharge of duties and the maintenance of discipline among the membership. Archaic laws must need be refurbished with modern ideas keeping pace with changing times and changing value systems evolving constantly, often imperceptibly. But most certainly men in muftis and in fatigues should not be viewed with the same spectacles. There is a

qualitative difference between the two classes but it should not be too wide off the mark inhibiting Articles 14, 16 and 21 of the Constitution. Marginal protections of law and equity account for foolscap liberty of the individual against excessive and unreasonable invasion. That is the cherished goal of the Constitution and the laws established.

69. To turn back again to the mainstream debate, the petitioner surely was unjustly deprived from continuing in service contrary to the due process of law and was deprived of his right to life and right to a livelihood. Furthermore, the confinement of the petitioner during his period of suspension by the respondents under purported exercise of powers under the Cr.P.C, 1898 clearly amounted to violation of guarantees of personal liberty of the petitioner by the Constitution for inadequate and insufficient reasons and that too on a mere suspicion of commission of crime as recorded in the judgment of conviction and sentence inflicted till the rising of the court without due thought paid.

70. The petitioner was unduly penalised by process unknown to law and victimized at the hands of the 6th respondent, who despite impleadment and notice issued to him long ago, has by court office reportedly chosen to remain unrepresented and without appearance on due notice of pending proceedings. In such peculiar facts and circumstances, the petitioner ought to be compensated for wrongs done to him in violation of the protection of Articles 14, 16 & 21 of the Constitution of India.

71. I am inclined to accept the view of the learned Senior counsel as canvassed on the criminal law issues involved in this service matter that the

entire process of the alleged criminal trial is vitiated, illegal and a gross abuse of the process of law and that the petitioner was not strictly held guilty on a 'criminal charge'.

72. The writ court is not without jurisdiction in an appropriate case to read and set aside the order/judgment of criminal conviction and sentencing by a Commandant in CRPF exercising powers of a Chief Judicial Magistrate, which brings untold grief, ruin and grave harm upon a citizen, such as the twin orders dated March 19, 1993 passed in this case appear to be with any worthy legs to stand on and if they defy logic, common sense and standards of reasonableness and proportionality then interference would be called for and justified. It follows that where the twin acts of conviction and dismissal are inextricably bound and are found on judicial review wholly unsustainable in law and they form the basis of the impugned dismissal order then the writ court can examine threadbare the judgment of the criminal/trial court empowered in the special Act in replacement of the ordinary criminal courts exercising competent jurisdiction. In cases where the sentence imposed is till the rising of the court the duty of the writ court would be even greater to prevent injustice to see if such a sentence was used for oblique purpose of packing off home a member of the force with the line of least resistance on a hapless victim of arbitrary and colourable exercise of power to dismiss.

73. That from a larger perspective, the issue of separation of powers of the executive and the judiciary envisaged under the new deal of criminal procedure code amended extensively separating two limbs of the troika and

the existing provisions of the Constitution of India and upon amendments made by the recommendation of the Law Commission of India there is something radically repulsive and abhorrent in the archaic system of dispensation of justice under a pre constitutional law of CRPF enforcing to this day the repealed Criminal Procedure Code, 1898 which has to be read down to mean the Code of Criminal Procedure Code, 1973. In this regard, the amicus had made the following written submissions which are set down as hereunder:

Re-visiting the CRPF Act, 1949 and CRPF Rules, 1955:

74. The CRPF Act published in the Gazette of India (Extraordinary) on December 30, 1949 after it received the assent of the Governor General on December 28, 1949. It is an Act to provide for the constitution and regulation of an Armed Central Reserve Police Force to replace the old Crown Representative's Police Force Law, 1939 which ceased to have effect on India's independence on August 15, 1947. The Central Reserve Police Force is a reserved Force to aid in the maintenance of law and order in times of emergency as was the function of the Crown Representative's Police Force.

75. The CRPF Act runs into 19 sections and contains 111 rules in the CRPF Rules framed by the Central Government in exercise of powers conferred by s. 18 of the CRPF Act. A brief summary of the relevant provisions is set down as hereunder:

(i) Ss. 9 and 10 of The CRPF Act prescribe and contain "*more heinous offences*" and "*less heinous offences*". s. 10 (n) contains a residuary

punishment clause, *“which, though not specified in this Act, is prejudicial to good order and discipline”* and entails punishment as for other *“less heinous offences”*. No provision in the Act defines or prescribes a determination process of any such *“less heinous offence”* though r. 27 stipulates the authority and the procedure provided for conducting enquiries and punishments to be inflicted after a formal departmental enquiry.

(ii) Section 11 of The CRPF Act prescribe that the “competent authority” may, subject to the Rules under the Act, *“award in lieu of, or in addition to, suspension or dismissal anyone or more of the following punishments to any member of the Force”* which have been stipulated as reduction in rank, fine, confinement to quarters/quarter guard or removal from distinction/special emolument in the Force. S. 12 states that, *“every person sentenced under this Act to imprisonment may be dismissed from the Force”* and every such person shall, if so dismissed, be imprisoned in the prescribed prison, or be confined in the quarter-guard or such other place as the Commandant or the Court may consider suitable. Section 2 (b) of the Act defines, *“close arrest”* and s. 2 (e) defines *“open arrest”* as specified in s. 15.

(iii) That under s. 16 of the Act, *“Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) the Central Government may invest the Commandant or an Assistant Commandant with the powers of a Magistrate of any Class for the purpose of enquiring into or trying any offence committed by member of the Force and punishable under this Act, or any offence committed by a member of the Force against the*

person or property of an another member.”

