



GAHC010008132012

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**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)  
**PRINCIPAL SEAT**  
**WP(C)/4245/2012**

Shri Chandan Rai  
S/o Sri Biron Ch. Rai,  
Village: Bhomkipara, P.O. Silbari Abdipara, PS. Bijni,  
Dist. Bongaigaon, Assam

.....**Petitioner**

-versus-

1. The Union of India,  
Represented by the Chief Secretary Ministry of Home Affairs,  
New Delhi-1
2. The Director General of Police, CRPF, CGO  
Complex Lodhi Road, New Delhi
3. The Inspector General of Police,  
Eastern Sector, CRPF, Salt Lake Kolkata, Pin – 700001
4. The Deputy Inspector General of Police,  
CRPF, Range Siliguri (West Bengal), Pin – 735101

5. The Commandant, 171 Battalion CRPF,  
Reserve Police Line, Dibrugarh, Pin – 786001
6. Sri Ranjit Kumar Mondol,  
Assistant Commandant, 171 Battalion CRPF,  
To be served through the Commandant, 171 Battalion CRPF,  
Reserve Police Line, Dibrugarh, Pin – 786001

.....***Respondents***

### **ADVOCATES**

For the Petitioners	: Mr. R. Mazumdar : Mr. H. Bezbaruah : Mr. A. Kumar : Ms. R. Dutta
For the Respondents	: Mr. H. Gupta

**BEFORE**  
**HON'BLE MR. JUSTICE KARDAK ETE**

Date of hearing	: <b>17.08.2023</b>
Date of judgment	: <b>12.09.2023</b>

### **JUDGMENT & ORDER** **(CAV)**

Heard Mr. H. Bezbaruah, learned counsel for the petitioner and also Mr. H. Gupta, learned CGC appearing on behalf of the respondents.

**2.** By filing this application under Article 226 of the Constitution of India the petitioner has challenged the impugned order dated 29.04.2010, passed by the Commandant 171 Battalion, CRPF (respondent No. 5) whereby the petitioner was dismissed from service and the order dated 16.05.2011 passed by the Deputy Inspector General of Police, CRPF (respondent No. 4) whereby the departmental appeal filed by the petitioner was rejected and prayed for a direction to the respondents to reinstate the petitioner in service in Central Reserve Police Force (in short CRPF) as Constable/General Duty with all consequential benefits.

**3.** The petitioner was recruited in Central Reserve Police Force as Constable/General Duty after having qualified in the recruitment process on 06.07.2004 and he was allotted Force No. 041713063. While the petitioner was serving and posted in 171 Battalion, CRPF, by order dated 25.07.2009 bearing No. P-VIII-13/2009-171-EC-2, the respondent No. 5 placed the petitioner under suspension in contemplation of a disciplinary proceeding.

**4.** A memorandum of charges bearing No. PVIII-13/2008-171-Establishment-2 dated 12.08.2009 was issued. The summary of charge was that the petitioner had submitted High School Leaving Certificate bearing No. R5-029 No. 182 issued by the Board of Secondary Education, Guwahati Assam and on the basis of the said Certificate he was recruited as Constable/General Duty in the CRPF. However, on investigation the Certificate was found to be fake and thus, he has betrayed the Department which is against the Rule of

the Force and is an offence punishable under Section 11(1) of CRPF Act 1949 read with Rule 27 of CRPF Rules, 1955. It alleged that the petitioner had submitted a fake High school pass certificate allegedly issued by the Board of Secondary Education, Assam at the time of his recruitment and that he was recruited on the basis of the said certificate and as such the petitioner had committed an offence punishable under Section 11(1) of the CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1955.

**5.** Thereafter vide order No. PVIII-14/09-171-EC-II dated 02.09.2009, the respondent No. 5 appointed one Sri R.K. Mondol, Assistant Commandant 171 Battalion as Enquiry Officer to enquire into the charges framed by the respondent No. 5 in accordance with the provisions of Rules 27(A) of the CRPF Rules, 1955.

**6.** On 01.10.2009, the Enquiry Officer conducted preliminary hearing. Thereafter, by order No. G.II-1/09-RKM dated 01.10.2009 the petitioner was directed by the Enquiry Officer to be present before him on 03.10.2009 at 10:00 AM to participate in the enquiry proceedings. On 03.10.2009, 20.08.2009 and 11.11.2009 the petitioner appeared before the Enquiry Officer as directed.

**7.** The petitioner was given fifteen (15) days time by order dated 11.11.2009 to produce any defense or evidence in his favour. Pursuant thereto, on 15.12.2009 the petitioner submitted copies of the Admit Card, Mark Sheet, Board Certificate and Verification Certificate. Vide order No. P-VIII.13/09-171-EC-II dated 09.02.2010, the Commandant, 171 Battalion, CRPF revoked the suspension of

the petitioner by modifying the earlier order dated 09.01.2010.

**8.** The Commandant, 171 Battalion, CRPF, by order dated 13.04.2010, bearing No. P-VIII.13/09-171-EC-II forwarded a copy of the Enquiry Report submitted by the Enquiry Officer to the petitioner directing him to submit his reply/representation against the report within fifteen (15) days of receipt of the Enquiry Report. However, no representation was submitted by the petitioner.

