

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 7090 of 2013

**Ujjal Sarkar
-Vs-
Union of India & Ors.**

For the Petitioner : Mr. K.B.S. Mahapatra

For the Union of India : Mr. Anirban Mitra

Heard on : 13.06.2024, 19.07.2024, 25.09.2024,
26.11.2024, 19.12.2024, 25.03.2025

Judgment on : 19.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioner, a Constable with the Central Industrial Security Force (CISF) posted at Imphal Airport, challenges his removal from service following a departmental proceeding initiated under Rule 36 of the CISF Rules, 2001. He was charged with gross misconduct and indiscipline for allegedly consuming liquor outside the airport premises, scaling a locked exit gate to enter the airport, creating a public nuisance, and misbehaving with fellow CISF personnel—acts said to have tarnished the Force's image. The petitioner prays for a writ of mandamus quashing the charge sheet, final order, appellate order, and revision order along with all consequential benefits.

2. The petitioner contended to have been falsely implicated to shield misconduct by officers of his unit. He alleged that he was assaulted in his quarters while resting after duty, rendered unconscious, and then framed using fabricated evidence, including a medical report allegedly procured by pouring alcohol on him post-assault. He asserted that critical statutory provisions and principles of natural justice were violated, including denial of key witness testimonies, failure to produce the medical examiner for cross-examination, and rejection of his request to change the enquiry officer. He also claims that the appellate and revision authorities relied on biased reports prepared behind his back. The petitioner argued that the departmental proceeding was a mere formality and the removal order was passed in bad faith, causing him physical, mental, and professional harm.
3. The petitioner duly acknowledged the charge memorandum on 05.04.2011 and filed his reply on 13.04.2011, denying the charges and claiming victimization by certain officers who allegedly sprinkled alcohol on him and assaulted him, rendering him traumatized. He requested access to the Preliminary Enquiry Report, witness statements, and other relevant documents for his defense, along with a transfer to another unit for medical treatment. Finding his reply unsatisfactory, the Disciplinary Authority initiated a full departmental enquiry and appointed Shri S.S. Chauhan as Enquiry Officer and Sub Inspector V.K. Jha as Presenting Officer. Despite objecting to Chauhan's appointment, the petitioner's plea was rejected. The enquiry proceeded with full opportunity granted to the petitioner to cross-examine witnesses and inspect documents, although he failed to appoint a

defence assistant. Following several hearings, Chauhan was transferred, and Shri S.K. Jha took over as Enquiry Officer. The enquiry concluded with the charges being found proved, and the report was submitted to the Disciplinary Authority on 05.09.2011. The petitioner received the enquiry report on 09.09.2011 and requested and was granted an extension to submit his representation, which he filed on 29.09.2011, reiterating his illness, denying the charges, and alleging insufficient opportunity for defense during the enquiry.

4. The petitioner has prayed for a writ in the nature of mandamus commanding the respondent authorities to forthwith quash and set aside the purported proceedings, final order, appellant order and the revision order with all consequential benefits.
5. The petitioner was employed in the Central Industrial Security Force and at the relevant point of time he was posted at CISF Unit, ASG, Imphal Airport. He was charge-sheeted under Rule 36 of CISF Rules – 2001 vide Deputy Commandant, CISF Unit, ASG, Imphal Airport memorandum bearing No.V-15014/Maj/KM(1)2011/1088 dated 04.04.2011 on the following charge:

“An Act highly prejudicial to good order and discipline of the Force, No.013610047 Constable/GD Ujjal Sarkar of CISF Unit ASG Imphal Airport, Imphal on 06.02.2011 at about 19:50 hours apparently consumed liquor from outskirts of Imphal Airport and entered forcefully into the Airport premises by scaling over the locked Exit Gate of Airport premises. After entering into the Airport premises, he created nuisance in the public place at A.A.I. Complex and also misbehaved with CISF personnel residing at

Airport Authority of India colony at Imphal Airport which tarnish the image of the Force in public. The above act on the part of No.013610047 Constable/GD Ujjal Sarkar tantamount to gross misconduct, indiscipline disobedience of instructions and unbecoming act of a member of disciplined Force. Hence, the charge.”