(iv) Rule 27 (cc) is part of a provision which deals with procedure to be adhered to in disciplinary enquiries, prescribes three grounds where the competent authority, 'may' impose a departmental penalty considering the circumstances of the case, to make such orders thereon as it deems fit. Thus, this provision of the rules, if invoked, do not require any notice, hearing, opportunity of rebuttal or defence before any penalty is imposed on a delinquent member of the Force. It may be pointed out at the outset that if r. 27 (cc) is compared and contrasted with Article 311 (2) of the Constitution, then, r. 27 (cc) is differently worded. Rule 27 (cc) dispenses with the applicability and requirement of a Departmental enquiry in three contingencies and states that, *“the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.”* In so far Article 311 (2) is concerned, it provides that if a person is dismissed, removed or reduced in rank, *“this clause shall not apply,”* inter alia, *“where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.”*

(v) Hence, the distinguishing feature in the CRPF Act is the use of the word 'may' in r. 27 (cc) which gives a discretion to the punishing authority, whereas Article 311 (2) prescribes a mandatory 'shall' leaving no discretion to the punishing authority as explained by the Supreme Court in past precedents. Hence, invoking of r. 27 (cc) prescribing the use of word, “may” in the light of interpretation of Articles 14, 16 and 21 of the Constitution,

would require reasons to be recorded in exercising any discretion dispensing with an enquiry if any of the three contingencies of r. 27 (cc) when are invoked for dismissing the services of a Member of the Force.

(vi) Rule 36 of the CRPF Rules prescribes that, “*all trials in relation to any one of the offences specified in s. 9 or 10 shall be held in accordance with the procedure laid down in the Code of Criminal Procedure Code, 1898.*” Though, there seems to be no formal amendment replacing it with the Code of Criminal Procedure, 1973, a note in the Bare Act indicates “*see now the Code of Criminal Procedure, 1973*” which is merely editorial and not the voice of Parliament.

(vii) Rule 36 (B) of the CRPF Rules enjoins that for the purposes of Chapter VI-A dealing with place of trial and adjustment of jurisdiction of ordinary Courts, “Magistrate” means a Magistrate other than the Commandant or an Assistant Commandant on whom the powers of a Magistrate have been conferred under sub s. 2 of s. 16.

76. From a collective reading of the above provisions, it can be understood that a Commandant under s. 16 of the CRPF Act, whilst acting as a Magistrate and conferred with the powers under the Code of Criminal Procedure Code, 1898 (“see now the Code of Criminal Procedure, 1973”) can sentence a person to *more or less* heinous offences under Ss. 9 and 10 of the Act. Thereafter, under Ss. 11 and 12, further punishments including dismissal from service of the Force can be imposed by the Commandant as the Disciplinary Authority for which under r. 27 (cc), discretion can be exercised to make such orders as deemed fit. Therefore, if a member of the

Force is convicted on a criminal charge, he can be removed from service without any notice, enquiry or hearing under r. 27 (cc) in the discretion of the Commandant as the Disciplinary Authority. However, the provisions in s. 12 using the words that “*every person sentenced under this Act to imprisonment may be dismissed*” are different from the words “*conviction on a criminal charge*” used in s. 12 of the Act. Thus, the different wording, may lead to a conclusion that dismissal from service would require a formal departmental enquiry prescribed under r. 27 in respect of *a person sentenced under this Act to imprisonment*. The protection of Articles 14 and 16 available to all citizens necessitates the requirements of equality of treatment even to members of a disciplined Force as the CRPF.

77. Thus it may be seen that departmental enquiries in the CRPF are conducted under s. 11 (1) of the CRPF Act read with r. 27 (c) of the CRPF Rules since s. 11 is subject to rules made under the Act. In contrast, judicial trials are also held under Ss. 9 and 10 of the CRPF Act read with r. 36 and r. 36 E to 36 J of the CRPF Rules. Section 11 deals with minor punishments and contains overlapping of jurisdictions and requires to be read in its principles since it establishes a connection with rules:

"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 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"

The Commandant 6th respondent opted out of s. 11 without applying mind or acting under it when he could have for good measure. Be that as it may, judicial trials are conducted under Ss. 9 and 10 by Commandants who are conferred the powers of Judicial Magistrates under s. 16 of the CRPF Act. Even though there is no formal amendment incorporating the provisions of the Code of Criminal Procedure, 1973, they may have to be read into various provisions of the CRPF Act and Rules as a substitute to the Code of Criminal Procedure, 1898 which stands repealed under s. 484 of the Cr.P.C. Hence, by necessary implication, the 1973 Code shall stand substituted. I am inclined to think that the provision in s.16 in the CRPF Act has outlived its shelf life. I would not like to hold that the trial court should also be the disciplinary authority and to put the imprimatur of the Court on such fusion of powers. This would be an antithesis of the rule of law and the benign principle of separation of powers with a right upon a third agency recognized by parliament to override and veto. If not, it would be putting much too much paid on unfettered powers vested in one person to enthrall his captive audience to suffer his personal whims without a system of checks and balances in place. We should not let anyone get too powerful and centralized if the laws are to be worked properly without causing undue injury on a fellow human being. The

nightmare that man has always faced from times immemorial without a permanent and abiding solution is man's inhumanity to man. If nature is written in tooth and claw, officialdom is equally brutal. The horribly dominating spirit of officialdom in a police State subjugates the weaker mortal of whose neck they are given the leash to pull or release as they wish. I think the 6th respondent was resplendent in such extreme power which neither his industry, caliber, education, judicial experience or merit justified holding the high office of a Chief Judicial Magistrate, almost visibly power drunk but kneeling before and kowtowing to the powers that be, given the formidable location of the alleged occurrence and the overwhelming position of the complainant who ultimately made no complaint whatsoever to put the criminal law into motion or to be taken criminal cognizance of, the entire episode rather murky.

Code of Criminal Procedure, 1898 /1973:

78. However, since the functions of a Judicial Magistrate are conferred upon a Commandant of the CRPF by virtue of s. 16 of the CRPF Act, it may be necessary to examine certain provisions of the Cr.P.C., 1898 as also the present Cr.P.C., 1973, to test the authorization and exercise of judicial powers by CRPF Commandants, as also to simultaneously exercise powers of a disciplinary authority.