**9.** Thereafter, vide order bearing No. P-VIII.13/09-171-EC-II, dated 29.04.2010 was issued by the respondent No. 5 whereby the petitioner was imposed a penalty of dismissal from service with effect from 29.04.2010 and his period of suspension from 25.07.2009 to 08.01.2010 was regularized. Grieved of the dismissal order the petitioner filed an appeal before the appellate authority and same was rejected vide order No. R-III.-1/2011-SLG-EC-3 dated 16.05.2011 and affirmed the penalty of dismissal from service. Hence this present petition challenging the impugned order dated 29.04.2010 and order of rejection of appeal dated 16.05.2010.

**10.** Mr. H. Bezbaruah, learned counsel for the petitioner submits that it is apparent from the impugned order dated 29.04.2010 that the respondent No. 5 had considered a letter dated 25.03.2010 allegedly issued by the Registrar, Board of Secondary Education, Assam to come to a conclusion that the Certificates produced by the petitioner at the time of his recruitment were false. It is further apparent that the petitioner was supplied a copy of the Enquiry Report only and he was neither put to notice regarding the letter

dated 25.03.2010 nor was he put to notice regarding the intention of the respondent No. 5 to rely upon such a document to come to a conclusion regarding the guilt of the petitioner. He further submitted that the decision of the respondent No. 5 to come to a conclusion regarding the guilt of the petitioner and his further decision to dismiss the petitioner from service are based wholly and solely on the contents of letter dated 25.03.2010, which the petitioner did not have any notice nor was the same a part of the enquiry proceedings held against the petitioner.

**11.** He submits that the petitioner thereafter filed a departmental appeal before the Deputy Inspector General of Police, CRPF, Range Siliguri (WB) and the said appeal was rejected by the respondent No. 4 by order bearing No. R-III.-1/2011-SLG-EC-3 dated 16.05.2011, which the petitioner received on 24.05.2011. The petitioner could not have been charged under the provision of Section 11(1) of the CRPF Act, 1949 since no misconduct could be attributed to be done by him in his capacity as a member of force. The respondents, thus, could not have passed the impugned order dismissing the petitioner from service.

**12.** Mr. H. Bezbaruah, learned counsel submits that the non-appointment of Presenting Officer during the enquiry proceeding has vitiated the enquiry proceeding in the threshold since in the present case, in the absence of a presenting officer, the Enquiry Officer has acted as both prosecutor and Judge, thus, vitiating the enquiry proceeding.

**13.** Mr. H. Bezbaruah, learned counsel submits that the documents which were relied upon in support of the charges were not put in evidence as exhibits and the petitioner did not have any opportunity to inspect the same during the enquiry proceeding. The petitioner was not given the opportunity to cross examine the witnesses. That the respondent No. 5 had acted upon a document dated 25.03.2010 allegedly issued by the Registrar, Board of Secondary Education, Assam, to hold the petitioner guilty even though the said document did not form part of the documents named in the memorandum of charges and it did not form a part of the enquiry proceeding and it was admittedly obtained by the respondent No. 5 after the enquiry proceeding was closed and the enquiry report had been submitted. The petitioner was never put to notice regarding the letter dated 25.03.2010 nor was he put to any notice that the contents of the said letter would be taken into consideration by the respondent No. 5 while coming to a conclusion regarding the guilt of the petitioner. Thus, the enquiry proceeding against the petitioner is liable to be set aside and quashed. Since the respondent No. 5 had acted illegally when he had based the impugned order of dismissal on a piece of document which was not a part of the enquiry proceedings and which was never brought to the notice of the petitioner, the impugned orders cannot stand the scrutiny of law and are liable to be set aside and quashed.

**14.** He submits that the order dated 16.05.2011 passed by the appellant authority had illegally upheld the order passed by the Disciplinary Authority on the basis of the letter dated 25.03.2010

while completely ignoring the fact that the letter dated 25.03.2010 was never a part of the enquiry proceeding and in fact apparently the same was sought for and allegedly obtained by the Disciplinary Authority after the enquiry proceeding had been closed. The appellant authority had held that the petitioner was guilty of producing a fake certificate at the time of initial appointment even though the enquiry officer had come to a specific finding that the allegation leveled against the petitioner is not proved.

**15.** The learned counsel for the petitioner, Mr. H. Bezbaruah submits that the petitioner was charged with the allegation of submitting a fake education certificate at the time of his recruitment. It was alleged that the petitioner had committed an offence under section 11(1) of the CRPF Act. The Enquiry Officer in his enquiry report dated 07.01.2010 had held the charges to be not proved. The respondent No. 5 passed the orders for dismissal of the petitioner basing upon a document dated 25.03.2010 holding that the document had proved his guilt, however, the document was not a part of the enquiry proceedings and was apparently issued after the enquiry proceeding were closed. The petitioner had no notice of the letter dated 25.03.2010.