6. The learned advocate for the petitioner submitted that the proceedings initiated against the petitioner were intended to shield the misconduct of the officers of the Unit involved in the said assault, and to victimize the petitioner. It was submitted that the evidence presented had been manufactured and crucial personnel present at the location were deliberately excluded from the list of prosecution witnesses, while others who were either not present or participated in the assault were included. It was further submitted that the Enquiry Officer called a contractor as a court witness to fill gaps in the prosecution’s case, but declined to call witnesses identified by the petitioner.
7. The learned advocate for the petitioner argued that the guilt of the petitioner had been predetermined and the entire proceeding was a mere formality. It was contended that the allegations regarding the petitioner scaling a locked exit gate after allegedly consuming alcohol were unreasonable and framed with mala fide intent. The learned advocate also contended that the enquiry violated the statutory provisions under Rule 36 of the CISF Rules, 2001, particularly Rules 36(10)(b)(iii) and 36(18)(b), and that the petitioner was denied reasonable opportunity to defend himself. The rejection of the petitioner’s prayer for a change of the Enquiry Officer was also challenged

8. It was submitted that the preliminary enquiry initially conducted by Shri Atul Sankre of CISF Unit, Dimapur, confirmed the petitioner's account and found that officers of the Unit had assaulted the petitioner. However, a second preliminary enquiry was subsequently conducted by an officer from the same Unit, which, according to the learned advocate, was unlawful, biased and intended to absolve the actual wrongdoers. It was also submitted that the Appellate and Revision Authorities relied upon paragraph-wise comments prepared by the Disciplinary Authority without affording the petitioner an opportunity to respond
9. The learned advocate for the petitioner referred to the General Diary entry which recorded that the petitioner was picked up from his quarter, whereas the charge-sheet presented a different narrative. The Enquiry Officer was said to have admitted that staff had gone to the petitioner's quarter without authority, and that a fact-finding enquiry had indeed been conducted by Shri Atul Sankre.
10. The petitioner's wife had also submitted a complaint regarding the incident. The learned advocate contended that Manipur being a dry state, there were no wine shops near the Imphal Market and the claim of alcohol consumption was manufactured. The enquiry report, it was submitted, improperly shifted the burden of proof to the petitioner and relied upon unverified medical evidence, as the doctor who issued the certificate was not examined.
11. Reference was made to the CISF Act, 1968, specifically Section 8, which governs dismissal and removal of members of the Force. It was contended that the respondents lacked jurisdiction to initiate the proceedings, and that

the charges, enquiry report, final order, appellate orders and revision orders were liable to be quashed.

12. In support of the petitioner's case, reliance was placed upon the following judicial pronouncements:

a) The Hon'ble Supreme Court held the following in ***Rasiklal Vaghajibhai Patel vs. Ahmedabad Municipal Corporation (1985) 2 SCC 35***

*"4. The High Court while dismissing the petition held that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfalls he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence — removal or dismissal from service on account of the misconduct constitutes penalty in law — that the workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct. The legal proposition as stated by the High Court would have necessitated in-depth examination, but for a recent decision of this Court in *Glaxo Laboratories v. Presiding Officer, Labour Court, Meerut* [(1984) 1 SCC 1 : 1984 SCC (L&S) 42 : (1984) 1 SCR 230 : (1984) 1 LLJ 16 : 1983 Lab IC 1909 : (1984) 64 FJR 16] in which this Court specifically repelled*

an identical contention advanced by Mr Shanti Bhushan, learned Counsel who appeared for the employer in that case observing as under:

“Relying on these observations, Mr Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer may take appropriate action. This observation cannot be viewed divorced from the facts of the case. What stared in the face of the Court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under Section 33-A was not maintainable. It is in this context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. The law will have to move two centuries backward to accept such a construction. But it is not necessary to go so far because in Salem Erode Electricity Distribution Co. Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees Union [AIR 1966 SC 808 : (1966) 2 SCR 498 : (1966) 1 LLJ 443 : 28 FJR 237] this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to employees before they accept the employment. If such is the object, no vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection, we may also refer to Western India

Match Company Ltd. v. Workmen [(1974) 3 SCC 330 : 1973 SCC (L&S) 531 : (1974) 1 SCR 434 : (1973) 44 FJR 245] in which this Court held that any condition of service if inconsistent with certified standing orders, the same would not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing. Says the Court: [SCC para 10, p. 334: SCC (L&S) p. 536]

'In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the unity of this law. But the experience of the working of this law over a long period has belied their faith.'

Lastly we may refer to *Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd.* [(1970) 20 FLR 243 : (1969) 2 SCWR 237 : 38 FJR 342] This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in *Rohtak Hissar District Electricity Supply Co. Ltd. v. State of U.P.* [AIR 1966 SC 1471 : (1966) 2 SCR 863 : (1966) 2 LLJ 330 : 29 FJR 76] the Court held that everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say *ex post facto* that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr Shanti Bhushan that

some other act of misconduct which would per se be an act of misconduct though not enumerated in SO 22 can be punished under SO 23 must be rejected.”