79. That under s.s 30, 32 and 34, 36 and 37 of the Cr.P.C 1898, as it originally stood, Deputy Commissioners or Assistant Commissioners were invested with powers to try as a Magistrate all offences not punishable with death. Hence, under Chapter III dealing with power of Courts under the old

Cr.P.C., 1898, where the Executive Officers were invested with wide powers to exercise judicial functions as Magistrates.

80. That to make criminal procedure more comprehensive, the Law Commission undertook a detailed examination of the Cr.P.C., 1898 and submitted its report on February 19, 1968. Thereafter, since the Law Commission was reconstituted, another detailed 41st Report was submitted by the Law Commission in September 1969. Thereafter, Bill 41 of 1970 was introduced in the Rajya Sabha on December 10, 1970. The Bill was referred to a Joint Select Committee of both Houses of Parliament. Incorporating the recommendations of this Committee, the Cr.P.C Bill was taken up for consideration by Parliament. This Bill having been passed by both the Houses of Parliament, received the assent of the President on January 25, 1974 and came into Force on April 1, 1974 as the Cr.P.C., 1973. One of the main recommendations of the Law Commission was to provide for the separation of the Judiciary from the Executive on an All India basis to ensure improvement in the quality and speed of all Judicial Magistrates who would be legally qualified and trained persons within the control of and under the different High Courts. Further, to do away with the scope of arbitrary exercise of power and to dispense with discretionary powers and act in a manner consistent with known principles of law, this conscious decision was taken in view of the provisions of Article 50 of the Constitution providing for the separation of the judiciary from the Executive in public services.

81. That it may also be pertinent to point out that according to Schedule II of the Law Reforms Ordinance, 1978 (Ordinance XLIX of 1978) s. 34 was omitted. The Law Commission in the 41st Report took note of the Union Territories (Separation of Judicial and Executive Functions) Bill, 1968 as introduced in Parliament containing the following clause;

“Where under any law, the functions exercisable by a Magistrate relating to matters which involves the appreciation or shifting of evidence or formulation of any decision which exposes any person to any punishment, or penalty, detention in custody pending investigation, enquiry or trial or would have the effect of sending him for trial before any court, such functions shall, subject to the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act, be exercisable by Judicial Magistrate; and where such functions relate to matters which are administrative or Executive in nature, such as granting of a license, the suspension or cancellation of a license, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid be exercised by an Executive Magistrate.”

Based on the above proposal, the Law Commission made a broad classification of the functions of Judicial and Executive Magistrates in the 41st Report.

82. That in Chapter II dealing with the Constitution of criminal courts and offices, the Law Commission in its 41st Report has specifically suggested that Judicial Magistrates shall be appointed by the High Court at such places as the State Government may in consultation with the High Courts duly notified in the official Gazette. Further, Special Judicial

Magistrates may be appointed by the High Court by conferring upon any person a Judicial post if he possesses such qualifications as may be prescribed by the High Court. Likewise, the Law Commission also suggested appointment of Executive Magistrates by the State Government to exercise Executive functions in their jurisdiction.

83. That the above provisions of constitution of Criminal Courts and offices find their statutory place in Chapter II of the Cr.P.C from Ss. 6 to 25. Judicial Magistrates exercising judicial functions are appointed by the High Court and Special Judicial Magistrates can be appointed for a term not exceeding one year at a time, under s. 13 if a person possesses such qualification or experience in relation to legal affairs as the High Court may by rules specify. Likewise, public prosecutors who have been practicing as an Advocate for not less than 7 years can be appointed by the Central Government or the State Government for every High Court. Executive Magistrates can be appointed by the State Government under s. 20 of the Cr.P.C. Thus, there is a clear separation of powers as contemplated by Article 50 of the Constitution and Judicial powers are not exercised by Executive Magistrates. The amicus had also placed on record on January 28, 2015 the relevant extract of the provisions of the Cr.P.C., 1898 as also the relevant extract of the 41st report of the Law Commission of India, September 1969 where upon the changes were made in the Cr.P.C., 1898 given rise to the current Cr.P.C., 1973.

84. Bearing in mind that the CRPF is the main counter insurgency Force in India serving at all sensitive locations and borders in India, and is

also the largest Central Armed Police Force comprising about 230 battalions and reported over 3 lac personnel, it is suggested that an appropriate reference be made to the Law Commission of India for suggesting suitable amendments to the CRPF Act, 1949 and the CRPF Rules, 1955 so that these provisions can be brought at par with the provisions of the Cr.P.C 1973 and the constitutional mandate under Article 50 of the Constitution stipulating a legal mandate to separate the Judiciary from the Executive in the public services of the State. Hence, CRPF Personnel ought to be administered by a law which is in agreement with the provisions of the Constitution without infringing Cr.PC, 1973.

85. It may be useful to quote that the Army Act, 1950 read with the Army Rules, 1954, the Air Force Act, 1950 and the Navy Act, 1957 which are post Constitutional laws conforming to existing laws do prescribe a proper procedure in accordance with law to regulate disciplinary and penal punishments for offences committed in service through a process of Court Martial and other legal procedural methods devised and employed in accordance with law and rules of natural justice.

86. Likewise, the Border Security Force Act, 1968 read with the BSF Rules, 1969, provides a Security Force Court for dealing with offences for members of BSF which conform to the Constitution and do not infringe other existing statutory laws.

87. Since, CRPF is the largest armed Central Reserve Police Force, it can no longer be continued to be administered by an archaic pre-Constitutional law whose provisions are not in accordance with the

protections guaranteed under the Constitution of India as also the principle of separation of judicial powers under the Cr.P.C, 1973. It may no longer be legally tenable to conduct judicial trials by the CRPF under the Cr.P.C, 1898."

