

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 24th December, 2020**

+ **W.P.(C) 3186/2013**

S.K. SHARMA

....Petitioner

Through: Mr. Jaideep Singh, Mr. Kartik Dabas and Ms.Disha Sachdeva, Advocate

Versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Ajay Digpaul, CGSC and Mr. Kamal R Digpaul, Advocate for R-1 to 3.
Mr.Vishal Gera, Advocate for R-4.

+ **W.P.(C) 5855/2014**

S.K. SHARMA

....Petitioner

Through: Mr. Jaideep Singh, Mr.Kartik Dabas and Ms. Disha Sachdeva, Advocate.

Versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Manish Mohan, CGSC with Manisha Saroha, Advocate for the Respondent / UOI, SSB,
Mr.Vishal Gera, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE ASHA MENON

1. This judgment will dispose of two writ petitions filed by the petitioner who is a Commandant with the respondents No.1-3/Sashastra Seema Bal (SSB). The respondent No.4 is an Inspector General with the SSB.
2. The first petition was filed in the year 2013 when the petitioner was issued a memorandum dated 4th March, 2013 proposing to hold a departmental inquiry against him on allegations that he had indulged in corrupt practices during the recruitment of Drivers in the year 2006.
3. The second petition is directed against the memorandum dated 8th December, 2010 and 27th December, 2013 as also the inquiry report dated 20th August, 2013 in respect of a chargesheet accusing the petitioner of having destroyed the government property issued to him at his residential quarter and delay in returning the official stores including weapons issued to him.
4. Since the arguments have been commonly submitted in respect of both the petitions by the learned counsel for the petitioner and has been responded to by the learned counsel for the respondents and the points raised being common it is considered appropriate to dispose of both the petitions by this common judgment.

BACKGROUND FACTS

5. Some facts to give a background to the present litigation may be noted. The petitioner joined the SSB on 12th July, 1989 as Company Commander and was posted to different parts of the country and earned good reputation for being an excellent performer and had been graded 'outstanding' in the period 2006 and 2007. He was promoted as

Commandant on 22nd July, 2006 and posted to the 11th Bn., SSB at Gorakhpur. It appears that all his problems commenced thereafter. It is alleged in the petition that respondent No.4, who was initially his neighbour, and subsequently, on promotion as Inspector General, his superior, at SSB Gorakhpur, started misbehaving with the wife of the petitioner during his absence and when she took strong objections to such misbehaviour, began harassing her with obscene anonymous letters and character assassination in the camp. Subsequently, an attempt was also made to accuse the petitioner and his wife of misuse of government vehicle to cross over to Nepal, but on further enquiry, the person responsible for this violation was found to be one Mr. Sunil Mangai, who was then Commandant of ITBP, temporarily stationed at the SSB Complex at Gorakhpur. Being troubled by the harassment meted out to the petitioner's wife, she submitted various complaints to the authorities in the SSB, but without any relief coming to her. She submitted complaints to National Human Rights Commission (NHRC) and National Commission for Women (NCW) and also held a press conference to highlight her plight. According to the petitioner, all the memorandums and charge-sheet were a direct result of these complaints of the petitioner's wife against respondent No.4.

6. The petitioner further submitted that he was prematurely transferred vide order dated 4th January, 2008 to Patna for a Battalion deployment in Dantewada. On account of his illness and hospitalization, the petitioner was not able to vacate his official quarters immediately. He also chose to challenge the transfer before the High Court of Allahabad but due to his illness he was unable to follow up the case and as a result

the petition was dismissed on erroneous information being submitted allegedly by the respondents. It is further submitted that adverse remarks were also recorded by respondent No.4 in the Annual Confidential Report (ACR) of the petitioner for the year 1st April, 2007 to 7th January, 2008 in respect of which a writ petition, being W.P. (C) 8886/2011 was filed. It may be mentioned here that this court vide orders dated 8th October, 2015 had subsequently quashed the adverse grading in the ACR.

