

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10481 of 2012

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Ramesh Kumar S/O Sri Moti Singh Resident Of Village- Chakusaini (Mansi),
Police Station- Mansi, Dist.- Khagaria.

.... Petitioner

Versus

1. The Union of India through the Director General of Police, Central Reserve Police Force, New Delhi
2. Director General of Police, Central Reserve Police Force, New Delhi
3. Inspector General of Police, Central Reserve Police Force, Bihar Sector, Patna
4. Deputy Inspector General of Police, Group Centre, Patna
5. Deputy Inspector General, Group Centre, Mokamaghat, Patna
6. Commandant, 21 Bettalion, Central Reserve Police Force, Srinagar, Jammu and Kashmir.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manish Kumar,
Mr. Mrityunjay Kumar
For the Respondent/s : Mr. Anshuman Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 01-02-2018

Heard learned counsel for the petitioner and learned
counsel for the Union of India.

In the present case, petitioner is challenging the letter
no.P-VIII-2/2011-21-Estt.-II dated 4th July, 2011 issued by the
Commandant, 21 Battalion, Central Reserve Police Force, Srinagar,
Jammu and Kashmir there by dismissed the petitioner from service
and letter no. P-VIII-R.K.(21)/2011-Estt.-I dated 30.11.2011 issued



by the Deputy Inspector General of Police, CRPF, Group Centre, Patna by which order of punishment of dismissal has been converted to “ Removal from Service” and further to quash letter no. R.XIII-21(R.K.)/12-B.S.Estt.-3 dated 23.2.2012, by which the memorial of the petitioner has been rejected by Inspector General of Police, Patna and further for issuance of consequential writ in the nature of mandamus directing and commanding the respondents authorities to reinstate the petitioner in service with all consequential benefits.

Petitioner was member of Central Reserve Police Force (hereinafter referred to as the CRPF) and was attached with C Company 21st Battalion which was deputed in Srinagar in the State of Jammu and Kashmir. Petitioner while serving the duty, was served with letter dated 29.12.2010 (Annexure-2) whereby and whereunder, in exercise of power conferred under Sub-rule (i) of Rule 10 of the CCS (CCA) Rules, 1965 read with Rule-27(A) of CRPF Rules, 1955 the petitioner was put under suspension, during that period he shall remain present in his headquarter, would be attending morning Marker and evening Roll-call daily to confirm his presence. Later on, Commandant 21 Battalian, vide letter dated 3.11.2011 (Annexure-6) revoked the suspension of the petitioner. During the period of suspension, the petitioner was served with the charge sheet dated 8th January, 2011 (Annexure-3), two allegations



were made against him that on 27.12.2010 he along with official weapon and ammunition deserted the camp ignoring all administrative instructions, whereby he endangered his security and security of camp. In second article of charge, it has been alleged that violating service code of conduct, he deserted the camp with weapon and ammunition, took drink out side the camp i.e. meat market, vulnerable to security caused adverse impact, details of facts have been attached with the charge-sheet wherein it has been mentioned that on 27.12.2010 he deserted the camp. When it was informed two searching parties were sent and he was found at Barbersah Bridge, Srinagar at the place of shop of muttan, in over loaded drunken condition, where was found dancing with bottle of wine with weapon and ammunition. The Company Commander himself entered in the mob and dragged him out was brought to the camp, was found in intoxicated condition. He was later on disarmed, is a serious misconduct endangered the security of the camp, departmental proceeding was started under Section 11(1) of CRPF, 1954. No explanation was submitted by the petitioner, accordingly, vide letter dated 17.01.2011 Sri Nikhilesh, Assistant Commandant, was appointed as Inquiry Officer but he could not conduct proper enquiry proceeding, later on vide office order dated 02.04.2011 (Annexure-8) *de novo* enquiry was directed to be conducted,



appointed Sri Sanjay Sharma, as new Inquiry Officer, examined seven witnesses including four documentary evidences. Niranjana Singh was examined as prosecution witness. He gave the details of the fact related to the misconduct committed by the petitioner. Jagdish Prasad, R.S. Patol, Heera Lal Paswan, K.C. Sutar, Gautam Kumar Singh and Mandal Prasad were examined; all of them supported the prosecution case.