It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts.”

b) In *A.L. Kalra vs. Project and Equipment Corporation* (1984) 3 SCC

316, the following was held by the Hon’ble Supreme Court:-

*“22. Rule 4 bears the heading “General”. Rule 5 bears the heading “Misconduct”. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope Rule 4 into Rule 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in *Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court, Meerut* [(1984) 1 SCC 1 : 1984 SCC (L&S) 42] where this Court held that “everything which is required to be*

prescribed has to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant Standing Order is nonetheless a misconduct not strictly falling within the enumerated misconduct in the relevant Standing Order but yet a misconduct for the purpose of imposing a penalty". Rule 4 styled as "General" specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of Rule 5 which specifies misconduct. It would therefore appear that even if the facts alleged in two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that Rule 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

c) The Hon'ble Supreme Court held the following in *M/s Glaxo Laboratories (India) Ltd. vs. Presiding Officer, Labour Court, Meerut and Others (1984) 1 SCC 1:-*

"16. Reference was also made to Central India Coalfields Ltd., Calcutta v. Ram Bilas Shobnath [AIR 1961 SC 1189 : (1961) 1 LLJ 546 : 19 FJR 302] in which scope and ambit of Standing Order 29(5) came up for consideration before this Court. The Industrial Tribunal had held that the alleged misconduct had taken place outside the working hours as well as outside the pit where the respondent had to discharge his duties and accordingly he could not be punished under Standing Order 37. This Court while allowing the appeal of the employer observed that "normally this standing order would apply to the behaviour on the premises where the

workmen discharge their duties and during the hours of their work". It was further observed that "it may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within Standing Order 29(5)". This Court then observed that in the special circumstances of this case it is clear that the incident took place in the quarters at a short distance from the coal-bearing area. If the incident occurred in the quarters occupied by the workmen who were working in a nearby coal bearing area, one can safely conclude that the incident occurred in the vicinity of the establishment and that was the governing factor which swayed the decision. And the decision was reached as specifically stated in the special circumstances of the case while leaving no trace of doubt about the normal approach in law to the construction of a standing order that it would apply to the behaviour on the premises where the workmen discharge their duties and during working hours of their work. This clearly imports time-place content in the matter of construction. This decision would rather clearly indicate that the misconduct prescribed in a standing order which would attract a penalty has a casual connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours.

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18. Reference was also made to Tata Oil Mills Co. Ltd. v. Workmen [AIR 1965 SC 155 : (1964) 7 SCR 555 : (1964) 2 LLJ 113] . This case should not detain us for a moment because the standing order with which the Court was concerned with in that case in terms provided "that without prejudice to the general meaning of the term "misconduct", it shall be deemed to mean and include, inter alia, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory". Mr Shanti Bhushan, however, urged that the judgment does not proceed on the construction of the expression 'without' in the relevant standing order but the ratio of the decision is that purely private and individual dispute unconnected with

employment between the workmen cannot be the subject-matter of enquiry under the standing order but in order that the relevant standing order may be attracted it must be shown that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim. Approaching the matter from this angle, it was urged that in the present case the charge-sheet under clauses 2(c) to 2(h) clearly and unmistakably alleged that the 'loyal workmen' were threatened with dire consequences with a view to frightening them away from responding to the duty and this provides the necessary link between the disorderly behaviour and the employment both of the assailant and victim. Even where a disorderly or riotous behaviour without the premises of the factory constitutes misconduct, every such behaviour unconnected with employment would not constitute misconduct within the relevant standing order. Therefore, even where the standing order is couched in a language which seeks to extend its operation far beyond the establishment, it would none the less be necessary to establish causal connection between the misconduct and the employment. And that is the ratio of the decision, and not that wherever the misconduct is committed ignoring the language of the standing order if it has some impact on the employment, it would be covered by the relevant standing order. In order to avoid any ambiguity being raised in future and a controversial interpretation question being raised, we must make it abundantly clear and incontrovertible that the causal connection in order to provide linkage between the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous. An illustration would succinctly bring out the difference. One workman severely belaboured another for a (sic) duty on the next day. Would this absence permit the employer to charge the assailant for misconduct as it (sic) had on the working in the industry. The answer is in the negative. The employer cannot take advantage to weed out workmen for incidents that occurred far away from his establishment.

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23. It was next contended that while misconduct is enumerated in Standing Order 22, the punishment is prescribed in Standing Order 23, and the expression "misconduct" in Standing Order 23 would comprehend any misconduct irrespective of the fact whether it is enumerated in Standing Order 22 or not. The preamble of Standing Order 23 reads as under:

"23. (a) Any workman who is adjudged by the manager on examination of the workman, if present, and of the facts to be guilty of misconduct is liable to be...."