7. The petitioner alleges that in order to harass him, memorandum dated 8th December, 2010 was issued to him after about 3 years of relinquishing charge from Gorakhpur on totally false and frivolous charges, such as, damage to curtain, mattress, etc. Though he submitted a self-contained reply dated 24th December, 2010 but the respondents persisted to continue with the enquiry. After the examination of several witnesses when the respondents realised that the petitioner may be exonerated (according to him), another memorandum dated 4th March, 2013 was issued to him alleging certain infirmities in the Recruitment Board held in July, 2006 relating to the recruitment of Drivers during the time he was posted at Gorakhpur under respondent No.4. This memorandum was challenged in the writ petition bearing W.P. (C) 3186/2013 which is under consideration vide this order. The memorandum dated 8th December, 2010 is under challenge in W.P. (C) 5855/2014.

FACTS IN WP (C) 3186/2013

8. The necessary facts required to be noticed, as pleaded in W.P. (C) 3186/2013, are that an anonymous complaint had been received at the

office of the Assistant Director (Establishment), Frontier Headquarter, SSB alleging that the petitioner's wife had demanded Rs.5 lacs for recruitment of one Constable/Driver but after enquiry, it was found that it had no merit despite which the respondents *malafidely* decided to hold a departmental enquiry against the petitioner and appointed Sh. R.K. Bhumbra DIG, as an enquiry officer on 26th April, 2013 to enquire into the matter. It is at this stage that the instant petition was filed praying that the memorandum dated 4th March, 2013 proposing to hold the departmental enquiry and the order dated 26th April, 2013 appointing Sh. R.K. Bhumbra as the Inquiring Authority be quashed. The petitioner has also prayed that respondents No.1 to 3 be directed to hold an enquiry into the complaints of the petitioner's wife and take strict disciplinary action against respondent No.4. Since 15th May 2013 till now a stay has operated against the memorandum dated 4th March 2013 and all proceedings based on it.

9. The respondents No.1 to 3 have filed a counter affidavit to which a rejoinder and an additional affidavit were filed by the petitioner. The respondent No.4 also filed his reply along with several documents. Pursuant to the directions of this Court to the respondents SSB to submit all documents relating to the enquiry, vide Index No.D-1188642, the respondents SSB had filed on 4th December, 2020, all the documents relating to the inquiry into the anonymous complaint against the petitioner, including the Central Vigilance Commission's (CVC) recommendation for initiation of disciplinary action.

FACTS IN W.P.(C) 5855/2014

10. The petitioner averred in this petition that as the NHRC had vide letter dated 2nd January, 2008, directed the Senior Superintendent of Police Gorakhpur to transmit the complaint of the petitioner's wife to the concerned authorities, he was suddenly transferred from Gorakhpur to Patna for a battalion deployment in Dantewada vide order dated 4th January, 2008. Though he was hospitalized on 6th January, 2008, he was hurriedly relieved on 7th January, 2008 by the respondent No.4 who issued two Signals *malafidely*, though he too had been transferred vide the same order and another officer had already been directed to take charge.

11. According to the petitioner, it was in furtherance of illegal orders passed by the respondent No. 4 that the impugned Memorandum dated 8th December, 2010 was issued to him, three years after relinquishing charge from Gorakhpur, for initiation of departmental action against him on the charges that he had unauthorizedly kept the pistol and ammunitions, mobile with charger and other stores with him till 8th February, 2008, and had damaged government stores worth Rs.38,900/- and had retained the government accommodation unauthorizedly and had vacated it after a month without prior approval.

12. The petitioner submitted that despite examining several witnesses from both sides, the Inquiry was kept pending without conclusion for six months only to harass the petitioner. After he had given three reminders, the petitioner received the memo dated 27th December, 2013 asking him to submit a representation to the Enquiry report dated 20th August, 2013, since he was found partly guilty. His response was found to be without

merit and the matter was recommended to the disciplinary authority for deciding the quantum of punishment. Finally vide order dated 17th April, 2017, major penalty was imposed on him of “*reduction to a lower stage in the time scale of pay by two stages for a period of one year with further direction that he will not earn increment of pay during the period of such reduction and on the expiry of such period the reduction will not have the effect of postponing the future increment of pay*”.