**16.** The learned counsel further submits that the petitioner was recruited as Constable/General Duty in Central Reserve Police Force by following due procedure of recruitment on 06.07.2004 and he was allotted force No. 041713063. The requisite Educational Qualification was "HSLC Passed" for the said post. In the recruitment



proceedings, the petitioner had submitted his Educational Qualification Certificate at the documents verification stage. After qualifying in all the mandatory tests, i.e. Physical Efficiency Test, Written Test, and Medical Test, the petitioner was inducted in the force.

**17.** Though the respondent authority furnished the Enquiry Report to the petitioner with a direction to submit representation, if any, against the report, the Enquiry Officer in his report opined that "Charges leveled against Force No. 041713063 Chandan Rai are not proved", therefore, the petitioner did not prefer any reply.

**18.** Mr. H. Bezbaruah, learned counsel for the petitioner submits that the respondents in their affidavit-in-opposition has reflected that the Enquiry Officer submitted his report on 30-11-2009 and the Disciplinary Authority returned the report to rectify with observation. After that on 07-01-2010 enquiry report was again submitted and the respondents have admitted that the impugned order was passed relying upon the contents of the communication dated 25-03-2010.

**19.** Mr. H. Bezbaruah, learned counsel for the petitioner submits that the disciplinary authority had imposed the punishment of dismissal under Section 11 (1) of CRPF Act, 1949. Section 11(1) of CRPF Act, 1949 deals with official misconduct committed in the discharge of duty or in the capacity as a member of the force. It is an admitted position of the facts that the petitioner had not committed any misconduct after enlisted in the force in the

discharge of his duty or as a member of the force. Thus the petitioner cannot be punished under section 11(1) of the CRPF Act.

**20.** Mr. H. Bezbaruah, learned counsel for the petitioner submits that in the impugned disciplinary proceedings, the Enquiry Officer in the absence of Presenting Officer, himself examined all the witnesses and produced documents. Thus, the petitioner was prejudiced due to non-appointment of presenting officer. He submits that the Commandant has passed the impugned order of dismissal taking into account of a communication dated 25-03-2010 which was neither a part of enquiry proceedings nor was petitioner afforded any opportunity to defend. After receiving the Enquiry Report, the disciplinary Authority had relied upon the alleged verification report dated 25-03-2010 from the Registrar of Board of Secondary Education, Assam and relying upon the contents of the said documents, passed the impugned order of dismissal from service. Prior to issuance of the impugned order of dismissal from service, disciplinary authority had not brought the communication dated 25-03-2010 to the notice of the petitioner. Learned counsel submits that non furnishing of reasons to Delinquent Officer is fatal and vitiates the ultimate order of dismissal. In the present case, disciplinary authority prior to issuance of the impugned order of dismissal from service had not communicated the tentative reasons for disagreement, thus the proceedings is vitiated.

**21.** Mr. H. Bezbaruah, learned counsel for the petitioner further submits that the contents of verification report dated 25-03-2010

has not been proved by the author of the said document. It is a settled position of law that mere filing of documents is not enough if the content of said document has not been proved by the author of the documents. And it has been admitted that the respondents have not taken any steps to prove the contents of alleged verification report dated 25-03-2010.

**22.** Sum and substance of the arguments of the learned counsel for the petitioner is that the petitioner has challenged the impugned disciplinary proceedings and decision of the disciplinary authority on the grounds that Section 11(1) of CRPF ACT, 1949 is not applicable, Non appointment of presenting officer vitiates the proceedings, disciplinary Authority could not have imposed major penalty relying upon a document which was not a part of Enquiry proceedings or without affording an opportunity to defend the said document, when disciplinary authority disagreed with the conclusion and findings of Enquiry Officer, it is mandatorily required to record its tentative reasons for disagreement and communicated the same to the delinquent and furthermore so called re-verification report dated 25-03-2010 was not proved.

**23.** In support of his submissions, Mr. H. Bezbaruah, learned counsel has relied on the judgements and orders of the Hon'ble Supreme Court and the Hon'ble High Court in the following cases :

(i) Thagen Das -vrs- Union of India and Ors. **Writ petition (C) No.87 of 2007.**

(ii) Writ Appeal No. 384 of 2008 **Union of India & Ors V. Saraf**

**Khan.**

**(iii) Dheeraj Singh Vs. Union of India and Anr** reported in **1999 Legal Eagle (J&K) 342.**

**(iv) Dambaru Dhar Pathak V. Union of India and Ors** reported in **2003 Legal Eagle (J&K) 277.**

**(v) Union of India V. Ram Lakhan Sharma** reported in **(2018) 7 SCC 670**

**(vi) Roop Singh Negi Vs. Punjab National Bank & Ors,** reported in **2009 (2) SCC 570.**

**(vii) S.B.I & Ors Vs. Arvind K Shukla** reported in **2004 (13) SCC 797.**

**(viii) Deepali Gundu Surwase Vs. Krant Junior Adhyapak Mahavidyala (D.Ed) & Ors** reported in **(2013) 10 SCC 324.**

**(ix) State of Uttar Pradesh Vs. Dayanand Chakrawarty & Ors** reported in **(2013) 7 SCC 595.**

**24.** On the other hand, Mr. H. Gupta, learned CGC for the respondents submits that No. 041713063 Ex-Constable (General Duty) Chandan Rai was enlisted in Central Reserve Police Force on 06.07.2004 as a Constable General Duty against the existing Vacancy in 171 Battalion and was posted in the said Unit. The Respondent No. 4, i.e., Deputy Inspector General of Police, Group Centre, CRPF, Siliguri (West Bengal) vide Letter dated 15.07.2009 addressed to the Respondent No. 5, i.e., Commandant, 171 Battalion, CRPF, Dibrugarh intimated that Educational/Date of Birth Certificate produced by the petitioner at the time of enlistment was fake as verified from the