After closure of prosecution witness vide letter no.M iii-S.S./11-29dt. petitioner was asked to submit defence statement. Petitioner submitted his defence vide letter dated 27.5.2011 where he has also accepted the misconduct committed by him, made a statement before Inquiring Officer that he had gone outside the camp along with the official weapon with the intention to offer sweets to Pir Baba, he accepted that he had committed mistake he should not have gone along with official weapon, at later stage, he accepted that he had wrongly taken liquor and was also awarded punishment earlier. In the statement himself he accepted in part, he was awarded punishment of reduction of pay by two stage with cumulative effect, awarded 28 days confinement to lines and awarded the punishment Censure and gave undertaking that he would not repeat the same mistake in future. Thereafter enquiry report was submitted which was served to the petitioner for his comment, but he did not file any



objection with regard to the finding recorded by the Enquiring Officer, the disciplinary authority passed the order of punishment vide order dated 4.7.2011 (Annexure-13).

The petitioner filed an appeal before DIG, Group Centre, Mokama Ghat who converted the punishment of dismissal into "Removal from Service". Against that he filed memorial which was also rejected by I.G, Bihar Sector, Patna vide order dated 23.2.2012 (Annexure-15).

Learned counsel for the petitioner has taken a plea that proper procedure was not followed by the Enquiring Officer has acted as prosecutor as well as Enquiring Officer, which is completely procedural lapse will vitiate the enquiry proceeding, as Inquiring Officer should have acted as an independent arbitrator. Second point has been raised that, reason has not been explained for *de novo* enquiry, and as such second enquiry is not sustainable in law. In support of his submission he has placed reliance on the judgment in the case of *Sudhanshu Shekhar Deo vs. Union of India and Ors.* reported in **2014(1) PLJR 297** and other judgment passed in Letters Patent Appeal No. No.318 of 2016, in the case of *State of Uttar Pradesh and others vs. Saroj Kumar Sinha*, reported in **(2010) 2 SCC 772**, in the case of *K.R. Deb vs. the Collector of Central Excise, Shillong*, reported in **AIR 1971 S.C. 1447** and in the case of



Kanailal Bera vs. Union of India and Ors., reported in *AIR 2007 S.C. (Supp) 1000*. It has further been submitted that neither the Presenting Officer was appointed nor petitioner was given defence assistance, he has placed reliance on the judgment in the case of *Sudhanshu Shekhar Deo vs. Union of India and Ors.* reported in *2014 (1) PLJR 297* and submitted that it also a procedural lapse as Inquiry Officer was duty bound to ask the petitioner whether he is required of defence assistance which he failed to do. Further argument has been made by the petitioner that proceeding was initiated under Section 11 of CRPF which deals with minor punishment and removal of service does not fall in the category of minor punishment rather it is a major punishment. Petitioner cannot be awarded major punishment under Section 11 of CRPF. He has relied on the judgment in the case of *Sudhanshu Shekhar Deo vs. Union of India and Ors.(supra)*. He further submits that this Court must interfere with the order of punishment as petitioner was completely mentally disturbed and imbalance on account of serious illness of his wife.

Learned counsel for the Union of India has submitted that there was no procedural lapse as basic idea is to give fair hearing in the matter and the procedure that has been followed cannot be said that any illegal procedure. He has further submitted that when it was



found that there was procedural error in conducting the first enquiry, second Inquiry Officer was appointed who conducted the enquiry fairly and properly. He was given chance to cross-examine the witness, examine his own witness and after enquiry he was given enquiry report and when the petitioner did not submit his explanation/comment the order of punishment was accordingly passed. He has further submitted that during the proceeding the petitioner has himself accepted his guilt, assured that he will not repeat the guilt in future. He has further submitted that petitioner was in past awarded punishment in six proceedings having not been contradicted by the petitioner.

