



GAHC010129342013



## IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

### WRIT PETITION (C) No. 1471/2013

**Naren Gogoi,**

S/O Late Balu Ram Gogoi,

Vill: I-No. Borbil, P.O. Bonomali (Suffty), Dist.  
Sivasagar(Assam), PIN-785689

**.....Petitioner**

**-Versus-**

**1. The Union of India,** represented by the  
Secretary, Ministry of Home Affairs, New Delhi-1

**2. The Director General of Police,** CRPF, CGO,  
Complex, Lodhi Road, New Delhi

**3. The Deputy Inspector General of Police,**  
Central Reserve Police Force, Neemach, Madhya  
Pradesh



**4. The Commandant,** 65 Battalion CRPF, Reserve  
Police Line, Rani, Kamrup (Assam)

**.....Respondents**



**:: BEFORE ::**

**HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Petitioner : Mr. R. Mazumdar, Advocate

For the Respondents : Mr. S.P. Choudhury, CGC

Date of Hearing : **20.07.2023**

Date of Judgment : **19.10.2023**

**JUDGMENT & ORDER (CAV)**

The dismissal of the petitioner from his services as Constable (General Duty) in the CRPF is put to challenge in the present proceedings. The petitioner joined his services as Central Reserve Police Force as a Constable (General Duty) on 31.12.1991. During his 16 years of continuous service, he had been posted in various places and it is stated that he had rendered his services with utmost sincerity and dedication. While the petitioner was deployed at Rani, Kamrup, Guwahati, the respondent No. 4 issued a communication No. P-VIII-6/2007-Est.-II dated 22.05.2007 informing him for the proposal to conduct an enquiry on two (2) charges leveled against the petitioner. The memorandum of charges along with list of documents and witnesses were all supplied to the petitioner. By the said communication dated 22.05.2007, it was alleged that the petitioner had committed acts of disobedience/remissness in the discharge of duty while



he was on active duty. It is alleged that while he was on active duty in sensitive area on 02.04.2007, he had consumed country liquor and created chaos in an inebriated condition using abusive language. These acts of the petitioner are considered to be serious act of misconduct under Section 11 (i) of the CRPF Act of 1949 which is punishable under Rule 27 of the CRPF Rules, 1955. The petitioner was further charges of having committed misconducts in the past and such repetition of misconduct is punishable under the CRPF Act read with the Rules. The Enquiry Officer was appointed and the enquiry proceeded. Statements of witnesses as well as that of the petitioner were recorded in the enquiry. The Enquiry Report was submitted to the Disciplinary Authority on 14.09.2007. The Disciplinary Authority accepted the findings of the Enquiry Report and thereafter passed the order dated 01.12.2007 bearing No. P-VIII-6/07-EC-II, whereby the petitioner was dismissed from service. Against the order of dismissal, the petitioner also preferred a departmental appeal bearing No. P-XII-6/08-I dated 22.09.2008. The appeal came to be rejected pursuant to which the petitioner has approached this Court by filing present writ petition assailing the Enquiry Report dated 07.09.2007, the impugned order of dismissal dated 22.12.2007 as well as the appellate order.



**2.** The learned counsel for the petitioner submits that the petitioner was employed as Constable (General Duty) and he was not at all familiar with the Rules and Procedures which were resorted to while conducting the enquiry by the CRPF Authorities. It is submitted that being a Constable, it was incumbent on the Department to have offer proper legal assistance to the petitioner so as to enable him to meet the allegations raised against him by way of the proceedings. It is submitted by the learned counsel for the petitioner that the enquiry was conducted entirely by the Enquiry Officer and no presenting Officer was appointed. The Enquiry Officer acted as the Prosecutor as well as the Judge and thereby causing serious prejudice to the petitioner. The further submission of the learned counsel for the petitioner is that the enquiry conducted was not based on any evidence. It is submitted that since the charge No. 1, it is alleged that the petitioner consumed liquor and misbehaved and thereby committed serious misconduct, it was incumbent on the Enquiry Officer to examine the relevant medical documents including the Medical Tests reports if any. Even the treating Doctor was not called as a witness and examined. A copy of the Prescription which was produced was also not proved in original. Under such circumstances, the entire enquiry is an eye wash and the respondent authorities with a vindictive attitude permitted the enquiry to