Registrar, Board of Secondary Education, Assam, Guwahati and directed to conduct enquiry to take appropriate disciplinary action and inform the office about the proceeding to be conducted in the said matter. Thereafter vide letter dated 18.06.2009 addressed to the DIGP, GC, CRPF, Siliguri, (West Bengal) regarding the verification of the Education Certificate and Date of Birth of the Writ Petitioner was received which was in negative stating that the Certificates and Mark-sheets sent for verification in respect of the petitioner were false as per the Verification Report. On the basis of such verification the letter dated 15.07.2009 was addressed to the Respondent No. 5, i.e., Commandant, 171 Battalion, CRPF, Dibrugarh for necessary action and the Respondent No. 5, in his turn vide Office Order dated 25.07.2009 suspended the petitioner with effect from 25.07.2009 in terms of Rule 27A of CRPF Rules, 1955.

**25.** Thereafter, charges were framed against the Petitioner vide Memorandum dated 12.08.2009. Vide Office Order dated 02.09.2009, Shri R.L. Mondal (IRLA No. 6910), Assistant Commandant of 171 Bn. CRPF was appointed as Enquiry Officer to enquire into the charge leveled against the petitioner. A copy of the said Order was also handed over to the petitioner through Adjutant/171 Bn., CRPF. The department conducted an enquiry against the petitioner under Section 11 (1) of CRPF Act, 1949 r/w Rule 27 of the CRPF Rules, 1955 for submitting false education certificate and date of birth certificate. During the Departmental Enquiry, the petitioner produced a fresh verification report purportedly issued by Sri R. Bhuyan, M.A., B.T., Deputy Secretary,

Board of Secondary Education, Assam, Guwahati vide Letter dated 24.08.2009 in which it has been mentioned that the petitioner had passed High School Leaving Certificate Examination, 1999 in 3rd Division and Certificate bearing Roll R5-029 No. 152 and the certificate issued to the individual is genuine.

**26.** Mr. H. Gupta, learned counsel submits that the Enquiry Officer prepared the enquiry report dated 07.01.2010 without proving the guilt of the accused. However, it was proposed by the Enquiry Officer that for enquiry of the truth of the charges against the accused, his documents are required to be re-verified by the Registrar, Board of Secondary Education, Guwahati. Accordingly, case for verification of the documents by the petitioner was taken up with the Registrar, Board of Secondary Education, Assam, Guwahati dated 11.01.2010 and 13.01.2010. In reply, the Board vide Letter dated 25.03.2010 again confirmed that the educational documents produced by the petitioner were false. He submits that the Enquiry Officer during the course of enquiry opined for fresh verification report vide his enquiry report dated 07.01.2010.

**27.** Mr. H. Gupta, learned CGC submits that before taking any decision on the report of the Enquiry Officer and on the confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, Guwahati, keeping in view the principle of natural justice, by letter No. dated 13.04.2010, a Copy of the Enquiry Report was forwarded to the delinquent giving him 15 (fifteen) days' time to present representation against the same. The accused did not prefer

any representation.

**28.** Mr. H. Gupta, learned CGC further submits that the Disciplinary Authority in terms of the findings of the Enquiry Officer submitted vide his report dated 07.01.2010 and vide letter dated 11.01.2010 and 13.01.2010 called for fresh re-verification of the certificates before taking any decision on the report of the Enquiry Officer. After receiving the Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, Guwahati on re-verification of certificates, vide letter dated 13.04.2010 the petitioner was given opportunity to reply to which he did not and hence there is no violation of principles of natural justice.

**29.** Mr. H. Gupta, learned CGC further submits that the conclusion as interpreted by the petitioner with regard to the report of the Enquiry Officer dated 07.01.2010 stating that the Enquiry Officer has come to finding that the allegation against the petitioner is not proved, is incorrect, in the light of the observation made by the Enquiry Officer in his report dated 07.01.2010 and which he quoted "Therefore, for enquiry of the truth of the charges against the accused, his documents are required to be re-verified by the Registrar, Board of Secondary Education, Guwahati". Therefore, the complete findings of the Enquiry Officer has to be read and not only one of the same. Hence, pursuant to this, re-verification was done and the petitioner was given opportunity to reply vide letter dated 13.04.2010 to which he did not respond.

**30.** Mr. H. Gupta, learned CGC further submits that as a result of

the Departmental Enquiry, the Disciplinary Authority has imposed penalty of dismissal from service on the petitioner vide Order dated 29.04.2010. Accordingly, the petitioner was struck off from the strength of the unit with effect from 29.04.2010. Further, the Appeal preferred by the petitioner has been rejected by a Speaking Order vide Office Order dated 16.05.2011 inter-alia holding that there is no cogent reason to interfere with the order already passed by the Disciplinary Authority as the punishment awarded to the petitioner is commensurate with the gravity of offence committed by him.