The submission is that the expression "misconduct" under Standing Order 23 is not qualified as the one set out in Standing Order 22 and therefore, any other act of omission or commission which would per se be misconduct would be punishable under Standing Order 23 irrespective of the fact whether it finds its enumeration in Standing Order 22. The Act makes it obligatory to frame standing orders and get them certified. Section 3(2) requires the employers in an industrial establishment while preparing draft standing orders to make provision in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. Item 9 of the Schedule provides "suspension or dismissal for misconduct, and acts of omissions which constitute misconduct". It is therefore, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must therefore, know in advance which act of omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the face of the statutory provision it would be difficult to entertain the submission that some other

act of omission which may be misconduct though not provided for in the standing order would be punishable under Standing Order 23. Upon a harmonious construction, the expression "misconduct" in Standing Order 23 must refer to those acts of omission or commission which constitute misconduct as enumerated in Standing Order 22 and none else. However, in this connection, Mr Shanti Bhushan drew our attention to Mahendra Singh Dhantwal v. Hindustan Motors Ltd. [(1976) 4 SCC 606 : 1977 SCC (L&S) 20 : AIR 1976 SC 2062 : (1976) 2 LLJ 259] In that case in a second round of litigation between the parties the Industrial Tribunal set aside the order of dismissal of the workmen and ordered reinstatement with full back wages. In a writ petition filed by the company under Article 226 of the Constitution, a learned Single Judge of the High Court declined to interfere with the award holding that "the reason might have been the old reason of dismissal" and that the "circumstances relied on by the Tribunal cannot be characterised as unreasonable". The company carried the matter to the Division Bench of the High Court which accepted the appeal observing that unless contravention of Section 33 of the Industrial Disputes Act is established, the Industrial Tribunal would have no jurisdiction to entertain an application under Section 33-A. In terms it was held that unless it is established that there has been discharge for misconduct, the Industrial Tribunal had no jurisdiction to set aside the order of termination in an application under Section 33-A. In the appeal by certificate granted by the High Court, the workman contended that Section 33 may be contravened in varieties of ways and the only question that needs to be examined is whether there was a contravention by the employer in that it did not make any application to the Tribunal for the approval of the order of termination of service of the workman. It is in this context that while allowing the appeal of the workman this Court observed as under: [SCC para 23, pp. 611-12: SCC (L&S) pp. 25-26]

“Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing orders, it may still be a misconduct in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action. Ordinarily, the standing orders may limit the concept but not invariably so.”

Relying on these observations. Mr Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer may take appropriate action. This observation cannot be viewed divorced from the facts of the case. What stared in the face of the Court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under Section 33-A was not maintainable. It is in this context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. The law will have to move two centuries backward to accept such a construction. But it is not necessary to go so far because in Salem Erode Electricity Distribution Co. Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees' Union [AIR 1966 SC 808 : (1966) 2 SCR 498 : (1966) 1 LLJ 443] this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to the employees before they accept the employment. If such is the object, no

vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot (sic can) be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection, we may also refer to Western India Match Company Ltd. v. Workmen [(1974) 3 SCC 330 : 1973 SCC (L&S) 531 : (1974) 1 SCR 434 : (1973) 2 LLJ 403] in which this Court held that any condition of service if inconsistent with certified standing orders, the same would not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing. Says the Court: [SCC para 10, p. 334: SCC (L&S) p. 536]

“In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the unity of this law. But the experience of the working of this law over a long period has belied their faith.”

Lastly we may refer to Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd. [38 FJR 342 : (1970) 20 FLR 243] This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in Rohtak Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh [AIR 1966 SC 1471 : (1966) 2 LLJ 330 : 29 FJR 76] the Court held that everything which is required to be prescribed has to be prescribed with precision and no argument can be entertained that something not

prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none the less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in Standing Order 22 can be punished under Standing Order 23 must be rejected.'

d) The Hon'ble Orissa High Court held the following in **(Prahllad Padhi vs. Secretary, Department of Water Resources and Others) BBSR, 2009 SCC OnLine Ori 179,**

26. *In the instant case, the offence for which the said Opposite Party No. 5 is facing criminal charge does not relate to office as it is a case of ill-treatment to the domestic servant. As the misconduct does not relate to office and has not been committed in the course of employment or at the place of employment or in connection with the employment of the employee, the disciplinary proceedings may not even be permissible (vide Amit Biswas v. State of West Bengal, 2007 Lab. I.C. 1295).*

e) The following was held by the Hon'ble Supreme Court in **Roop Singh vs Punjab National Bank. (2009) 2 SCC 570**