be conducted and thereby holding that the charges were proved although no evidence was adduced in support thereof. It is also submitted that pursuant to the Enquiry Report being submitted by the Enquiry Officer to the Disciplinary Authority and prior to the Disciplinary Authority imposing the penalty of dismissal from service, no show-cause notice as required under the statute be issued to the petitioner. All these issues were urged by the petitioner before the appellate authority in his appeal preferred against the impugned order of penalty of dismissal. However, even the Appellate Authority without any application of mind rejected his appeal without considering the allegations raised. It is submitted that the enquiry conducted therefore is not an enquiry in the eye of law and consequently, Disciplinary Authority could not have accepted the Enquiry Report and imposed punishment on the petitioner. It is submitted that in view of the submissions made, the enquiry proceedings, the impugned order of dismissal passed by the Appellate Authority should be interfered with, set aside and the petitioner be reinstated in service with full backwages and all financial benefits. In support of his contentions, the learned counsel for the petitioner relies upon the following Judgments:

***"1. Union of India and Ors. Vs. Ram Lakhani Sharma, reported in (2018) 7 SCC 670;***

**2.** *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors, reported in (2013) 10 SCC 324;*

**3.** *P.V. Mahadevan Vs. MD, T.N. Housing Board, reported in (2005) 6 SCC 636;*

**4.** *Union of India Vs. Namit Sharma, reported in (2013) 10 SCC 359;*

**5.** *LICI and Anr. Vs. Ram Pal Singh Bishe, reported in (2010) 4 SCC 491;*

**6.** *Roop Singh Negi Vs. Punjab National Bank and Ors., reported in (2009) 2 SCC 570;*

**7.** *Judgment and Order dated 10.05.2018 passed in W.P(C) No. 4517/2008 (Santosh Kumar Singh Vs. Union of India and Ors)*

**8.** *Judgment and Order dated 01.02.2019 passed in W.A. No. 305/2017 (The Union of India and Ors. Vs. Ex-Constable GD Sri Atul Chandra Kalita)*

**9.** *Judgment and Order dated 29.08.2019 passed in W.A. No. 120/2019 (Union of India and Ors. Vs. Santosh Kumar Singh)*

**3.** The respondent Department contested the case of the petitioner by filing an affidavit-in-opposition. In their affidavit, the respondent Department held that the petitioner was found to be in an inebriated condition and using abusive languages. In the camp, when he was detailed for map reading course while serving as CT/GD and on active duty in



sensitive area (Kamrup, Assam). In their affidavit, the respondent Department stats that the petitioner was found to be a habitual offender and between 1993 to 2006 there were several misdeeds which were committed by the petitioner. Details of the misdeeds mentioned in Paragraph -4 of their affidavit are extracted below:

*"While working as Constable/GD in CRPF, petitioner was found to be a habitual offender, remaining misdeeds between 1993 to 2006 as mentioned below:*

*1. 10 days confinement of Lines during 1993 was awarded to him, when he was detailed for Treasure Guard duty on dated 03.12.93 because of his refusal for guard duty.*

*2. Was awarded a punishment of "Stoppage of two increments" due to negligence in the execution of his duty.*

*3. 5 days OSL (w.e.f. 15.06.2004 to 19.06.2004) was regularized as LHP with no leave salary.*

*4. 30 days confinement to Lines w.e.f. 16.09.2006 to 15.10.2006 was awarded, when on dated 15.09.2006 at 1200 hours he had left the camp/line without prior permission of competent authorities and reported in camp at about 2100 hours on inebriated condition."*