This Court has considered the rival contentions of the parties, the petitioner has primarily raised three points; first the disciplinary authority vide letter dated 2nd April, 2011 (Annexure-8) directed to hold the *de novo* enquiry by Sanjay Sharma without giving sufficient reason and hence in absence of proper reason the second inquiry proceeding is vitiated; second point the petitioner has taken, the Disciplinary Authority or the Inquiry Officer having not provided the defence assistance to the present petitioner as well as the Inquiry Officer has acted as prosecutor as well as the Inquiry Officer as no Presenting Officer was appointed to assist the Inquiry Officer for and on behalf of the prosecution, whereas it is supposed



that the Inquiry Officer is neither a representative of the prosecution nor of the defence but impartial independent arbitrator; Third point that has been raised by the petitioner that Section-11 of the Central Reserve Police Force Act, 1949 only empowers the Disciplinary Authority to pass the minor punishment not the major punishment of dismissal. So the inquiry proceeding is completely vitiated and requires interference.

Issue no.1-Whether the Disciplinary Authority has acted illegally in giving direction to hold the *de novo* inquiry without giving sufficient reason

In support of the submission, the petitioner has placed reliance of the decision of the Hon'ble Supreme Court in the case of *K.R. Deb vs. the Collector of Central Excise, Shillong*, reported in *AIR 1971 S.C. 1447*, in that case the first enquiry was conducted, charges were not found proved, held that there was no conclusive evidence to establish the charge of misappropriation of the Government money. It was only established that the goods (5 mds. of onion) were seized from the house of Sri Siddique Ahmed but in his diary and seizure report Sri K. R. Deb concealed the fact and seizure was shown to have been made on border. The charge does not include such concealment of fact. The Collector, Central Excise and Custom, issued direction for examination certain witness, even



thereafter the finding of Inquiring Officer did not change, but whereafter the Collector, Central Excise and Custom, appointed another Inquiry Officer to conduct the *de novo* enquiry against the delinquent employee, who submitted the report and accordingly on that basis the punishment was inflicted upon the delinquent. In this back drop, while interpreting Rule-15(1) of the Classification and Control and Appeal Rules the Court has held that Rule-15 stipulates for one inquiry, but if in a particular case, when there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule-15 for completely setting aside the previous enquiries on the ground that the report of the Inquiry Officer or Officers does not appeal to the Disciplinary Authority.

It will be relevant to quote paragraph no.13 of the said judgment, which reads as under:-

“13. It seems to us that Rule-15, on the fact of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to



record further evidence. But there is no provision in Rule-15 for completely setting aside the previous inquiries on the ground that the report of the Inquiry Officer or Officers does not appeal to the disciplinary authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule-9.”

The Hon'ble Supreme Court has recorded that as a matter of fact the Collector was determined to punish the delinquent, so in this background the second enquiry was held to be not sustainable and the Court has directed to reinstate the delinquent.

Learned counsel for the petitioner has also placed reliance on the decision passed in the case of ***Kanailal Bera vs. Union of India and Ors.***, reported in ***AIR 2007 S.C. (Supp) 1000***. In this case, the delinquent had gone for the medical leave, returned later on, without proper sanction of leave he unauthorizedly left the place of posting remained absent for a period of 67 days. When he returned back to his duty he was directed for confinement to civil lines for seven days, against this, petitioner filed representation, but was not routed properly. Another proceeding was initiated, he was directed to confinement of 10 days, he refused to comply with the requirement of such confinement to civil lines. Another disciplinary proceeding was initiated against him, in the said proceeding charges



against him were partly proved, he was dismissed, but another disciplinary proceeding was again directed to initiate. He exhausted internal remedies without success. In that case, the Court has held that holding a delinquent officer to be partially guilty of the charges leveled against him, another inquiry directed to be initiated on the self same charges, which could not be proved in the first enquiry.

It will be relevant to quote paragraph no.5 of the said judgment, which is as follows:-

“5. The question as to whether a punishment of confinement to Civil Lines could have been directed or not should not detain us as we agree with the contention raised by learned counsel for the appellant that the purported order dated 5.4.1995 of the disciplinary authority was unsustainable in law. Rule 27 of the Central Reserve Police Force Rules 1955, inter alia, lays down the procedure for conducting a departmental inquiry. Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry.”