13. Before proceeding further, it may be noticed that as regards the memorandum dated 4th March, 2013, this Court had vide order dated 15th May, 2013 [W.P.(C)3186/2013] stayed its operation and all further proceedings based thereon. On the other hand, in respect of the memorandum dated 8th December, 2010, no such orders were passed. As a result the preliminary inquiry was concluded and the matter placed for imposition of punishment by the disciplinary authority which order was passed on 17th April, 2017. The writ petition was amended with permission of the Court and a prayer was added to quash this order dated 17th April, 2017 also.

14. The petitioner submitted that the entire proceedings were wrongly initiated against him as being unwell he had not been able to deposit the official stores and there was nothing intentional in the delay in depositing the same. It was for the same reason that since he was on medical leave till 8th February, 2008 that he could not vacate the allotted government quarters at Gorakhpur for one month after he was relieved by the order issued by respondent No.4 while he was still in hospital and the conclusion of the enquiry officer holding the petitioner guilty of having failed to deposit the control stores was clearly biased because despite the

enquiry officer acknowledging that the petitioner was hospitalized during the relevant time and knowing fully well that it was not possible for him to go to the office or residence to handover any stores, he still held him guilty. The enquiry officer also ignored the fact that the petitioner had been authorised to retain the allotted government quarters for the entire period of his sickness and was not even levied market rent or any other penalty for overstaying in the house. Furthermore, the respondents had not been able to establish before the enquiry officer as to what goods had been issued to the petitioner which was subsequently damaged by the petitioner and got repaired by his successor which fact has been deliberately overlooked by the enquiry officer. The enquiry officer also overlooked the evidence placed on record by the petitioner of the *malafide*, obscene fax sent on the instructions of respondent No.4 to the wife of the petitioner which established bias.

15. In the circumstances, the petitioner sought quashing of the memorandum dated 8th December, 2010, 27th December, 2013 and the inquiry report dated 20th August, 2013, the order dated 1st April, 2014 and the order dated 17th April, 2017. A prayer was also made to initiate disciplinary action against respondent No.4 in the light of observations made in the report given by NCW.

16. The respondents No.1 to 3, 5 & 6 have filed a common counter affidavit against this petition to which a rejoinder was filed by the petitioner. A reply was also filed by respondent No.4. After the writ petition was amended to quash the order dated 17th April, 2017, counter affidavit was filed again on behalf of respondents No.1 to 3, 5 & 6 and reply to the amended writ petition was filed by respondent No.4.

Rejoinder to the counter affidavits and reply were filed by the petitioner.

17. We have carefully gone through the record and have heard Mr. Jaideep Singh, counsel for the petitioner and Mr. Ajay Digpaul and Mr. Manish Mohan, counsel for the respondents SSB and Mr. Vishal Gera, counsel for respondent No.4.

ANALYSIS

18. We will deal with the writ petition No. 5855/2014 first. A perusal of the petition which was amended after the issuance of the order dated 17th April, 2017 by the disciplinary authority, reveals that the petitioner has not chosen to challenge the disciplinary action. Rather the learned counsel for the petitioner continued to emphasize that the proceedings were initiated *malafidely* by respondent No.4 because the petitioner's wife had complained against respondent No.4.

19. We are, however, of the view that the order dated 17th April, 2017 issued by DIG (Pers.) imposing the punishment is an action taken under Rule 14 of the CCS (CCA) Rules, 1986, and since Rule 23 of the CCS (CCA) Rules provides for an appeal against such order and further as we find it needless to comment while exercising our jurisdiction under Article 226 of the Constitution of India, on the factual matrix as recorded by the enquiry officer regarding the damage to property or whether or not, as claimed by the petitioner, these had been issued to him in the first place, we decline the relief to the petitioner, namely, quashing of the memorandums dated 8th December, 2010, 27th December, 2013, enquiry report dated 20th August, 2013, order dated 1st April, 2014 and the order dated 17th April, 2017. However, liberty is granted to the petitioner to

approach the prescribed Appellate Authority which may deal with the appeal overlooking the delay in submission of such appeal. The petitioner would also have the liberty to raise all issues in such appeal and if the decision is adverse to him to avail of all remedies available to him in law.