**4.** It is stated that instead of rectifying himself inspite of being repeatedly punished and necessary advised given by the Coy Commander,





petitioner had not changed his attitude and against deserted the camp consumed liquor on his active duty. He was oblivious to his duties and responsibilities. It is stated that initially the preliminary enquiry was conducted which recommended for taking suitable disciplinary action against the petitioner. It is pursuant to this that the disciplinary proceedings were initiated. Although the petitioner was permitted fifteen (15) days time to submit his reply, he did not submit any reply in his defence within the stipulated time. Consequently, the enquiry proceeded and he was found to be guilty of the charges alleged and punishment as per the statute as prescribed was awarded to him. The appeal preferred by the petitioner before the Appellate Authority was examined by the Appellate Authority and thereupon the same is dismissed. It is stated that the requirement of appointing a Presenting Officer came to be enforced by a Circular Order No. 05/2011 dated 05.10.2011. As such that the time when the enquiry was conducted, the Circular was not in place and no presenting Officer was presented. However, it is stated that the enquiry was conducted absolutely as per procedure prescribed and the Disciplinary Authority acted keeping in view Rules prescribed and the laws of natural justice. It is further stated that although opportunities were given to the petitioner to cross-examine the witnesses, the petitioner declined to cross-



examine the witnesses and the same is available on record with his signature thereon. The charges were read over and explained to the petitioner. All the exhibits were produced and documented in the presence of the petitioner. Even an opportunity granted to the petitioner to verify these documents, he refused to do so with his signature endorsing on it. It is submitted that the proposition sought to be pressed into service by the petitioner laid down in the case of Ram Lakhan (Supra). It is submitted that the same is not an universal proposition. More particularly in view of the Circular No. 05/2011 dated 05.10.2011 which came into force on the date it was issued. As such, the applicability of the circular cannot be accepted to have a retrospective effect and therefore non-appointment of Presenting Officer did not vitiate the enquiry proceedings. It is further submitted that since there was denial to the charges brought against the petitioner including the charges of previous misconduct, the contention of the petitioner that he suffered pre-judiced cannot be accepted in view of the materials available on record. The learned counsel for the respondent further submits that the pendency of the writ petition cannot by *ipso facto* be permitted to be used as a ground for sympathy to be earned by the petitioner de hors the facts and the materials available on record. The delay in respect of the pendency of the writ petition if any cannot be attributed



to the department because the affidavit of the Department was filed as far back as 24.06.2013 to which the petitioner also filed an affidavit-in-reply on 06.09.2013 itself. It is submitted that the member of a discipline force cannot be permitted to commit misconduct and expect leniency. There is no denial by the petitioner that he was guilty of misconduct on earlier occasions also. Under such circumstances, there is infirmity in the enquiry proceedings conducted, impugned penalty imposed as well as the order dated 22.09.2008 passed by the Appellate Authority rejecting the appeal filed by the petitioner. There is no merit in the writ petition and therefore the same ought to be dismissed as being devoid of any merit.

**5.** The learned counsels for the parties have been heard. Pleadings on record have been perused. The Departmental Proceedings records along with the Translation supplied have also been carefully perused. The challenge to the D.P. made in the present writ petition is that the dismissal order of the petitioner should be interfered with as the same was conducted without appointing any Presenting Officer and which is contrary to the law laid down in Ram Lakhan (Supra). That apart, there is no evidence on record to hold that the petitioner was alcohol dependent as no medical records were called for and proved as required nor was the treating doctor examined.



**6.** In Union of India Vs. Ram Lakhan Sharma (Supra), the Apex Court was examining a Disciplinary Proceedings conducted by the CRPF. The Apex Court held that when statutory rules are silent with regard to applicability of any facet of principles of natural justice, applicability of principles of natural justice which are not specifically excluded in statutory scheme are not prohibited and can be made applicable in a given case to advance cause of justice. The Enquiry Officer has to be independent and not representative of Disciplinary Authority. If he starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting the evidence to punish employee, principle of bias comes into play. The Apex Court held on the facts of that case that since the Enquiry Officer himself let the examination-in-chief of the prosecution witnesses by putting question and acting as a prosecutor also, capacity of independent adjudicator was lost which adversely affect his independent role of adjudicator. Thus the principle of bias come into play and accordingly, it upheld the order of the High Court in setting aside the dismissal order and granting liberty to the applicants.