In the said judgment the Court has placed reliance on the decision passed in *K.R. Deb vs. The Collector of Central Excise, Shillong (supra)*. In both the judgments, considering the particular facts and circumstances of the case, the Court has held that the *de novo* enquiry should not be directed to be conducted. If any defect is found to be committed by the Inquiry Officer, the Disciplinary Authority can point out the same and directed for further enquiry. Further, in the case of Kanailal Bera (*supra*) the Court has held that if in a previous inquiry the charges have been proved partially, fresh inquiry is not permitted for the same charge, which could not be proved in the first inquiry.

Let us test the present case in the backdrop of the aforesaid decisions set out by the Hon'ble Supreme Court. In the present case, one Nikhilesh, Assistant Commandant, was appointed as Inquiry Officer. On perusal of the materials brought before this Court, it appears that he has recorded the statement of the prosecution witnesses and later on he himself put the questions to the prosecution witnesses and further recorded that the delinquent has refused to cross-examine the witnesses. So, when the Inquiry Officer has acted as prosecutor as well as Inquiry Officer, in that event, the Disciplinary Authority has appointed another person to remove the lacuna, which was committed by the previous Inquiry Officer. In



such circumstance, the reason which has been given by the Disciplinary Authority that the enquiry was not conducted properly, which is apparently reflects from the proceeding itself, cannot be said to be a improper exercise of power. Had the Disciplinary Authority directed for fresh inquiry by the same Inquiry Officer there was always likelihood that he would have been swayed away by his earlier finding recorded in the enquiry proceeding, to remove such hang over and fear and to give the justice to the petitioner second Inquiry Officer was appointed and directed to hold *de novo* enquiry and the reason which has been assigned by the Disciplinary Authority cannot be said to be in any manner improper exercise of power as the basic idea of the enquiry is to grant fair and proper opportunity to the delinquent to defend himself in the disciplinary proceeding and as such, this point raised by the petitioner is not acceptable and the same is accordingly, rejected.

Issue no.2- Whether the Inquiry Officer has acted as an prosecutor?

The petitioner has pleaded that Inquiry Officer has acted as prosecutor rather independent arbitrator, hence, entire enquiry proceeding vitiated. The petitioner in support of the submission has placed reliance on the judgment dated 21.08.2017 passed in Letters



Patent Appeal No.318 of 2016, where the Division Bench has refused to interfere with the order of Single Judge. In that case, the Court has held that it cannot be laid down as a proposition of law in all cases that merely because the Presenting Officer is not appointed, the departmental enquiry stands vitiated. It will be proper to quote relevant portion of the said order passed in Letters Patent Appeal No.318 of 2016, which are as follows:-

“...we are of the considered view that the question of law as to whether a presenting officer is required to be appointed in each and every case of departmental enquiry, particularly when the statutory rule governing conduct of departmental enquiry does not provide for appointing a presenting officer, is a question to be decided based on the facts and circumstances of each case. It cannot be laid down as a proposition of law in all cases that merely because the presenting officer is not appointed, the departmental enquiry stands vitiated. A Rule can provide for conduct of an enquiry without appointing the presenting officer and in a particular case the Enquiry Officer may have conducted the enquiry without stepping into the shoes of the prosecutor and conducted the enquiry and recorded a finding as an impartial Enquiry Officer. In a case it may be possible that the Enquiry Officer, apart from his role as an Enquiry Officer, may step into the shoes of a prosecutor and prosecute the case of the prosecution, in such a case, the Enquiry Officer may have been acting as a



prosecutor which violates the principles of natural justice.”

So, this order itself discloses that merely because the Presenting Officer was not appointed will not *ipso facto* lead to vitiating the enquiry proceeding but caution has been given, the Inquiry Officer should not act as representative of the prosecution and make an effort to prove the charge against the delinquent employee, if he maintains the neutrality fairness is observed.

In the case of ***State of Uttar Pradesh and others vs. Saroj Kumar Sinha***, reported in (2010) 2 SCC 772, while dealing with the issue of fairness of enquiry the Hon’ble Supreme Court has held that in the event of failing to submit the explanation by the delinquent employee it is incumbent upon the Inquiry Officer to fix the date of hearing in the inquiry and if the delinquent fails to appear on the date fixed the Inquiry Officer can proceed with the inquiry ex parte. Further held that the inquiry Officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/Disciplinary Authority, his primary function is to examine the evidence presented by the Department, even in absence of delinquent official to see as to whether the un rebutted evidence is sufficient to hold the charges proved. Further held that the departmental inquiry is required to be



conducted following the natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in the proceeding, which may culminate into punishment being imposed on the employee.