**31.** Mr. H. Gupta, learned CGC submits that the petitioner was given full opportunity of hearing following the principles of natural justice as after the re-verification report dated 25.03.2010, the petitioner vide letter dated 13.04.2010 was given opportunity to reply before the Disciplinary Authority finalized the Departmental Proceedings, but no reply was received from the side of the petitioner. The letter dated 13.04.2010 was given after receiving the re-verification report vide Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, Guwahati.

**32.** Mr. H. Gupta, learned CGC further submits that pursuant to the Departmental Appeal dated 06.12.2010 preferred before the higher authority by the petitioner against the Order of dismissal from dated 29.04.2010, the Appellate Authority while deciding the Appeal on 16.05.2011, clearly recorded the findings about re-verification of the certificate in view of the contradictory findings which was confirmed by the Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, stating the HSLC Certificate



of the petitioner to be false and the same was also communicated to the petitioner. But the petitioner without preferring any Revision Petition under Section 29 of the CRPF Rules, 1955 within 30 days of the orders passed by the Disciplinary Authority and Appellate Authority, approached the Hon'ble High Court under Article 226 of the Constitution of India alleging that the Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Guwahati was not communicated to the petitioner. Hence, the Writ Petition preferred by the Writ Petitioner is not maintainable. The petitioner before approaching the Writ Court had knowledge of the fact about the Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, Guwahati which affirmed the previous letter dated 18.06.2009 regarding the fact of fake Certificate

**33.** Mr. H. Gupta, learned CGC, with regard to the non-appointment of the Presenting Officer, submits that the CRPF Act and Rules does not contemplate appointment of the Presenting Officer. Enquiry Officer in the present case has not acted as Presenting Officer.

**34.** Mr. H. Gupta, learned CGC further submits that the fact that the petitioner has secured his appointment through a fake/forged HSLC Certificate is proved beyond reasonable doubt and the petitioner after having knowledge of the fact of the Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, which affirmed the previous letter dated 18.06.2009 regarding the fact of fake HSLC Certificate and communicated to him by the Appellate Authority on 16.05.2011, has not challenged the

said Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, Guwahati before any authority nor preferred any revision and approached the Hon'ble High Court by filing the present on 03.09.2012 which is nearly after more than 1 year 4 months. The learned CGC submits that the petitioner ought to have approached the Revisional Authority under Rule 29 of the CRPF Rules, 1955 or challenge the Confidential letter dated 25.03.2010 of Registrar, Board of Secondary Education, Assam, Guwahati which has attained finality after the Order passed by the Appellate Authority.

**35.** Mr. H. Gupta, learned CGC to support the proposition that when a person secures appointment on the basis of a false certificate, he cannot be permitted to retain the benefit of wrongful appointment has relied on the Judgment and Order of the Hon'ble Supreme Court dated 02.05.2023 passed in Civil Appeal No. 3320/2023 in the case of **Bhubaneswar Development Authority –Vs- Madhumita Das & Others** and Judgment and Order dated 11.07.2022 passed in Civil Appeal No. 4990 of 2021 **The Chief Executive Officer, Bhilai Steel Plant, Bhilai –Vs- Mahesh Kumar Gonnade and Others**.

**36.** Mr. H. Gupta, learned CGC further relied on the judgment of the Hon'ble Supreme Court in the case of **Union of India v. Ram Lakhan Sharma**, reported in **(2018) 7 SCC 670**.

**37.** Mr. H. Gupta, learned CGC finally submits that apparently, the petitioner has not availed the alternative remedy under Rule 29 of the CRPF Rules, 1955 and merely on the ground of procedural irregularity which is not fatal to the findings of the disciplinary

proceedings the petitioner is seeking to challenge the impugned dismissal order which cannot be allowed in the present Writ Petition.

**38.** I have considered the submissions advanced by the learned counsels for the parties and the materials available on record.

**39.** Issues for consideration in the present case is as to whether submission of false/fake educational certificate for securing appointment in CRPF would constitute a misconduct so as to entitle the respondent authority to impose punishment section 11(1) of CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1955 and as to whether there is any procedural irregularity in the Department proceedings.

**40.** The charge against the petitioner was framed vide memorandum No. P-VIII.13/09-171-EC-II dated 12.08.2009 on the allegation of submitting false/fake High School Pass ( 10<sup>th</sup> Passed) Certificate bearing No. R5-029 No. 182 issued by the Board of Secondary Education, Guwahati, Assam in the year 1999 on the basis of which the petitioner was recruited in the CRPF as Constable General Duty. Article of charge is reproduced herein below:

#### Article I

“Force No. 041713063 CT/GD Chandan Rai was recruited to the CRPF in post of constable on 06/07/2022. The employee at the time of recruitment to the post of Constable GD, had submitted High School pass (10<sup>th</sup> Passed) certificate Bearing No. RV-029 No. 182 issued by Board of Secondary Education,

Guwahati (Assam) in the year 1999 and on the basis of the certificate was recruited in the CRPF. On investigation the certificate has been found to be fake. Therefore the aforesaid employee took the support of a fake certificate to be recruited in the CRPF and cheated the department which is against the rules of the Force and is an offence punishable under section 11(1) and Rule 27 of the CRPF Rules, 1955."