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The

purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

12. The learned advocate for the respondents submitted that the petitioner acknowledged the charge memorandum dated 04.04.2011 on 05.04.2011 and submitted a written reply on 13.04.2011 denying the charges and alleging victimisation by vested interests. The petitioner stated that he had been beaten by officers of the unit, that whisky had been poured and sprinkled on him to fabricate evidence, and requested a copy of the preliminary enquiry report and statements, the logbook of vehicle no. TATA 207, and the order for his removal from quarters. The petitioner also prayed for transfer to another unit for medical treatment and to enable him to defend the case effectively.
13. The learned advocate for the respondents submitted that the disciplinary authority, finding the petitioner's reply unsatisfactory, ordered a full-fledged departmental enquiry and appointed Shri S.S. Chauhan, Assistant Commandant, as Enquiry Officer and Sub-Inspector/Exe V.K. Jha as Presenting Officer by orders dated 21.04.2011. The enquiry was scheduled to commence on 04.05.2011. The petitioner objected to the appointment of Shri Chauhan and requested his replacement. The disciplinary authority rejected the prayer, finding no grounds for bias. Shri S.K. Jha, Assistant

Commandant, was subsequently appointed Enquiry Officer on 04.06.2011 after Shri Chauhan was transferred.

14. The learned advocate for the respondents submitted that the enquiry proceeded in accordance with Rule 36 of the CISF Rules, 2001, and the petitioner was given full opportunity to inspect documents, cross-examine 16 prosecution witnesses and 3 court witnesses, and defend himself. The enquiry report dated 22.08.2011, received by the disciplinary authority on 05.09.2011, held the charges proved. A copy of the report was served on the petitioner on 09.09.2011, who sought and was granted an extension due to illness. He submitted his representation against the enquiry report on 29.09.2011.
15. The learned advocate for the respondents submitted that upon analysis of the enquiry records, the disciplinary authority found that the petitioner, Constable/GD Ujjal Sarkar (CISF No.013610047), had on 06.02.2011 at around 19:45-19:50 hours, scaled a locked exit gate at the Imphal Airport under the influence of alcohol, sustained facial injuries, and was involved in a scuffle with local boys in an insurgency-affected area. It was contended that the petitioner failed to produce any material evidence to rebut the charges, whereas the prosecution proved the charges through documentary and oral evidence.
16. The learned advocate for the respondents submitted that the disciplinary authority, exercising powers under Rule 32 and 34(ii) of the CISF Rules, 2001, imposed the penalty of "Removal from Service" by Final Order No.V-15014/CISF/LGBIA(G)/DISC/MAJ.01/US/2011/5009 dated 12.10.2011.

The petitioner's appeal was dismissed by the DIG/AP CISF (E & NE) Headquarters, Kolkata, vide order dated 30.03.2012, and his revision petition was rejected by IG/APS CISF APS Headquarters, New Delhi, vide order dated 24.09.2012.

17. The learned advocate for the respondents submitted that the judgment in *M/s. Glaxo Laboratories (I) Ltd. v. Presiding Officer, Labour Court Meerut & Ors.* (1984) 1 SCC 1 was not applicable as the CISF Act, 1968 under Section 15 deemed every member of the force to be always on duty. Judgments in *Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation* (AIR 1985 SC 504), and *Dilara Begum v. State of West Bengal* were distinguished on the ground that the standard of misconduct for paramilitary forces differed from civilian employment. The respondents further cited *Union of India v. Constable Sunil Kumar* (Appeal No. 219 of 2023), *State Bank of India & Ors. v. Ramesh Dinkar Punde* (2006) 7 SCC 212, and reiterated that judicial review under Article 226 is limited and not meant for re-appreciation of evidence. It was reiterated that the petitioner had already exhausted his remedies under Section 9(2A) of the CISF Act, 1968. Judgements in *Probodh Kumar Bhowmick v. University of Calcutta* (1994) 2 Cal LJ 456, *Union of India vs RK Sharma* 2001 (9) SCC 592, *State of Punjab & Ors. Vs Ram Singh, Ex Constable* (1992) 4 SCC 54 were further cited.

18. In this writ petition, the petitioner has sought issuance of a writ in the nature of mandamus, praying for an order to set aside and quash the entire disciplinary proceedings, including the final, appellate, and revisional orders

passed against him, and to grant all consequential benefits flowing therefrom.

19. The petitioner, who was employed as a Constable (General Duty) with the Central Industrial Security Force (CISF), was at the relevant time posted at the CISF Unit, ASG, Imphal Airport. He was served with a charge-sheet under Rule 36 of the CISF Rules, 2001, vide memorandum dated 4th April, 2011 issued by the Deputy Commandant of the said unit. The charge levelled against him alleged that, on 6th February, 2011 at approximately 19:50 hours, the petitioner, allegedly under the influence of alcohol consumed outside the airport premises, forcefully entered the secured area of the Imphal Airport by scaling a locked exit gate. Upon gaining unauthorised entry, it is alleged that the petitioner caused a public disturbance within the Airport Authority of India complex, and further misbehaved with CISF personnel residing at the Airport colony. It was further alleged that such conduct was not only grossly inappropriate but also in flagrant disregard of the standards of behaviour expected of a member of a disciplined force, thereby bringing disrepute to the institution.
20. Learned Counsel appearing on behalf of the petitioner contended that the entire disciplinary proceedings initiated against the petitioner were vitiated by mala fides, procedural impropriety, and a flagrant violation of the principles of natural justice. It was urged that the petitioner, having completed his official duties, was resting in his designated quarters when he was forcibly taken away by fellow personnel and subjected to a brutal physical assault. As a result of such assault, he lost consciousness, and it