88. Accordingly, a copy of this judgment is remitted to the Law Commission of India and the Ministry of Law and Justice, New Delhi to contemplate upon devising a mechanism for administration of discipline and imposition of penalties upon CRPF personnel which are the touch stone and main stream of a disciplined Force and by separation of judicial and executive power and to consider points in para. 84 above. The Law Commission may also deliberate the issue where the minimum sentence is not prescribed by law then what should be the bare minimum sentence. In other words, how would "minimum" sentence be quantified. This phrase whether requires to be qualified? Whether judicial discretion requires to be rationed and rationalized when awarding sentence of "till the rising of the Court" on a criminal charge. This is for the Commission and the Parliament to debate.

89. That when s. 12 of the Act is directory in nature and not mandatory then dismissal from service should normally follow formal departmental enquiry in terms of the procedure prescribed under r. 27(1). That due process established by law was departed from and straight away, on the same day three major events with lifelong consequences were synchronized and inflicted by the Commandant; the conviction, the sentence and the dismissal. Even assuming *arguendo* that a regular enquiry was not

necessary under r. 27, even then, the petitioner should have been served with a show cause notice to hear him out if he had anything to say against dismissal or proposed dismissal in view of discretion under s. 12 and in absence of the mantra of the words “conduct which led to the conviction” employed therein as in Article 311 of the Constitution on which *Tulsiram Patel* case is founded and *Chellapan* case overruled on point of hearing. That opportunity was not given and the principles of natural justice were breached. Rule 27 is a rule of natural justice. Section 12 (1) is an enabling provision. Therefore, the limitation on exercise of power of the Commandant while acting as the disciplinary authority in relation to a constable in CRPF stands circumscribed by r. 27. The dismissal order has undoubtedly been passed under s. 12 (1) of the Act which does not contain the words exactly as are found in Article 311(2) (a) of the Constitution. Therefore, none can be imported into s. 12 which is special law for CRPF personnel traceable to what is now Article 33 of the Constitution of India. History has it that the CRPF was a successor to the The Crown Representative's Police Force raised in British India under an enactment called The Crown Representative's Police Force Law, 1939, which was made under the Foreign (Jurisdiction) Order, 1937 to provide for the constitution and regulation of the Force, which automatically ceased to have effect from the August 15, 1947. However, the Government of India Act, 1935 continued to operate till it was transformed into the Constitution of India, 1950. The CRPF Act, 1949 was legislated by the Dominion from Paragraph 1 of List 1 of the Seventh Schedule to the Government of India

Act, 1935 falling in the category of "any other armed Forces raised or maintained by the Dominion' which is now replaced by the Union of India administered through the Central Government.

90. Section 12 (1) of the Act enables the punishing authority to choose one of the minor punishments specified in s. 11 for one or more of the heinous offences specified in s. 9 or for less heinous offences enumerated in s. 10. I find no cogent or good enough reason not to read Serial No.1 of the Table under r. 27 as part of the substantive mandatory procedure required to be followed, though falling in rules with no power drawn from the provisions of the Act directly or impliedly. A reading of r. 27 appears not to leave any discretion in the Commandant when not only the proposed choice of punishment is dismissal or removal from the Force, but for any reason whatsoever, for any of the misconducts specified in Ss. 9 and 10 of the Act except to visit after a regular departmental enquiry is held and in no other manner even after sentencing for an offence under s 10 (i) (c) of the Act. It is well settled that if a thing is required to be done in a particular manner, it should be done in that manner or not at all. Otherwise, the action would be open to criticism as one being arbitrary and unreasonable. I would repeat the famous words of Justice Felix Frankfurter of the United States Supreme Court in *McNabb v. United States*, 318 U.S 332 that the "*history of liberty has largely been the history of the observance of procedural safeguards*". Rule 27 is an absolute procedural safeguard while S. 12 (1) is enabling and directory in nature, it enables but does not command the Commandant to do what he wishes and as he likes. When the disciplinary

authority/Commandant forms opinion under s. 12 (1) as to what has to be done after awarding sentence, then the word 'may' used in s. 12 comes into play and would goad and guide him to resort to fair procedure of domestic enquiry recognized by r. 27 of the CRPF Rules, 1955 to arrive at the truth or the most probable truth, when law does not and is not intended to deal with absolutes while reconstructing today of events in the past based on the limitations of admissible evidence, principles of hearsay etc. and lack of direct facts proved in a trial.

91. There appears to be yet another fundamental reason which persuades me to hold that due procedure was not followed in ordering dismissal without enquiry. That reason lies in sub section (2) of s.12 of the Act. The sub s. lays down that: *"Every such person shall, if he is so dismissed, be imprisoned in the prescribed prison,..."*. A priori imprisonment follows dismissal. It is not the other way round. Dismissal is an inherent right of the employer reflected in the General Clauses Act, 1897. Provisions of s. 12 do not speak of 'conviction' but speak of 'sentencing' a 'person' 'to imprisonment'. It is axiomatic in criminal law that sentence follows conviction. Thus, conviction on a criminal charge has to be read into s. 12 of the CRPF Act, 1949 even if the word is not found in the statutory enactment and only 'person sentenced'. But an order of dismissal based on sentence passed on a proven criminal charge is to be visited with imprisonment in view of the word 'shall' used in s. 12 (2). This part is apparently mandatory leaving no elbow room or discretion in the trial judge, the Commandant, CRPF to act to the contrary. However, if dismissal is not

selected as penalty following sentence then the “Court or the Commandant” can order confinement in quarter-guard. I think that dismissal cases cannot go to quarter-guard. The 'place of imprisonment' under s.12 (2) is the 'prescribed prison’. The expression 'prescribed prison' is not defined in the Act nor was required as it is procedural and penal result of criminal consequences. It is r. 36 (2) which tell us that it is the place which is the nearest jail. This means where a sentence of imprisonment shall be served. Court is not a jail but can be a place of imprisonment and a person sentenced can be imprisoned in a court room for the working day. Section 389, Cr.P.C. does not speak of jail sentence but of imprisonment. The ordinary meaning of the word 'sentence' is 'punishment given by a law court'. A direction by the court that a person shall be confined in court premises till the court rises constitutes imprisonment within the meaning of the Penal Code and the Code of Criminal Procedure as it is a confinement and curtailment of civil liberty imposed by authority of law. But the CRPF Act is a special statute and is differently worded in r. 36 (b) which leaves no discretion except to confine a person sentenced under the Act in the nearest jail depending on feasibility of transport and escort either to the nearest jail or Quarter-Guard. This was not done to Zuber Ahmed. The provision reads:

“36. Judicial Trials

(a) All trials in relation to any one of the offences specified in s. 9 or' s. 10 shall be held in accordance with the procedure laid down in the Code of Criminal Procedure, 1898. (1973)

(b) All persons sentenced to imprisonment under the Act shall be confined in the nearest jail. Provided that

if the sentence of imprisonment is for one month or less, or where the Commandant is satisfied that due to the difficulty of transport and escort of the person sentenced to imprisonment, to the nearest jail, it is so desirable, such persons shall be confined in the Quarter Guard of the Force.”

92. Flowing from the statutory framework and on a cumulative reading of Ss. 12(1) and 12(2) of the CRPF Act, 1949 and rls. 27 (a) and 36 (a) and (b) of the CRPF Rules, 1955 it follows, and this court is inclined to think that actual physical imprisonment in a prescribed prison is a condition precedent to dismissal from service. The prescribed prison is the nearest jail but not the Court room where the petitioner was sentenced to simple imprisonment till the rising of the Court. This appears to me to be the legal position. I may say and not without some trepidation that sentencing left in the hands of a layperson who is not trained in the criminal law as a Judge in ordinary courts may lead to manifestly disastrous and dangerous results in the quest of truth and justice. The platitudinous expression of justice being delivered from the 'temple of justice' should not be mixed up with or converted into sentencing a person arraigned in the dock to be incarcerated to jail in a mock judicial trial. If the offender belongs to the paramilitary force it does not mean that the scales of justice will tilt against him anyhow. The true value of procedural safeguards in criminal law cannot be undermined in matters involving the constabulary in the paramilitary forces. They may be special citizens though serving under reasonable curtailments of rights enjoyed by civil society but their fundamental rights can be seen restricted or abrogated by Parliament under Article 33 of the Constitution

being charged with maintenance of public order but still they deserve to be dealt with under the overarching constitutional scheme of fundamental freedoms and guarantees of cherished rights in Part III of the Constitution, if not by all of them, but at least some of those protected by Articles 14, 16, 20 (3) and 21 of the Constitution which permeate through the interstices of the criminal justice dispensation system. One may see a facet of Article 14 and 16 in relation to armed forces subjected to court interference in the recent decision of the Supreme Court in **Major General H.M.Singh v. Union of India & Anr;** (2014) 3 SCC 670. The CRPF Act and its provisions, as I see them, neither restrict nor take away such minimal protections from a constable, namely, of a fair and independent trial, fair disciplinary action, fair conviction, fair sentence and fair application of the rule of law. They have a right not to be tried and convicted by a Kangaroo court, where the rudimentary principles of criminal jurisprudence and its fair procedure established by law are thrown to the winds and constables in CRPF made scapegoats on the altar of good order and discipline without just and sufficient cause or probative evidence to prove a criminal charge laid by the Commandant criminal court palming them off as pariahs by a whimsical order of sentence of "till the rising of the court"; which to put shortly was thought to be *quod erat demonstrandum*. It is something akin to what appears to have happened in this case when one sees the original record of the trial proceedings which look more like a lopsided departmental enquiry than a full-fledged and fair criminal trial, a difference which is clearly noticeable from the Commandant/CJM's file. It is less of

justice and more of self-serving a predestined and predetermined end, the trial motions gone through mechanically without help of defence counsel to the undertrial and the checks and balances of fair procedure. I would agree with Mr Sharma's lament that a fair deal was not given to Zuber Ahmed at the trial and on the other hand was dealt with rather roughly. Therefore, the impugned dismissal order and the appellate order confirming that order deserve to be set aside being non est and ab initio voidable being based on no evidence with the complainant not supporting the case of the prosecution. The sentence imposed on an offender/delinquent should after all reflect the true crime/misconduct they are alleged to have committed duly proven beyond a shadow of reasonable doubt or even on a preponderance of probabilities, as the case may be, from criminal trial to disciplinary proceedings and the result in either case has to be proportionate to the seriousness of the alleged offence. Always in passing sentence, the Court has not only to bear in mind the nature and the limit of the punishment prescribed for the offence of which the accused is found guilty, but also the nature and the limit of the punishment which it is empowered to impose.