**41.** One Shri R. N. Mondol, Assistant Commandant was appointed as Enquiry Officer to enquire into the charges leveled against the petitioner by the order dated 02.09.2009. The Enquiry was conducted against the petitioner under Rule 27 of the CRPF Act, 1955 which is stated to be punishable under section 11(1) of the CRPF Act, 1949. The Enquiry Officer submitted the Enquiry Report dated 07.01.2010 with the opinion that the charges leveled against the petitioner are not proved. However, it also contains a finding to the effect that since the petitioner was given 15 (fifteen) days time to present his defense, he had produced the letter dated 24.08.2009 issued by the Deputy Secretary, Board of School Education, Assam, Guwahati according to which the documents of the petitioner are stated to be true and genuine, therefore original documents of the petitioner requires verification. The Enquiry Officer had recorded that for enquiry of the truth of the charge against the accused, the documents of the petitioner are required to be re-verified by the Registrar, Board of Secondary Education, Assam, Guwahati.

**42.** On perusal of the materials on record, it transpires that during the course of enquiry, the petitioner produced a fresh

verification report vide letter dated 24.08.2009 in which it has been mentioned that the petitioner has passed High School Examination in the year 1999 in 3<sup>rd</sup> Division bearing roll no. R5-029 No. 152 and the certificate issued to the individual is genuine.

**43.** It appears that re-verification of the documents of the petitioner was sought by the respondent authority from the Registrar, Board of Secondary Education, Assam, Guwahati vide letters dated 11.01.2010 and 13.01.2010. The Registrar, Board of Secondary Education, vide letter dated 25.03.2010 in its reply confirmed that the educational documents produced by the petitioner are false as has been found by the letter dated 08.06.2009 (previous verification in respect of the petitioner which was found to be false).

**44.** It is seen that the respondent authority vide letter dated 13.04.2010 had forwarded a copy of the Enquiry Report to the petitioner by giving him 15 (fifteen) days time to submit representation, if any, against the Enquiry Report. However, the petitioner has chosen not to prefer any representation against the said Enquiry Report. The Disciplinary Authority in fact appears to have acted in terms of the findings of the Enquiry Officer dated 07.01.2010 and vide letter dated 11.01.2010 and 13.01.2010 proposes for fresh re-verification of the certificates before taking any decision on the report of the Enquiry Officer as the Enquiry Officer had recorded a finding for re-verification of the documents as the petitioner has submitted the letter from the Deputy Secretary, Board of School Education, Assam, Guwahati which states that the

documents are genuine as noted above. It is also seen that vide letter dated 13.04.2010, the petitioner was given an opportunity to file representation, if any, against the Enquiry Report as it contains finding for re-verification though the charge according to the opinion of the Enquiry Officer was not proved. It be taken note that the letter dated 25.03.2010 of Registrar, Board of Secondary Education, Guwahati confirmed that the School Certificate and Date of Birth Certificate against the petitioner is shown to be false. The letter dated 25.03.2010 includes one Shri Homeshwara Rabha whose certificate is also shown to be false. Therefore, the contention of the petitioner that the report of the Enquiry Officer dated 07.01.2010 has a finding that the allegation against the petitioner is not proved is of course correct. However, there was another finding that in view of the documents submitted by the petitioner during the course of Enquiry (showing the documents to be genuine) same requires re-verification. According to the Enquiry Officer to find out the truth of the charges against the accused, the documents of the petitioner are required to be re-verified by the Registrar, Board of Secondary Education, Assam, Guwahati. Since the petitioner chose not to file any representation against the Enquiry Report, the Disciplinary Authority appears to have accepted the finding of Enquiry Officer for re-verification which indicates the disagreement with the opinion of not having been proved the charges against the petitioner.

**45.** The charges and disciplinary proceedings had been conducted under the provision of Rule 27 of the CRPF Rules, 1955 against the petitioner for an offence punishable under section 11(1)

of CRPF Act, 1949. It is apt to refer to Section 11 (1) of the CRPF Act, 1949 which is reproduced herein under:

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

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*(a) reduction in rank;*

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

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

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

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*(e) removal from any office of distinction or special emolument in the Force.”*

**46.** On bare reading of the section 11(1) above, minor punishments can be imposed or awarded in lieu of, or in addition to, suspension or dismissal anyone or more of the above punishments to any member of the force, whom the authority considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or other misconduct in his capacity as a member of the Force. In my view, the misconduct is to be in its capacity as a member of the force which is considered to be guilty of disobedience, neglect of duty and remissness of discharge in duty. In other words the misconduct is to be during the course of his duty.