was only thereafter that whisky was allegedly poured into his mouth and sprinkled upon his person in order to fabricate evidence of intoxication. The prosecution, it was submitted, had then relied upon a medical certificate to substantiate its claim that the petitioner had consumed alcohol, yet the medical officer who purportedly issued such certificate was never examined during the enquiry, causing serious prejudice to the petitioner's defence.

21. The petitioner's learned counsel further submitted that the real object of the enquiry was not to seek the truth but to shield the wrongdoing of certain officers within the Unit. It was alleged that the evidence had been consciously manipulated to conceal the truth — key personnel present at the time of the incident were deliberately omitted from the list of witnesses, while individuals either not present or complicit in the assault were included to support the prosecution's narrative. To lend an appearance of fairness, the Enquiry Officer had summoned a contractor as a court witness at the instance of the prosecution, yet denied the petitioner's prayer for summoning material witnesses who were present at the location and would have deposed favourably.

22. It was further submitted that the guilt of the petitioner was predetermined, with the memorandum of charges itself being drafted in such a conclusive and biased manner as to render the enquiry proceedings a mere formality. The allegations that the petitioner had consumed liquor outside the airport premises and thereafter scaled the locked exit gate were described as inherently improbable and designed with an ulterior motive. The learned counsel argued that a person in an inebriated state would not possess the

physical coordination required to scale a locked gate, and in any event, no reasonable person would attempt such a course unless entry had been permitted by someone from within.

23. Grave procedural lapses were also highlighted, including the violation of Rule 36(10)(b)(iii), which mandates the production of documents, and Rule 36(18)(b), which obligates disclosure of adverse evidence. It was also contended that the petitioner's prayer for appointment of an Enquiry Officer from another Unit was denied without valid justification, thereby compromising the fairness of the proceedings. The petitioner's counsel emphasized that the Enquiry Officer admitted that personnel had entered the petitioner's quarters without authority and also acknowledged that a separate fact-finding enquiry had been conducted by one Sri Atul Sankre. Despite all this, no meaningful opportunity was afforded to the petitioner to cross-examine witnesses beyond the list supplied to him.

24. It was further alleged that the Appellate and Revisional Authorities had not independently applied their minds to the petitioner's case, but had merely relied on paragraph-wise comments prepared by the Disciplinary Authority behind the petitioner's back. Inconsistencies in official records, such as the General Diary noting that the petitioner was picked up from his quarters whereas the charge-sheet narrates an entirely different version, were pointed out as yet another instance of manipulation. The cumulative effect of these infirmities, coupled with the petitioner's mental and physical trauma stemming from the alleged assault, rendered the disciplinary action taken

against him arbitrary, vindictive, and a colourable exercise of power, warranting interference by this Court.

25. The Learned Advocate representing the Union of India submitted that the petitioner acknowledged receipt of the charge memorandum on 05.04.2011 and submitted a written reply on 13.04.2011, denying the charges. He alleged victimisation at the instance of Inspector/Exe L.C. Sharma and four others, claiming he was assaulted and wine was poured on him to falsely implicate him. He prayed for supply of the Preliminary Enquiry Report and statements recorded therein, as well as other key documents such as the statements of PWs 1-16, the log book of vehicle TATA 207, and the order under which he was taken from his quarters. The Disciplinary Authority found his written reply unsatisfactory and initiated a departmental enquiry to provide him the opportunity to inspect documents, cross-examine witnesses, and defend himself. Shri S.S. Chauhan (Assistant Commandant) and Sub Inspector/Exe V.K. Jha were appointed as Enquiry Officer and Presenting Officer respectively by order dated 21.04.2011. Notices were duly served, and a preliminary hearing was fixed for 04.05.2011.