A sentence till the rising of the court should normally only be for trivial offences. If offence is not considered trivial or is heinous then there must be reason recorded in writing as to why the least punishment was chosen from the range available in law of where there may be minimum prescribed by statute. If the offence is trivial in nature and sentencing would justify the severest penalty of dismissal from service then the minimal

sentence should be avoided as not one authorized by law in CRPF Act as that would be disproportionate and strikingly excessive to the gravity of the offence charged or misconduct imputed, as the case may be, and duly proved for swapping duties for short duration. It should not be used in a sense that because the authority empowered can and wants to dismiss a subordinate then resort should readily be had to the line of least resistance only to add colour of law to justify the dismissal based solely on conviction even when the charge was not *stricto sensu* criminal in nature. Changing duties may be misconduct but certainly not a criminal charge and I wholeheartedly agree with Mr Cheema on the fine distinction made to help this Court in understanding the boundaries of criminal and service law and where they could meet to shape relief even when the petitioner failed to appeal against the conviction. It would not be a proper exercise of jurisdiction in the Commandant, CRPF acting with a double edged sword, one to convict and sentence by a flea bite, the other to swat a fly with a cannonball, firing the man from service and sending him packing home with bags and all, stripped off self esteem, self respect, to be shunned and despised by his family and community. Stung by the stigma of dismissal from service. The power to sentence till the rising of the court cannot be allowed to be abused by applauding the hand that strikes the match on the ignition stick, the inflictor watching in mirth, reassured by law which shields and protects the authority empowered to sentence and dismiss. No reasons have been recorded by the Commandant 6th respondent in the judgment of conviction and sentence, justifying punishment imposed

arbitrarily till Zuber Ahmed rose for the day to walk into the sunset. This is characteristic of judicial tyranny that civil society ought not to tolerate or support and instead to abjure. Lives, livelihoods and careers are very precious things which ought not to be cut short or prematurely destroyed except for compelling reasons and which, if truncated, then even the man of ordinary intelligence or the man on the street would start a whispering campaign if not revolt against what has been visited upon a fellow citizen.

93. To turn now to the respondent/Union of India's objection as to alternative remedy, it is found that since this Court entertained the petition in the year 1999 and admitted the matter for regular hearing without relegating the petitioner then to avail his remedy under r. 29 of the rules it would not appear to me fair or just after such long lapse of time to dispose of the petition directing the petitioner to avail the remedy of further revision against the appellate order which would unnecessarily reverse the clock and prolong the litigation much to his agony. It is too late in the day to consider such a defence plea after admission of the matter. Besides, no period is prescribed in r. 29 within which a revision is to be decided. At any rate, it is well embedded in law and judicial practice that an alternative remedy is not an absolute bar to the maintainability of a writ petition, when an authority has acted wholly without jurisdiction or in abuse of authority or in its colourable exercise, the High Court should normally not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. After all, this Court remains a Court of hope where justice can be easily had without land mines laid out for

litigants. Its doors are always ajar to equity, hope, trust, love, faith in mankind, and concern for fellow-beings by avoiding booby traps, not falling prey to subterfuges of jurisdiction or its esoteric innards and subterranean catacombs built to deny relief. There may be an element of restorative justice also to be read in the dispensation, in shaping the ultimate, reasonable and adequate relief grantable, say as in this case, where the man has been kept out of service for eternity and not for the best reasons. The violation of the protections guaranteed by Articles 14, 16 and 21 of the Constitution to the petitioner and in invoking the extraordinary jurisdiction under Article 226 of the Constitution leaves no manner of doubt, to my mind, that this Court in exercise of its high prerogative powers, informed reason and freedom of action, will have jurisdiction to quash both the impugned orders dated March 19, 1993 [P-4 and P-5] and the appellate order [P-6] dated May 15, 1993 being violative of the rights of the petitioner under the Constitution of India.

Conclusions in summary:

94. After giving my thoughtful consideration to the respective points of view canvassed by the learned counsel for the parties and the valuable assistance rendered by the learned Senior Counsel Mr R.S. Cheema and the learned amicus in the matter and after perusing the papers and the original record of the criminal trial proceedings produced before this Court by the respondent CRPF, I summarize what is said before and hold:

- (i) That though the charge framed on March 5, 1993 makes out an offence under s. 10 (n) of the CRPF Act by alleging that the petitioner had

caught hold of the mouth of Smt Gurdev Kaur with mala fide intention, the order of conviction and sentencing dated March 19, 1993 only holds the petitioner guilty of swapping places of duty without any other alleged charge being proved or established. Consequently, the petitioner was at the most guilty of neglect of duty or remissness of discharge of duty under s. 11 of the CRPF Act as a member of the Force. Therefore, the alleged charge framed under s. 10(n) is wholly without jurisdiction as s. 11 neither contemplates a trial nor award of any sentence of imprisonment. Hence, the order of conviction and sentence dated March 19, 1993 is wholly without jurisdiction and contravenes the provisions of the CRPF Act as the entire process of trial and conviction is vitiated. Therefore, it deserves to be struck down unconditionally.

(ii) That presuming that the petitioner had been convicted and sentenced under the CRPF Act, he could have been dismissed from the Force as prescribed in s. 12 of the CRPF Act. However, this could not have been possible without complying with the procedure for award of punishment of dismissal to be inflicted after formal departmental enquiry as stipulated in r. 27 (c) of the CRPF Rules. The enquiry could have been dispensed with under r. 27 (cc) of the CRPF Rules, if the petitioner had been convicted of a "criminal charge" as prescribed in r. 27 (cc) (i) of the CRPF Rules. Since, the petitioner was not convicted under s. 354 IPC which was possibly invoked in the allegation made against the petitioner; r. 27 (cc) was not applicable. The petitioner was merely convicted of an offence under the CRPF Act and not of a criminal charge under the IPC.

Hence, the punishment of dismissal from service vide order dated March 19, 1993 is illegal, invalid and in contravention of the CRPF Act and the Rules.

(iii) I find that the petitioner was made a victim of discrimination, bias, vendetta and unlawful action disproportionate to the charge at the hands of the 6th respondent. Even though a departmental enquiry and not judicial trial was recommended against the petitioner, the 6th respondent chose to act excessively. The Judge became the prosecutor. To the contrary, as against Constable Himmat Singh a full-fledged departmental enquiry was conducted by the 6th respondent and Guard Commander L/NK U.N Gaikwad and Sub Inspector M.J Kujur were awarded punishment of severe censure. Under what circumstances, and on what basis the 6th respondent proceeded to discriminate against the petitioner is not known. No reasons are assigned or forthcoming from record as to why no departmental enquiry was held against the petitioner in the very same case where the same was done against Constable Himmat Singh. No reasons were recorded in dispensing with such a departmental enquiry. Hence, the impugned action of the 6th respondent in passing the orders at Annexures P-4 and P-5 and the appellate order, at Annexure P 6 in not noticing this injustice are contrary to Articles 14 and 16 of the Constitution and thus the same deserve to be set aside.