**47.** In the case of **Sri Thagen Das Vs. Union of India** (supra) this Court held that it appears on prima facie examination of the

provisions under Section 11(1) of the CRPF Act, 1949 the recourse to the said section could be taken inter-alia for misconduct of CRPF personnel in its capacity as a member of the force. In the instant case, the misconduct alleged against the petitioner is not for an act after he joined service but for an act prior to his joining service in as much as the petitioner secured appointment on the basis of an invalid certificate. It also held that from the decision of the Hon'ble Apex Court in **Ram Saran Vs. IG of Police**, it appears that in case of securing appointment on the basis of false information or false certificate, the appropriate action against such person is to be initiated under the provisions of Rule 14 of the CCS(CCA) Rules, 1965, however, in the instant case, the authorities have taken recourse to powers provided under section 11(1) of CRPF Act, 1949 and not under the provisions of Rule 14 of CCS (CCA) Rules, 1965. Accordingly, the respondent authorities were directed to take recourse to the provisions of Rule 14 of CCS (CCA) Rules, 1965 for taking such action against the petitioner as he was alleged to have secured appointment by furnishing false certificate in terms of the direction given by the Hon'ble Supreme Court in the case of Ram Saran Vs. IG of Police (supra) as it held that recourse to provision 11(1) of the CRPF Act was inappropriate in the facts of the that case.

**48.** On careful perusal of the provisions of section 11(1) of the CRPF Act, 1949, in the considered view of this Court also, the recourse of the said section would be taken for misconduct of CRPF



personnel in its capacity as a member of the force. Punishment can be imposed in lieu of or in addition to suspension or dismissal. In the present case, the misconduct alleged against the petitioner is not for an act after he joined his service but for an act prior to his joining of service in as much as the petitioner got recruited on the basis of an alleged fake School certificate although he did not deserve to be considered for such a post, if it is proved in the departmental proceedings.

**49.** The Hon'ble Supreme Court in the case of **Ram Charan Vs. IG of Police CRPF and Others** reported in **(2006) 2 SCC 541**, held which is reproduced herein below:

*“8. The Courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in (CA) Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: [1947] 2 All ER 680(CA) commonly known as Wednesbury's case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.*

*11. This is a case which does not deserve any leniency otherwise it would be giving premium to a person who admittedly committed forgery. In the instruction (G.O. No.29/93), it has been provided that whenever it is found that a government servant who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment should not be retained in service. After inquiry as provided in Rule 14 of the CCS(CCA) Rules, 1965 if the charges are proved, the government servant should be removed or dismissed from service and under no circumstances any*

*other penalty should be imposed.”*

**50.** On consideration of the above observation of the Hon'ble Supreme Court in the case of **Ram Saran** (supra), no doubt, no leniency should not be given to a person who submits fake certificate to secure appointment otherwise it would be giving premium to a person who admittedly committed forgery. Undoubtedly any act of securing appointment on the basis of false information or false certificate should not be retained in service. However, in the present case the respondent authorities have committed procedural irregularities in view of the fact that Disciplinary Authority has passed the impugned order of dismissal dated 29.04.2010 primarily based on the communication dated 25.03.2010 without conducting any further proceedings which resultant in deprivation of petitioner an opportunity to defend himself and rebut the said document. Except that vide letter dated 13.04.2010, the petitioner was given an opportunity to file representation to the Enquiry Report as it contains findings for re-verification though the charge according to the opinion of the Enquiry Officer was not proved, there is nothing to show that petitioner was put to notice of the communication dated 25.03.2010.

**51.** In the case in hand, the respondent authorities have taken recourse to the powers provided under section 11 (1) of the CRPF Act, 1949 and not under the applicable provisions of other Rules. Accordingly, as held in Thagen Das (supra), this Court is of the opinion that the recourse to the provision of Section 11(1) CRPF Act

was inappropriate in the facts of the present case. The appropriate action of such a person would be initiated under the other applicable provisions of Rules strictly.

**52.** With regard to the contention of the petitioner that Enquiry Officer conducted the disciplinary proceedings in the absence of the Presenting Officer and examined all the witnesses and produced documents, therefore the petitioner was prejudiced due to non-appointment of presenting Officer and accordingly the entire proceedings is vitiated, it is seen that the CRPF act and the Rules does not contemplate appointment of the Presenting Officer. However, in view of the conclusion that the recourse to Section 11(1) OF CRPF Act, 1949 was inappropriate, there is no requirement of elaborate discussion on the issue. It is to be only observed that if the Rules does not contemplate appointment of the Presenting Officer unless it is shown that the principle of natural justice has been violated and if no prejudice is shown, mere non appointment of Presenting Officer may not be said to be vitiated.

**53.** It also transpires that the Disciplinary Authority has passed the impugned order of dismissal dated 29.04.2010 primarily based on the communication dated 25.03.2010 without conducting any further proceedings which resultant in deprivation of petitioner an opportunity to defend himself and rebut the said document. The Disciplinary Authority appears to have not brought to the notice of the petitioner about the letter dated 25.03.2010. It is also to be noted that when the Disciplinary Authority disagreed with the findings of the Enquiry Officer, it required recording its reasons for

disagreement and communicate the same to the delinquent. Though there was a finding for re-verification but the report of the Enquiry Officer contains a conclusion that the charges against the petitioner were not proved. In such circumstances when the Disciplinary Authority decided for re-verification, the reasons for disagreement on not proving the charges could have been communicated. The letter dated 25.03.2010, the basis on which the impugned order of dismissal was passed ought to have been put to notice to the petitioner to have his say on such letter by allowing the petitioner to rebut the same.