It will be relevant to quote paragraph nos. 27 to 30, 35, 36 and 37 of the said judgment, which are as follows:-

“27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

28. An Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the



Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

30. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

35. In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows:(Kashinath Dikshita case, SCC pp.234-35, para



10)

"10. ...When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."



36. *On an examination of the facts in that case, the submission on the behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations: (Kashinath Dikshita case, SCC pp.236, para 12)*

"12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

37. *We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant. "*



So, the thrust has been given in the aforesaid judgment that fairness and transparency and granting a proper opportunity is the basic element for fair and proper inquiry.

The petitioner has placed reliance on the decision rendered in the case of ***Sudhanshu Shekhar Deo vs. Union of India and Ors.*** reported in ***2014(1) PLJR 297***, in that case the question was raised about the appointment of Presenting Officer as well as for providing the defence assistance. In that case, the Court has arrived to a finding taking aid of provision of Rule-14(5)(c), 14(6) and 14(14) and 14(19) of the Central Civil Services (Classification, Control and Appeal) Rules that the appointment of Presenting Officer has been held to be must, but admittedly Rule-27 of the Central Reserve Police Force Rules, 1955 does not provide such stipulation, neither appointment of the Presenting Officer nor talks about the defence assistant. It will be relevant to quote Rule-102 of the Central Reserve Police Force Rules, 1955, which is as follows:-

“102. Other conditions of Service: The conditions of service of members of the Force in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of India of corresponding status.”

On perusal of the aforesaid Rule, it says where the



provision is absent on particular subject in the rule, the rule which are applicable to the other officers of the Government of India of corresponding status will be applicable. The first condition is that the provision must be silent and the corresponding provision dealing with the officers of the Government of India of the same status will be applicable. In the present matter, Rule-27 of the Central Reserve Police Force Rules, 1955 provides detailed procedure of departmental proceeding. In that case, the Court was of the view that the enquiry conducted was biased, on the ground that witness who had not supported the departmental case earlier has subsequently examined on record and supported the case of the department and later the Court has arrived to a finding that the authority were biased to the delinquent, was sufficient to interfere with the order of punishment. But, in the present case, nowhere any claim of biasness has been made against the Disciplinary Authority or the Inquiry Officer rather the present petitioner has voluntarily made a statement and accepted that he had committed wrong, whatever the defect may be in conducting departmental enquiry, will not have any affect on the ultimate result in view of the fact that the delinquent filed the written statement where he has admitted the guilt and he has never raised the plea that the application was obtained by pressure or coercion. If voluntarily statement comes, which itself sufficient for



holding the guilt of the charge, no further final evidence will be required to prove the misconduct.

In the present case, Rule-27 of the Central Reserve Police Force Rules, 1955 prescribes the procedure for holding the departmental enquiry and inflicting punishment of different nature. It further prescribes the authority competent to pass different nature of punishment, in item no.1 it has been provided 'dismissal or removal from the force', the competent authority has been shown as 'Commandant' in case of constable the punishment to be inflicted after formal departmental enquiry. Clause-(c) of Rule-27 prescribes the procedure for conducting a departmental enquiry. In clause-4 of Clause-c of Rule-27 it has been said that if the delinquent accepts the guilt, no further procedure to be followed for holding the enquiry and the proceeding will be closed. In the event of pleading 'not guilty' the proper procedure has to be followed. Sub Clause-6 of Clause-C of Rule-27 provides that if the Commandant has himself held the inquiry, he shall record his findings and pass orders where he has power to do so.