20. The other prayer of the petitioner in this writ petition no.5855 /2014 is for disciplinary action against respondent No.4 after detailed enquiry into the complaints against him of sexual harassment of the petitioner's wife.

21. The learned counsel for respondent No.4 Mr. Vishal Gera submitted that the petitioner had filed an earlier writ petition being W.P. (C) 8886/2011 wherein he not only challenged the recording of the ACR by respondent No.4 herein but had also sought disciplinary action being initiated against respondent No.4 but the Division Bench of this court had rejected that prayer and therefore the petitioner could not seek it in the present petition on application of principles of *res-judicata*. The learned counsel also submitted that ultimately the petitioner's wife was only interested in his transfer order and not in prosecuting respondent No.4 as the petitioner had been posted to a naxal area and as his challenge to the transfer before the Allahabad High Court had been dismissed. Therefore it was the submission of respondent No.4 that the allegations against him of sexual harassment were false and frivolous.

22. We are unable to agree with these contentions that the allegations of the petitioner's wife against respondent No.4 are to be treated to be false and vexatious. The Order of the NCW dated 1st May, 2014 has been placed in Vol. III of the electronic file of W.P. (C) 3186/2013. It records at internal page 2 (page 3 of the Vol. III) that the Gorakhpur Police

Report No. 1711/2008 filed by the petitioner's wife after obtaining it through RTI, reflected that the police had not inquired into the incident *"but used its power for achieving an alien purpose by stating that it is a dispute between husband and wife and departmental action may be initiated"*! Was the respondent No.4 the husband of the complainant or was the petitioner sexually harassing his wife!! What a strange conclusion was drawn by the local police when directed to look into the matter by the NHRC and bring it to the notice of the appropriate authorities! The NCW rightly observed *"This colourable exercise of power, appears to add substance to the apprehension of the complainant that any enquiry/investigation may not be fair and proper because the respondents (i.e. The respondent No.4 and other officers of the SSB who appeared before the NCW) involved in the case are highly influential persons."* The stance taken by the respondent No 4 before the NCW was that he had been targeted by the complainant because he had caused an inquiry into an anonymous complaint against the petitioner knowing fully well that the complaints against him preceded the inquiry against the petitioner.

23. A perusal of the order of the NCW records how callously the SSB has treated the complaints of the petitioner's wife of being sexual harassed by respondent No.4. Nevertheless, when the NCW asked the petitioner's wife as to what relief she desired and what measures could be taken to ameliorate her condition, she chose to tell the NCW that *"she wanted to move on in life and was willing to forget and forgive everything wrong that has happened to her; provided she is allowed to live in a non hostile atmosphere, away from the respondents, with her husband which is possible only on his transfer to some other department / central*

deputation away from the respondents.”. By no stretch of imagination can this statement be considered to be reflective of falsity of her complaint. Rather, it would show how frustrated she had become with her experience with the SSB. After the lapse of 6-7 years of inaction on the part of SSB and in the light of the fact that she and her daughters had shifted to Gurgaon she was no longer interested in ensuring that punishment comes to respondent No.4. The statement made to the NCW nowhere exonerates respondent No.4. Nor, for that matter, does the order of the NCW. Rather, it notes repeatedly, that the petitioner was being targeted because his wife decided to complain against, what in her view, were objectional overtures of the respondent No.4.