26. During the preliminary hearing, the petitioner objected to Shri Chauhan acting as Enquiry Officer and sought his replacement. The objection was rejected as Shri Chauhan was not connected to the case. The petitioner was assured that the enquiry would follow Rule 36 of the CISF Rules, 2001, and that he would have full opportunity to defend himself. Subsequently, Shri Chauhan was transferred, and Shri S.K. Jha was appointed Enquiry Officer in his place on 04.06.2011. After several hearings, the Enquiry Officer

submitted his report and departmental enquiry files “A” & “B” to the Disciplinary Authority on 05.09.2011. The proceedings were conducted per Rule 36 of CISF Rules, 2001. The petitioner failed to engage a defence assistant. The statements of Prosecution Witnesses were recorded on multiple dates between May and July 2011 in the petitioner’s presence. On the Presenting Officer’s request, three Court Witnesses were also examined in the petitioner’s presence. The petitioner was allowed to cross-examine all witnesses and access documents.

27. The Presenting Officer submitted his written brief on 15.08.2011, which was supplied to the petitioner the same day. The petitioner submitted his written representation in response on 20.08.2011. The Enquiry Officer, after examining all materials, held the charges as proved and submitted his report on 22.08.2011, which was received by the Disciplinary Authority on 05.09.2011. The enquiry report was forwarded to the petitioner on 09.09.2011, along with a direction to submit a representation within 15 days. The petitioner sought an extension due to illness, which was granted. He submitted his final representation on 29.09.2011, which was received by the Disciplinary Authority on 01.10.2011. In his representation, the petitioner reiterated that due to illness and an operation, he had been delayed in responding. He referred to prior representations dated 19.09.2011 and 22.09.2011 informing the authorities about his medical condition.

28. The Hon'ble Supreme Court held the following in **Coal India Ltd. v. Mukul Kumar Choudhuri**¹:-

“16. *In Union of India v. G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] this Court elaborately considered the proportionality in the administrative law in England as well as in our own country. The Court considered some important English decisions viz. *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] , *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , *R. v. Goldstein* [(1983) 1 WLR 151 : (1983) 1 All ER 434 (HL)] and *R. v. Secy. of State for the Home Deptt., ex p Brind* [(1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)] and few decisions of this Court viz. *Ranjit Thakur v. Union of India* [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] , *State of Maharashtra v. M.H. Mazumdar* [(1988) 2 SCC 52 : 1988 SCC (L&S) 436 : (1988) 6 ATC 876] , *Ex-Naik Sardar Singh v. Union of India* [(1991) 3 SCC 213 : 1991 SCC (L&S) 975 : 1991 SCC (Cri) 503 : (1992) 19 ATC 325] , *Tata Cellular v. Union of India* [(1994) 6 SCC 651] , *State of A.P. v. McDowell & Co.* [(1996) 3 SCC 709] and summed up position of proportionality in administrative law in England and India thus: (*G. Ganayutham case* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , SCC pp. 478-79, para 31)

“(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action

¹ (2009) 15 SCC 620

was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational—in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] principles.

(3)(a) As per Bugdaycay [R. v. Secy. of State for the Home Deptt., ex p Bugdaycay, 1987 AC 514 : (1987) 2 WLR 606 : (1987) 1 All ER 940 (HL)] , Brind [(1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)] and Smith [R. v. Ministry of Defence, ex p Smith, 1996 QB 517 : (1996) 2 WLR 305 : (1996) 1 All ER 257 (CA)] as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

*(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on *Wednesbury* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] and *CCSU* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.*

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of ‘proportionality’ and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.”

(emphasis in original)

17. *Dealing with the question of proportionality with regard to punishment in disciplinary matters, the Court said: (G. Ganayutham case [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , SCC pp. 479-80, paras 32-34)*

“32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of ‘proportionality’. There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to ‘irrationality’, there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the

punishment is in 'outrageous' defiance of logic. Neither Wednesbury [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] nor CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] tests are satisfied. We have still to explain 'Ranjit Thakur [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] '.

33. In Ranjit Thakur [(1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113] this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] and CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] tests were satisfied. In another case, in B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] a three-Judge Bench said the same thing as follows: (SCC p. 762, para 18)

'18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.'

Similar view was taken in Indian Oil Corpn. Ltd. v. Ashok Kumar Arora [(1997) 3 SCC 72 : 1997 SCC (L&S) 636] that the Court will not intervene unless the punishment is wholly disproportionate.

34. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury* [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] or *CCSU* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi* case [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] that the Court might—to shorten litigation—think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In *B.C. Chaturvedi* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the respondent, namely, *State of Maharashtra v. M.H. Mazumdar* [(1988) 2 SCC 52 : 1988 SCC (L&S) 436 : (1988) 6 ATC 876] cannot be of any help.”

(emphasis in original)

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20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

29. In the case of **Indian Oil Corporation Limited Vs. Rajendra D. Harmalkar**², the following was held by the Hon'ble Supreme Court:-

"19. In Om Kumar (2001) 2 SCC 386, this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority to order and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as "Wednesbury principles". In Wednesbury Case, it was said that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken."