Reference may be made to the case of **Union of India v. Ram Lakhan Sharma (supra)** wherein the Hon'ble Supreme Court has observed as under:

*”23. A perusal of the aforesaid Rule does not indicate that Rule contemplates appointment of Presenting Officer. Service conditions including punishment and appeal procedure of an employee are governed by statutory rules. The CRPF Act, 1949 has been enacted by Parliament for the constitution and regulation of an armed Central Reserve Police Force. Section 18 of the Act empowers the Central Government to make rules for carrying out the purposes of this Act.*

*25. Rules of natural justice have been recognised and developed as principles of administrative law. Natural justice has many facets. All its facets are steps to ensure justice and fair play. This Court in Suresh Koshy George v. University of Kerala [Suresh Koshy George v. University of Kerala, AIR 1969 SC 198] had occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the examination. In para 7 this Court held*

*that the question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. The following was held in paras 7 and 8:(AIR p. 201)*

*“7. ... The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.*

*8. In Russell v. Duke of Norfolk [Russell v. Duke of Norfolk, (1949)1 All ER 109 (CA)], Tucker, L.J. observed: (All ER p. 118 D-F)*

*‘There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.’*

**28.** *When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory*

*provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.”*

**34.** *We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context, reference is made of a case of this Court in Punjab National Bank v. Kunj Behari Misra [Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84: 1998 SCC (L&S) 1783]. In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employees & (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in para 10 of the judgment is as follows: (SCC p. 90)*

*“10. ... '7. Action on the enquiry report.— (1) The disciplinary authority, if it is not itself the enquiring authority, may, for*

*reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.*

*(2) The disciplinary authority shall, if it disagrees with the findings of the enquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.*

*(3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee, it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.*

*(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.' "*

**54.** The contention of the respondent that the petitioner has not availed the alternative remedy under Rule 29 of the CRPF Rules, 1955, therefore the petition is not maintainable is considered to be rejected in as much as it would be a mere formality or it would amount to an appeal from Caesar to Caesar's wife. It is all the moreso when the respondent authorities have recourse to provisions not applicable in the attending facts of the matter with procedural irregularity.

**55.** It is well settled position of law that unless there is a procedural irregularity in conducting the disciplinary proceedings

and/or the punishment imposed is shockingly disproportionate to the proved misconduct Court should not interfere with the order of punishment imposed by the disciplinary authority.

**56.** The Hon'ble Supreme Court in the case of **Indian Oil Corporation Ltd -versus- Rajendra D. Harmalkar reported in 2022 SCC Online SC 486**, while considering the case of submission of fake/forged/fabricated SSL certificate as admitted by the petitioner/delinquent has observed that producing the false/fake certificate is a grave misconduct. The question is one of a trust. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by employer. Whether such certificate is material or not and/or had any bearing on the employment or not is immaterial. The question is of not having an intention or mensrea. The question is producing the fake/forged certificate.

**57.** Reverting back to the issues, in the facts and circumstances of the matter and in view of the above discussion, in my considered opinion, the submission of false/fake educational certificate for securing appointment in CRPF would not constitute a misconduct so as to entitle the respondent authority to impose punishment section 11(1) of CRPF Act, 1949 after holding disciplinary proceedings under Rule 27 of the CRPF Rules, 1955. Moreso, there is a procedural irregularity in conducting the Disciplinary proceedings on the part of the respondent authorities as the document/verification dated 25.03.2010 relied on by the disciplinary authority was not put to notice on petitioner.



Undoubtedly submission of false/fake certificate for securing appointment is a grave misconduct. It is made clear that above conclusion of this Court, under any circumstances, is not to be construed that a person who had secured an appointment in service on the basis of false/fake certificate should be allowed to continue in the service at all. It is just that, in the opinion of this Court the respondent authorities have recourse to the provisions of inapplicable Acts and Rules and on procedural irregularity in the Departmental proceedings in the present case.

**58.** In view of the discussion and conclusion arrived with herein above, this court is of the view that no further considerations of the other case laws (supra) cited and relied upon by the learned counsel for the parties are required as the same deemed not necessary for the purpose of the present case.

**59.** In view of what has been discussed above, the impugned order dated 29-04-2010, passed by the Commandant 171 Battalion, CRPF whereby the petitioner was dismissed from service and order dated 16.05.2011 passed by the Deputy Inspector General of Police, CRPF (respondent No. 4) by resorting to section 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955 are not sustainable and accordingly, the order dated 29-04-2010 order dated 16.05.2011 are set aside and quashed. Consequently, petitioner be reinstated in service. However, the respondent authorities are at liberty to take recourse to the other applicable provisions of Rules and Act for taking action against the petitioner as he has alleged to have secured appointment by furnishing false/fake certificate which is a



grave misconduct as may be permissible under the law.

**60.** With the above observation and directions, the writ petition is allowed and disposed of. No order as to cost.

**JUDGE**

**Comparing Assistant**