24. The record placed in W.P.(C) 3186/2013 also shows that the petitioner's wife had submitted several letters to senior officers of the SSB and on which a preliminary enquiry too had also been conducted against respondent No.4 leading nowhere. She also held a press conference. It needs great courage for a woman to have come out in public at the station where her husband was posted to accuse his superior officer of subjecting her to sexual harassment and which officer was also his reporting officer for recording of confidential reports and in fact the petitioner's ACR was spoilt by the respondent No.4 and it was set right only through court orders. To argue today, that the complaints were intended only to seek favourable posting could not be further from the truth because the accusations were made while the petitioner and respondent No.4 were both posted at Gorakhpur. And while the petitioner and his family have been suffering since then, the respondent No. 4 does not seem to have suffered even a flea bite.

25. It is also because the NCW noticed that the organisation had done nothing for the aggrieved woman, in its recommendations, it had advised the SSB and required the SSB to put in place an Internal Complaints Committee to address these kind of issues effectively and timely. We hope that has been put in place now. We reiterate the recommendations of the NCW, not only for the SSB, but for all organisations for strict compliance by them.

26. However, at this point in time, in view of the lapse of about 14 years from the occurrence of the incidents, as also because we respect the decision of the wife of the petitioner to not press her charges against respondent No.4 as explained to the NCW by her, that we are also not inclined to accede to the second prayer of the petitioner in this petition to initiate disciplinary proceedings against respondent No.4. We are fortified in taking this view by the observations of the Supreme Court in ***P.V. Mahadevan v. M.D, Tamil Nadu Housing Board***, (2005) 6 SCC 636.

27. Turning to the earlier petition being W.P. (C) 3186/2013, as we have observed hereinabove in respect of W.P. (C) 5855/2014, respondent No.4 was ill-disposed to the petitioner. The actions taken in respect of an anonymous complaint appear to be tainted by the interest of respondent No.4 to somehow get even with the petitioner because the petitioner's wife had accused him of sexual harassment, though the attempt of the respondent No. 4 before the NCW was to put the petitioner's wife in the dock by claiming her complaint against him was because he caused the present inquiry against the petitioner in an anonymous complaint. This is a big admission of his interest in harassing the petitioner on the basis of

an anonymous complaint which as per the Government direction was to have been simply filed in 2008 but has continued to linger on till today.

28. Be that as it may, from the documents that have been placed on record by the respondents pursuant to directions of this Court on 4th December, 2020, we find perversity running through culminating in the decision to proceed with the departmental enquiry against the petitioner on the basis of an anonymous complaint. While it is not usual to discuss fact situation, it is necessary to refer to certain facts to underline the perversity we have found in the manner in which the respondents have proceeded against the petitioner.

29. One of the biggest factor reflecting bias and lack of fairness in administrative action is the huge delay that has occurred. Though the learned counsel for the respondents Mr. Ajay Digpaul valiantly defended the delay by submitting that painstaking efforts have been made to ensure fairness by advice being taken at various levels before the decision to proceed against the petitioner with a departmental enquiry was taken. Even the CFSL was asked to make a comparison of signatures and it pointed to variations in the signatures of the Board member. It was submitted that there were no *malafides* and the department was only extra cautious. There were three inquiries and a scrutiny by the Ministry of Home Affairs (MHA) and even the CVC's opinion had been obtained. The petitioner would get full opportunity to put forth his case when the departmental enquiry is conducted. However, we find no merit in these submissions.

30. It is trite that the courts will not interfere with the disciplinary proceedings at the stage of issuance of show cause or charge, unless ,of

course, bias, unreasonableness or perversity is writ large in the very initiation of the proceedings or in the decision making process leading to the framing of the Articles of charge. As observed by the Supreme Court in *State of Punjab v. V. K. Khanna and Ors.* (2001) 2 SCC 330, there can be no straight-jacket formula as to what constitutes fairness in administrative action. It would depend on the facts of each case. It is therefore that we would be referring in the following paragraphs, to the documents filed on 4th December, 2020, under index D-1188642, by the respondents SSB and placed in Volume-IV of the electronic file by page numbers for convenience as they do not have annexure numbers to determine, fairness and reasonableness and existence of bias in the decision making process as well as whether the decision itself was taken in good faith.