It will be relevant to quote Rule-27 of the Central Reserve Police Force Rule, 1955, which is as under:-

27. Procedure for the Award of Punishments: [The Punishments shown as items 1 to 11 in column 2 of the table below may be inflicted on non-Gazetted Officers and men of



the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7:

Sl. No.	Punishment	Subedar (Ins-Pector)	Sub- (Inspector)	Others Except Const. & en-rolled followers	Const. & en-rolled followers	Remarks
1	2	3	4	5	6	7
1.	Dismissal or Removal from The Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental Enquiry
2.	xxx					
3.	xxx					
4.	xxx					
5.	xxx					
6.	xxx					
7.	xxx					
8.	xxx					
9.	Censure	Comdt.	Comdt.	A. Comdt. or Coy Comdr.	A. Comdt. Or Coy Comdr.	
10.	xxx					
11.	Confinement to Quarters lines, Camp, punishment Drill, fatigue duties, etc., for a term not exceeding one month	--	---	----	Comdt.	

Notes: 1. When the post of Deputy Inspector General remains unfilled for a period of over one month at a time the Commandant shall exercise the powers of punishing the Subedar (Inspectors) and Sub Inspectors except the powers of ordering dismissal or removal from the force.

2. When the post of Commandant remains unfilled for



a period of over one month at a time consequent on the incumbent proceeding on leave or otherwise, the Assistant Commandant shall exercise the powers of punishment vested in the Commandant, except the powers of ordering dismissal or removal from the Force.

Explanation:- (a) Dismissal of member of the Force precludes him from being re-employed in Government service while removal of any such member from the Force shall not be disqualification for any future employment (other than an employment in the Central Reserve Police Force) under the Government.

(b) When non-gazetted officers or men of the various ranks are to be punished for any offence; a departmental enquiry, if necessary under clause (a) shall be held by the Commandant or other superior officer under the orders of the Commandant, provided that when the charge is against an officer of the rank of Subedar (Inspector) or Sub-Inspector the enquiry shall be held by an authority to be designated for the purpose by the Deputy Inspector General. Where the officer conducting the enquiry in the case of a Subedar (Inspector) or a Sub-Inspector considers that a punishment under items (1) to (5) and (7) of the Table is called for, he shall complete the departmental proceedings and forward the departmental proceedings and for the same to the Deputy Inspector General for orders.

(c) The procedure for conducting a departmental enquiry shall be as follows:-

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise



as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

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

(i) it shall be direct:

(ii) it shall be recorded by the Officer conducting, the enquiry himself in the presence of the accused:

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

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

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



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

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

So, detailed procedure has been provided for holding the departmental enquiry, in such view of the matter, Rule-102 has little role to play in the present case.

The Supreme Court in the case of ***State Bank of Patiala & Ors. vs. S.K. Sharma***, reported in ***1996 AIR 1669 = 1996(3)***



S.C.C. 364 has held that it is mandatorily required to give an opportunity of being heard, any procedural defect of violation of any statutory rule or regulation governing the departmental proceeding will not *ipso facto* be a ground for setting aside the enquiry automatically, but, the Court has to see whether the violation is of substantive nature or whether it is a procedural in character. A substantive provision of holding departmental enquiry is to be complied with and the theory of substantial compliance or the test of prejudice would not be applicable in such case, but in the procedural defect, will dependent on the finding recorded by the Court of causing prejudice to the delinquent in the enquiry. If the finding goes in favour of the delinquent, certainly the enquiry would vitiate, but in absence of such finding of prejudice, automatically the enquiry proceeding or enquiry report will not vitiate.

It will be relevant to quote paragraph nos. 32 of the said judgment, which reads as under:-

“32. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a



disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character,



whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) here in below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be



seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order / action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and not adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram



partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the court /tribunal/authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

So, it is to be seen, whether substantive of departmental procedure has been followed, in the matter of other procedural defect theory of prejudice would apply, *ipso facto* proceeding will not vitiate.



In the light of the aforesaid judgments of the Hon'ble Supreme Court and the Division Bench of this Court, the primarily laid down test is to be seen whether the fairness in the departmental proceeding has been followed or not.