(iv) That the disproportionate and excessive punishment imposed by the 6th respondent in concurrent exercise of his powers as Chief Judicial Magistrate and disciplinary authority was not condign and leaves no manner

of doubt for this Court to come to the conclusion that the petitioner was punished for a charge which was not made out and not even remotely proved in the light of evidence on record. In view of the submissions made before this Court by the learned Senior counsel, Mr Cheema and supported by the contentions of the learned amicus curiae, this court is fortified in its conclusion that the impugned orders Annexures P-4, P-5 and P-6 are wholly illegal, without jurisdiction and thus deserve to be set aside. The right to impose a penalty carries with it the duty to act justly, fairly and honestly. The flea bite sentence was shockingly disproportionate to the offence, assuming it was committed and punishable in s. 10 (n) of the Act. Neither the conviction nor the sentence imposed can legally act as a barrier to relief as it is found far too harsh, oppressive and violative of Article 14 of the Constitution on both unfair discrimination and unreasonableness which are both facets of the same protection against excessiveness and disproportionateness in administrative action. The decision making process inspires no confidence and to the contrary appears contrived to suit an event foreseen, blurring vision and rationality. It appears writ large that the status and address of the protected personality blinded and overwhelmed an objective decision. Subjective satisfaction of the disciplinary authority in choice of punishment is required to bear a jural relationship compatible with an objective criteria applied in making a fair assessment of all attending circumstances and attaching true weight to evidence collected at the trial by the prosecutor which in the present case is hardly anything more than a mere needle of suspicion of guilt. The 6th respondent/Chief Judicial

Magistrate administered a homeopathic dose on the criminal side and then quickly injected fatal poison on the administrative side into the bloodstream which has taken the petitioner 22 years in search of an antidote to cure the malady inflicted.

(v) This Court deems it appropriate to hold that CRPF personnel ought to be governed by constitutional standards and the protections and procedural safeguards envisaged under the amended Cr.P.C, 1973 and the Constitution of India currently, as it may no longer be tenable to conduct judicial trials by the CRPF under the Cr.P.C, 1898. Accordingly, as prayed for by the amicus, this Court requests the Law Commission of India to consider examining the CRPF Act and the Rules framed thereunder and to consider devising a mechanism for administration of discipline and imposition of penalties upon CRPF personnel which are the touchstone and mainstream of a disciplined Force as also keeping in mind the current position of law envisaged under the Cr.P.C, 1973 and the Constitution of India. Let a copy of this judgment be sent by the office to be placed before the Hon'ble Law Commission of India at New Dehi for its kind consideration of the matter to make, if desirable, appropriate recommendations accordingly.

(vi) For the variety of reasons and the arguments advanced on either side this Court is inclined to think that the dismissal order of March 19, 1993, is not legally sustainable as it is shockingly harsh, extremely oppressive, arbitrary and per se discriminatory and, consequently, the appellate order dated May 15, 1993 dismissing the appeal in a summary

manner without any opportunity of hearing or reflection or thought duly paid at the appellate stage following the dotted line, thus cannot be maintained and deserve to be set aside as infringing the protection afforded by Articles 14, 16 & 21 of the Constitution which cannot be denied to the petitioner, even though he was a member of the disciplined Force. The damage done then deserves to be repaired.

95. Consequently, this writ petition is allowed. The Order of conviction / sentence Annexure P-4, Order of dismissal Annexure P-5 and appellate order Annexure P-6, stand quashed upon a writ of certiorari issued. It is, however, found too late on account of passage of 22 years to grant liberty to the respondents to follow due process of holding a domestic enquiry under r. 27 of the CRPF Rules, 1955. The wisdom of giving such liberty at this distance of time may be questionable where witnesses may not be available or their memories too jaded for legal recall nor would it be practicably possible to hold an enquiry and for no purpose especially when the complainant did not support the case of the prosecution at the trial by failing to identify Zuber Ahmed as the culprit.

96. It is also found too late now to return the petitioner to the revisional jurisdiction against the appellate order upholding the dismissal. This, when followed would do no credit to this Court and may instead tend to bring the Court to disrepute, if not ridicule by adopting such a course and, therefore, CRPF's objection on alternative remedy is overruled. I may remind that when writ petitions are admitted for regular hearing after hearing parties such an objection loses its sting and becomes history not to

be repeated again or the plea entertained with any seriousness at the final hearing.

97. The moot but ticklish question still remains when the dismissal order is set aside then the consequence of quashing of the order of dismissal would ordinarily result in restoring the petitioner to service with all consequential benefits by restoration of the status quo ante. The Full Bench dictum of this Court in vintage but universally pleasant ruling in **Radha Ram v. Municipal Committee, Barnala**; 1983 PLR 21 informs and has been followed since once the relief of setting aside of the order of termination is granted it follows sequitur that the employee in the eyes of law continues to be in service and as a necessary consequence thereof would be entitled to all the past emoluments flowing from declaration of that right by decree. He must be deemed to be in a position identical with that existing prior to the passing of the order of termination of his service. The emoluments of the post are a logical consequence of setting aside the order of termination. But this case has special features, particularly when the court is dealing with a former member of a uniformed force where demands of service spent day in and day out is of its own peculiar value on which parameters required for career progression and promotions etc. are based on active service not found usually in ordinary civil service. The petitioner by now would have lost his skills forever. Then what relief should the petitioner take? He was dismissed long ago in the year 1993 and twenty two years have gone by of which six of them were misspent in the Calcutta High Court on bad legal advice hoping for justice. Are there any clues in