31. We may start from the very beginning, when an anonymous complaint was received at the FHQ (page 41). The recruitment of drivers had taken place even as per the complaint from 5th September, 2006 to 11th September, 2006 whereas this anonymous complaint was received on 22nd January, 2008. This complaint mentioned five names namely Yogendra Yadav, Bhura Ram, Umesh Kumar, Bidyanand and Asan Kumar and complained that the wife of the petitioner had taken bribes of Rs.2 lacs each from candidates who were her contacts from Delhi and Rajasthan and that the petitioner had manipulated the results being the Chief of the Recruitment Test Committee by putting forged signatures of other members of the Selection Committee of the Driver tests.

32. As per the Government Order No. 321/4/91/A VD.III dated 29th September, 1992 “*no action is warranted on anonymous/pseudonymous*

complaints against Government Servants and they are to be filed". Following the Government Order, this complaint had only to be filed.

33. Instead the complaint was sent by the Assistant Director (Pers.-III) Force Headquarters, MHA, Delhi to the Inspector-General FTR Lucknow on 20th February, 2008 for a "detailed report" verifying the facts with "specific comments". Accordingly Commandant P.K. Gupta was asked by the DIG to conduct the enquiry and verify the authenticity of the complaint and submit the detailed report by 11th April, 2008 "positively". A reminder seems to have been received from the FTR HQ on 16th June 2008 and a reminder sought to be issued to Sh. P.K. Gupta on 7th October 2008 but he submitted his report on 6th October, 2008 claiming that the complaint appeared to be true (page 44). Sh. P.K. Gupta came to this opinion for reasons mentioned in his report (pages 50-53) particularly that signatures of a member of the Recruitment Board Sh. Roop Singh Asstt. Comdt. were forged and the Pages 1-6 and Page 9 of the Driving /Tech test results sheets were changed.

34. If that was so, why was no departmental enquiry initiated immediately. Why did Sh. P.K. Gupta not submit his report before 11th April, 2008 as was required and took almost six months to conclude that there was some truth in the complaint? There are no explanations. It also appears that in all this time, he did not examine the petitioner.

35. A Memo was issued by the DIG on 16th October, 2008 that the enquiry was incomplete as the version of the petitioner had not been taken and the complainants examined. Since the DG, FTR agreed with the suggestions, further enquiry was assigned to DIG, HSQ Sh. B. Shome. The direction was that the "authenticity of the complaint" must

be re-examined. In other words, the recommendations of Sh. P.K. Gupta do not seem to have been accepted on 16th October, 2008.

36. After much effort, Mr. B. Shome in his report dated 3rd June 2009 (pages 59 & 60) found that the persons named in the complaint received on 22nd January, 2008 were fictitious names. Yogendra Yadav was found to be a person staying in Singapore, Bhura Ram was found serving in 39th Bn., SSB, Akash Nagar, (Chhattisgarh) as SFA (Vety.), Umesh Kumar stated that he has already joined as Constable (Driver) in the 27th Bn. Narkatiaganj (Bihar) on 24th April, 2007 through the recruitment test held at SHQ, Gorakhpur, for Constable (Driver) from 5th September, 2006 to 11th September, 2006, Bidyanand was found to be a fictitious person and Asan Kumar gave a written statement that he had never made any complaint and the complaint was totally false.

37. In other words, the anonymous complaint was established to be an anonymous and false complaint. Most interestingly, Umesh Kumar whose name appears in the anonymous complaint, had reported to the DIG at SHQ, Gorakhpur on 7th January, 2009 as per report of DIG B. Shome and had given a written statement that *“he has not made any such complaint, neither he knows any of the complainants. He did not see any favouritism or malpractice in recruitment test.”* It is to be noted that this person was selected in the same recruitment test held at Gorakhpur from 5th September, 2006 to 11th September, 2006 and belonged to village Rampur, Maharajganj, Uttar Pradesh and neither to Delhi or Rajasthan. He also vouched for the absence of favouratism or malpractices at the recruitment test.