30. The Hon'ble Supreme Court in **Brijesh Chandra Dwivedi v. Sanya Sahayak**³ held the following:-

"12. However, at the same time, considering the statement of the employee at the time of the enquiry and the explanation given by him that on going to duty on taking the vehicle from battalion, he had not consumed the liquor and after the accident with the objective to suppress the fear on coming to battalion and on parking the vehicle, he went directly to bus terminal, Ghazipur and consumed 100 ml of country-made wine, though has not been accepted but that might be plausible and considering his 25 years of long service and fortunately it was a minor accident which resulted into some loss to the vehicle and considering the fact that the employee has since died, we find that

² (2022) 17 SCC 361

³ (2022) 4 SCC 189

the punishment of dismissal can be said to be too harsh and may be treated one for compulsory retirement.

13. *In view of the above and for the reasons stated hereinabove and in the peculiar facts and circumstances of the case, narrated hereinabove, the award of punishment of dismissal can be said to be too harsh, the punishment of dismissal is directed to be converted into compulsory retirement of the employee. As the employee has since died, and on converting the punishment of dismissal to that of compulsory retirement, death-cum-retirement benefits as also the benefit of family pension, if any, shall be paid to the legal heirs of the deceased employee in accordance with law and bearing in mind that punishment of dismissal has now been converted into one of compulsory retirement. The present appeal is partly allowed to the aforesaid extent. However, there shall be no order as to costs."*

31. The petitioner was as aforesaid denied the charge memorandum dated 04.04.2011 under Rule 36 of the CISF Rules 2001 alleging that on 06.02.2011 he had sealed a locked exit gate of Imphal Airport being inebriated and misbehaved with fellow personnel residing in the Airport Colony. The petitioner opposed to have been forcibly withdrawn from the barrack by senior officers and assaulted, thereafter implicated in a fabricated incident involving intoxication. He sought production of the Preliminary Report, statements of relevant witnesses, log book of the transport vehicle and other contemporaneous records. The record revealed, several of such demanded documents were either not supplied or not relied upon the enquiry.

32. Although the Enquiry Officer allowed the prosecution to summon a contractor as a court witness, the petitioner's request to summon material witnesses who were allegedly present at the location was rejected. The fact-

finding report prepared by one Sri Atul Sankar was neither disclosed nor supplied to the petitioner, in derogation of Rule 36(18)(b). The appellate and revisional authorities affirmed the punishment in a mechanical manner without addressing these procedural infirmities.

33. The scope of judicial review in disciplinary matters is circumscribed. The writ court does not function as an appellate forum for reappreciation of evidence. However, where procedural irregularity in patent or the punishment imposed is shockingly disproportionate, interference is not only permissible but necessary to prevent miscarriage of justice.

34. Consumption of alcohol while off-duty, if established, constitutes misconduct in a disciplined force like CISF which demands highest level of discipline and regimented conduct. The act of sealing a locked gate while intoxicated is not only an error in judgment but borders on reckless behavior which is unacceptable, otherwise also could have resulted in his own peril. However, there is no allegation of violence, physical harm, breach of duty hours or permanent dereliction of service with regards to a third person pertaining to the instant memorandum of charge issued against the petitioner.

35. In *Ranjit Thakur Vs. Union of India* [(1987) 4 SCC 611], the Supreme Court held that punishment must not be outrageously disproportionate to the nature of the misconduct.

36. The principle of proportionality as reaffirmed in *B.C. Chaturvedi Vs. Union of India* [(1993) 6 SCC 749] and *Union of India Vs. G. Ganayutham* [(1997) 7 SCC 463], empowers this Court to interfere with the punishment where it appears to be emotional, arbitrary or excessive in its impact. Considering the nature

of the misconduct, absence of violent or insubordinate act and procedural lapses during enquiry, the punishment of removal from service does not appear commensurate with the misconduct proved.

37. Accordingly, the impugned order dated 05.09.2011 and those passed in appeal and revision are set aside only in so far as they pertain to the punishment. The matter is remitted to the Disciplinary Authority for reconsideration of penalty, which shall be confined to those enumerated under Rule 34(iv) and Rule 34(v) of the CISF Rules 2001, such as withholding increment or censure, expressly excluding the major penalties contemplated under Rules 34(i), (ii) or (iii).
38. The petitioner shall be afforded an opportunity of personal hearing limited to the quantum of penalty. The entire exercise shall be communicated within eight weeks from the date of communication of this order.
39. During this period, the petitioner shall be deemed to be under suspension and shall be entitled to subsistence allowance in accordance with law. Nothing in this order shall be construed as interference with the findings on misconduct.
40. In the view of the above discussions, the instant writ petition being WPA 7090 of 2013 is disposed of.
41. There is no order as to costs.
42. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)