Before dealing with this aspect of the matter, it has to be seen that the nature of allegations which are very serious in nature, it could have caused loss of life of the petitioner or could have also caused vulnerability to the camp looking to the location where he was posted. Further, one thing is very important, the petitioner has not denied the allegation, which was made against him rather he in his statement has specifically accepted the charge of misconduct, but he has given explanation of illness of his wife and after that he has taken liquor and went outside to offer sweet to the Mazar of Pir, but he was found in embarrassing condition carrying the weapon along with ammunition that too in a volatile State of Jammu and Kashmir that could have been fatal to his life. In this background and the judgments which has been decided by the Hon'ble Supreme Court as well as the Division Bench of this Court, wherein it has been held that merely absence of appointment of Presenting Officer will not *ipso facto* lead to vitiate the departmental proceeding, the nature of defect cannot be said to be substantive in view of the fact that merely



the Inquiry Officer has recorded the statement of the persons who have come before him and asked the delinquent, if so like, may examine the witness, but he refused to do so. Later on, submitted his written statement, accepted allegation but he gave his own explanation. In such event, when the Inquiry Officer has not acted as prosecutor but merely recording the statement without the assistance of the presenting Officer, will not lead to vitiate the enquiry proceeding.

So far the point of failure to provide the defence assistance is concerned, it has to be tested whether the enquiry was conducted in the procedure prescribed or not. Rule-27 of the Central Reserve Police Force Rules, 1955 prescribes the procedure for holding a proper enquiry, wherein nowhere it has been stated regarding appointment of Presenting Officer and does not prescribe that it is mandatorily required to provide the defence assistant to the delinquent. Certainly, the proceeding would have been vitiated if the Inquiry Officer has refused to grant the assistant to the delinquent, but in the event of fact, the delinquent has admitted the guilt by filing his written defence, in such circumstance, no further proof is required, but it appears that the defence has come forward and supported the prosecution story. In such a situation, this Court does not find any merit on the proposition when the petitioner had at no



stage either before the Disciplinary Authority or before the Appellate Authority or the Revisional Authority has taken such point or he has not in anywhere taken plea of causing prejudice in defending himself in departmental proceeding, but everywhere he has admitted his guilt but has taken plea that authority should take lenient view in his case looking to the facts and circumstances of the case.

Issue No.3- Whether Section 11 of the Central Reserve Police Force Act, 1949 empowers the Disciplinary authority to pass such order of Removal and Dismissal from service.

In the present case, learned counsel for the petitioner has raised the plea that Section 11 only empowers the Disciplinary Authority to pass the order of minor punishment and cannot pass the order of major punishment. Before dealing with this aspect of the matter, it is required to be noted that even if wrong section or rule has been quoted, the same will not *ipso facto* vitiate the order of punishment if such power is conferred in different section and rule of the act. It will be relevant to quote Sections-11 and 12 of said Act, which are as follows:-

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 (l) 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;

(c) censure or severe censure;

(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. Place of imprisonment and liability to dismissal on imprisonment.

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 of the Commandant so directs, be confined in the quarterguard or such other place as the court or the Commandant may consider suitable.”



Section-11 prescribes two phrases, namely, “subject to rule made under this Act”, another phrase prescribes that “the Disciplinary Authority may award in lieu of, or in addition to, suspension or dismissal” any one or more of the punishment mentioned below. Rule-27 has been framed which would hold the field in conducting departmental enquiry. Item no.1 of Rule-27 of Central Reserve Police Force Rule, 1955, permits the dismissal or removal from service after the formal departmental inquiry. Section-11 itself prescribes that Disciplinary Authority is empowered to pass order of punishment of dismissal or suspension, but he may pass order other than dismissal. Section-12 prescribes that every person sentenced under this act to imprisonment may lead to dismissal from the service, itself indicates covers other situation, which may lead to imprisonment. If this Court holds that Disciplinary Authority would not have power to dismiss the delinquent, will lead to destructive interpretation, which should be avoided, but such interpretation should be followed, which would subserve the aim and object of statute framed by legislature for particular subject. But, on conjoint reading of Sections- 9 and 11 of the Central Reserve Police Force Act, 1949 read with Rule-27 of the Central Reserve Police Force Rules, 1955, this Court is of the view that in the event of proving serious misconduct, as has been mentioned in Section-9, after



holding of proper inquiry punishment of removal from service can be awarded. In the present case, serious allegation has been made, which the petitioner has admitted by filing a written statement, has given explanation of his own personal reason, but the act of misconduct is very serious in nature, does not require any interference by this Court.

For the foregoing reasons, this Court does not find any error in the impugned order of punishment. Hence, this writ petition is dismissed.

(Shivaji Pandey, J)

Vinay/-

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