38. Therefore Sh. Shome recommended (page 60) *“it is, therefore,*

apparent that the names used in the complaint are fictitious and it is not the complaint of the actual name holders. This perhaps have done by some person with an ill motive and does not hold any merit.”(sic) (emphasis added)

39. This report was forwarded vide memorandum dated 23rd June, 2009 to the Assistant Director (Vigilance) at MHA (page 62). This was the second credible opportunity that became available to the respondents SSB to close the matter. But they did not do so. Till 8th March, 2010 nothing happened and on that day the report was put up by the ADG (Vig) with a recommendation that the allegations of forgery had not been verified and the fact finding report should be sent back to IG FTR Lucknow for the purpose as the CVC observed that the allegations made in the complaint to the effect that there was forgery and manipulation in the results needed to be examined! (page 66) It is appalling that the CVC could make such observation in the face of the Government Order dated 29th September, 1992 regarding anonymous complaints and in the face of the investigations carried out by Sh. Shome and his conclusions. It is crystal clear that there were some interests working behind the scenes.

40. Thus, a letter was dispatched on 30th March, 2010 to the IG FTR Lucknow for taking “*further necessary action as desired by the ADG SSB*” (page 68). However, vide memorandum dated 22nd July, 2010, the Deputy Inspector General FTR, Lucknow, quoting the Government Order No. 321/4/91/A VD.III dated 29th September, 1992 “*recommended that the matter should be dropped*”. The matter ought to have ended here. But it did not. So the third opportunity to close the case was not availed of. MHA pressed on and sent another letter dated 20th August, 2010 for

further such enquiry, particularly on the aspect of forgery and manipulation of test results (page 72). Strangely enough, in all of this, not a word is said about those who were actually recruited in the Recruitment Board of 2006 and whether they were dismissed or their services terminated or are discharging their duties well.

41. So we may now see what happened after an effort was made by the third enquiry officer Sh. S. Karmakar, DIG, SHQ, Gorakhpur who was , as a response to the MHA directive dated 20th August, 2010, directed on 15th /16th September, 2010 to enquire into these specific allegations and to ‘re-submit’ the report by 25th September, 2010 (page 73). He submitted a detailed report signed on 17th February, 2011 (pages 77 - 81), after interacting with the witnesses and the petitioner and considering the previous reports. He gave the following opinion (page 41):

“OPINION:

1. *It is opined that regarding forged signatures no concrete evidence found in support of the complaint.*
2. *Other than procedural mistakes in preparing reports, no mala fide intention on the part of the Chairman is found which is evident from the fact that out of 24 candidates selected in final merit list only 4 candidates hailed from State Rajasthan and no candidate was selected from Delhi. Thus, the allegation that candidates from Rajasthan and Delhi were selected is wrong.*
3. *The complaint is anonymous.*
4. *Variation in signatures of Shri Roop Singh, Assistant Commandant (Member) and Shri S.K. Sharma (Chairman) in result sheets could be examined from hand writing experts if deemed proper.”*

42. Thus though there was no concrete evidence found to support the complaint regarding forged signatures, he still recommended that the variations in the signatures of Sh. Roop Singh, Assistant Commandant (Member) and S.K. Sharma (Chairman) be examined from handwriting expert, if deemed proper. However, the IG FTR Lucknow gave his comments in the following words (page 75-76):

“Thus the charges levelled were found to be false as there is no variation of marks in daily result sheets signed by all the members and the final result sheet signed by the Chairman of the Board.

“As per the Inquiry report no evidence was found in support of the complaint and no malafide intention on the part of Chairman of the Board is found.

“I agree with the report of the Inquiry Officer.”

The report and the comments were forwarded to the Asstt. Director (Vig) Force HQ New Delhi vide Memorandum dated 16th March, 2011 (page 74). This was the fourth opportunity for the respondents to close the case. But once again they chose not to do so. From 2008 January, time had passed till 2011 March and despite being pointedly told by the IG Gorakhpur that there were no *malafides* and the matter needs to be dropped, the decision was taken to keep digging for something against the petitioner.