past precedents to meet such exigencies in terms of relief? Happily, those are not far to search. In **Ex. Sepoy Sube Singh vs Union Of India And Ors**, 140 (2007) DLT 26 a Division Bench of the Delhi High Court speaking through Hon'ble T.S.Thakur, J. [when His Lordship adorned the Bench of the Delhi High Court] when the Hon'ble Bench had occasion to deal with such a situation when confronted by one such a piquant situation faced with an unlawful discharge order of a Major in the Indian Army ventured to cull out the admissible relief in a special way but refrained from awarding reinstatement to service where the adjudicatory process had widened the gap from the date of discharge from service by seven years making return to service difficult by reason of the peculiar nature of duties involved in the Armed Forces, with the Army authorities strongly resisting reinstatement, the Court thus admirably moulded the relief by awarding service pension instead of reinstatement to service in the changed and supervening circumstances in the following manner, to quote:

"This Court could, therefore, mould the relief in such a manner that the petitioner gets his service pension without even directing the petitioner's reinstatement in service or granting any other pensionary benefit to him. We see no reason to decline that limited prayer. We are of the view that the minimum which the petitioner must be held entitled to, is the service pension and other benefits due upon completion of the 15 years of service in the Indian Army. This can be achieved by directing that instead of the petitioner's discharge taking effect on the date mentioned in the impugned order, the same shall take effect on the date he would have completed 15 years of pensionable service. Consequently, the

petitioner's discharge pursuant to the impugned order of discharge shall be deemed to have taken effect from 21st October, 2002. The extended period of service will not however entitle the petitioner to any arrears of salary, but for purposes of all retiral/pensionary benefits, the petitioner shall be deemed to have completed his pensionable service as on the date of his discharge. The respondents shall in consequence of the above, process the petitioner's case for payment of pension and ensure that the same is released to the petitioner expeditiously but not later than six months from the date of the pronouncement of this order."

In this special way relief was granted even while the Court was "...conscious of the fact that in matters relating to Armed Forces, courts adopt a liberal approach in accepting as valid, orders, even when they are not reasoned. Some amount of latitude is in the very nature of military customs, discipline and hierarchy due to the armed forces. That latitude cannot however extend to upholding an order which does not on the face of it show due and proper application of mind by the authority passing the same." Later, the principle enunciated in the precedent was followed and applied in deciding the case **B.P. Sinha vs. Union of India and Ors.** rendered by a subsequent co-ordinate Division Bench of the Delhi High Court in WP (C) No.1763/1979 rendered on 30 July, 2008 in the case of a Constable in CRPF, denying reinstatement but entitling by issue of mandamus the right to pension by directing that the petitioner would be deemed to have retired on completion of 20 years service counted from the date of discharge thereby entitling the petitioner therein to qualifying service for pension and pensionary benefits but without any arrears of pay

or benefit of seniority. In making the order by way of alternative relief the court relied on its earlier dicta in **Des Raj Shanwal (Lt. Col.) Vs. Union of India and Ors.**, 2004 (1) SCR 191 passed on similar lines where such relief was granted. Therefore, I see no reason why this practical and pragmatic course should not be adopted in this case in the alternative in order to secure the ends of justice. It is accordingly so ordered. Compliance be made within three months from the date of receipt of a certified copy of this order by respondent CRPF Headquarters, New Delhi duly served by the petitioner.

98. However, this order will not preclude the CRPF from reinstating the petitioner to service if it is still feasible or possible to do so. It would examine if the petitioner can be adjusted on a suitable field or non-field post if available and if it is found just and meet in the light of this judgment then the same can be resorted to holistically so as to bring about a right to work on current salary and entitlement to future pension in accordance with rules, but if such course is adopted then without payment of arrears of back salary; given the petitioner is still of an employable age. To this end an order would be passed and communicated to the petitioner within the time set for compliance as above.

99. Nonetheless, the petitioner shall have costs of litigation assessed at Rs 50,000/- paid by respondent CRPF, in any of the above two situations, in the first instance but costs may be recovered from the unpaid official dues to the 6th respondent, if any remaining, as he was issued summons by this Court duly served upon him, as recorded in the interim order dated May 18, 2000, but who chose not to appear or contest the case for reasons best

known to him even when malice was personally imputed against the 6th respondent which only he could answer and could not be responded to by the official respondents in view of the nature of the averments made in the petition. He is thus proceeded ex parte, however, with the liberty to apply to this Court for waiver of costs, if such prayer is supported by sufficient cause, then the request, if made, may be entertained and considered on merits in the disposed of matter by the appropriate roster Bench.

100. It was rather strange, when the Court was informed at the last hearing by the learned counsel for the petitioner that Sh Pushkar Singh rose to be an Inspector General in CRPF and while posted in Bihar was arrested on being booked by the police and remanded to police and then judicial custody, with bail once rejected by court, and was thereafter dismissed from service in a cash-for-job recruitment scam involving crores of rupees which surfaced in the year 2009. He was tried by the Special Court (CBI), Patna, as one of the main accused in the complaint/FIR on criminal charges spending time in jail. But unfortunately for him, not till the rising of the Court. I cannot help saying that there *is* a thing called poetic justice in this world.

Note: Extracts from case law and provisions of Act and Rules wherever quoted and underlined or emboldened are only for emphasis and not part of original text. Where text in the narration is underlined, it is for prominence to locate easily the ratios as presently understood.

Office to deliver a copy of this order per kind hand at the addresses of the special amicus, learned Senior counsel Mr R.S.Cheema and the learned amicus curiae Mr Anil Malhotra, Advocate as an expression

of gratitude of this Court for their valuable assistance.

Original files be now returned to Ms Puneeta Sethi by the Court
Secretary.

(RAJIV NARAIN RAINA)
JUDGE

April 30, 2015.
Paritosh Kumar