43. It appears from the noting dated 6th April, 2011 (page 97) that the SAO (Vig) opined that nothing could be done at “*this belated stage*” except to obtain the opinion of the hand-writing expert “*if deemed fit*”. The Legal Consultant examined the matter on 20th April, 2011 (page 100)

and though felt that “*initiation of a case for disciplinary proceedings against Shri Sharma stands on a slightly weaker footing*” also felt an imperative need to get the signatures of Shri Roop Singh compared as found on the driving test sheets, some of which were disputed and some of which were not. The question that begs an answer is why these two officers, who found no basis to proceed departmentally against the petitioner, still found it necessary to keep the issue alive at the MHA? Thus, Roop Singh’s signatures as disputed on pages 1-6 & 9 along with admitted signatures on pages 7, 8, 10-34 were sent for analysis on 30th August, 2011 and the report of the Central Forensic Science Laboratory (CFSL) dated 1st September, 2011 was obtained.

44. On the basis of this report - a perusal of which would show that variations in the signatures of Roop Singh appear in all the sheets with some commonality and some differences amongst them – that the questioned signatures did not tally with the admitted signatures of Sh. Roop Singh, the DG SSB opined that no-one was focusing on the “gravity of the misconduct” and were only bothered about the four years delay and went on to direct that this issue was not important if delay could be explained but it was necessary to focus on the merits of the case “*and the culpability of Sh.S.K.Sharma*” and saw no “*reason why DE proceedings cannot be initiated*” solely on the ground that the signatures of Sh. Roop Singh did not match (page 111). Despite the clear conclusions that the anonymous complaint was false and that the petitioner had not done anything *malafidely* in the Recruitment Board and lapses could only be considered procedural, that the highest ranking officer of the SSB could come to such absurd conclusions is regrettable.

It reflects a too obvious personal interest in a witch hunt against the petitioner.

45. What is laughable is that without sending the handwriting of the petitioner for comparison with the questioned signatures and without there being any opinion given by the CFSL handwriting expert that the forgery was committed by the petitioner, the Article-I of the charges against the petitioner, accuses him of having forged the signatures of Sh.Roop Singh. When the placing of signatures on the test sheets (for which Articles II & III have been framed) have been found to be only a procedural lapse, to raise it to the level of a misconduct inviting major penalty under Rule- 14 of CCS (CCA) Rules -1965, is most perverse to say the least. To allow a departmental enquiry to be held on such trumped-up charges would serve no purpose except to harass the petitioner. It is very strange that the CVC also dealt with the matter so casually.

46. We may notice that this decision was taken on 14th February, 2012. But the charge sheet was served on the petitioner vide memo dated 4th March, 2013, that is a full year later. We notice with dismay that for no reason the petitioner has been subjected to prolonged mental agony and suffering by the respondents wantonly delaying the decision and protracting the decision making process with no justification whatsoever. This, we were told by the learned counsel for the petitioner, has also led to denial of promotions to him. From the entire sequence of events and the material placed on the record by the respondents themselves, it is more than amply clear that the memorandum dated 4th March, 2013 was prompted by *malafides* and does not withstand judicial scrutiny. The

appointment of Sh. R.K. Bumbla as enquiry officer vide order dated 26th April, 2013 cannot also therefore stand. We quash the memorandum dated 4th March, 2013 and the order dated 26th April, 2013 in the light of the foregoing discussions.

47. As regards the second prayer of a fair enquiry into the complaints of the petitioner's wife, we only repeat our conclusions as recorded hereinabove in the writ petition being W.P.(C) 5855/2014.

48. Thus while dismissing the petition being W.P. (C) 5855/2014, with liberty to file appeal as per the service rules and avail legal remedies in the event the appeal is decided against the petitioner, we allow the petition being W.P. (C) 3186/2013 quashing the memorandum dated 4th March, 2013 and order dated 26th April, 2013 with all consequential benefits.



**ASHA MENON
(JUDGE)**

**RAJIV SAHAI ENDLAW
(JUDGE)**

DECEMBER 24, 2020

ck