**7.** From the pleadings and the Enquiry Reports, it is seen that the petitioner did not submit any reply to the charges leveled against him. The authorities appointed the enquiry officer by order date of 18.06.2007. The



petitioner, however, participated in the enquiry proceedings which had been initiated by the department.

**8.** As discussed above, the two charges i.e. the Charge-1 and Charge-2 are leveled against the petitioner, which are reproduced herein below:

### **Charge-1**

*That, Force number 911123804 CT. G.D. Narendra Gogai (A/65 C.R.P.F.) being posted as CT. G.D. and in the capacity of being a member of the force under Section 11 (1) of the CRPF Act, 1949 acted in disobedient manner/laziness in discharge of Duty, while he was active on duty in a hypersensitive area and consumed country made liquor 02.04.2007 and in the State of intoxication behave boisterously and use abusive language. This act of the said official is a serious offence under Section 11(1) of the C.R.P.F. Act, 1949 and is punishable under Rule 27 of C.R.P.F. Rule, 1955.*

### **Charge-2**

*That Force Number 811123804 CT. G.D. Narendra Gogai (A/65 C.R.P.F.) have also committed misconduct earlier, for which he was provided imprisonment of 10 days in the year 1993,*



*stoppage of two annual increment in the year held pay leave without the salary from 15.06.2004 to 19.06.2004 in the year 2004 and punishment of a fine present of about 30 days from 16.09.2006 to 15.10.2006 in the year 2006 which proves that the official is in the habit of committing repeated misconduct.*

9. The charge memo also contains a list of documents on the basis of which the statement of articles and charges were framed, which included a medical report, briefing/D-briefing register, one Hindu order register and any other document or evidence that the enquiry officer thinks proper. List of witnesses included three witnesses, namely, 1. Force No.690360432 Sub-Inspector/G.D. Shivji Pandey (S.I.A-65), 2. Force No.821191525 Head CT G.D. Moolchand, 3. Force No.005121838 CT. Nursing Ramesh Chand Meena. During the inquiry on the examination of the petitioner, he did not accept himself as guilty in so far as charge no. 1 is concerned. However, he accepted the charges insofar as charge no. 2 is concerned. A perusal of the statements made, as is evident in the report reads that only three witnesses stated that the petitioner was not found in the camp during the course relating to map reading. He was subsequently located and was found to be in an inebriated condition and was abusive in nature. It is also seen that after examination of the witnesses, opportunity was granted to



the petitioner and it is recorded that he does not wish to examine any of the 3 (three) witnesses, whose names are mentioned above. A photocopy of the medical report was seen to be produced during the enquiry proceedings. This medical report contains the signature of the Medical Officer of 55 C. Battalion CRPF. The medical report is written in Hindi language, although the English translation of the same is produced before the Court. This Court has also carefully produced the original enquiry reports. The said report however has been attested to be a true copy by the competent authority.

**10.** The opinion of the medical officer as reflected from the medical report reads as under: *"PT (patient) probably has taken alcohol and he can take care of himself only partially."* This examination was done on 02.04.2017. In the said record *"smell of breath"* is shown to be alcoholic.. General behavior as is reflected in the medical report reads as under:

*General Behaviour, such as :-*

- 1. State of Clothing : Shirt is absent, only in ganji.*
- 2. Character of Speech : Slurred*
- 3. Evidence of Self Control : Not in complete control.*

*The appearance of the pupils are shown to be slightly dilated.*



**11.** From the evidence of the witness no.1 Force No.690360432 Sub-Inspector/G.D. Shivji Pandey (S.I.A-65), it is seen that on 02.04.2007 at around 10:00, the witness no.1 was on duty as In-charge of Map Reading Course. He was informed by Force No. 821191525 Sergeant (Havaladar)/GD Moolchand that the delinquent constable who was assigned in the Map Reading Course has not yet entered in the training period and is not even in line. Then he gave orders to witness no.2 to go along with some more personnel and search for the petitioner and bring him. After searching the camp, the petitioner was not found anywhere near. Thereafter, the witness no1 called Force no.841330867, Fakruddin and ordered him to quickly find the petitioner. A report was also submitted by the witness no.1 to the adjutant. Subsequently, at around 03:00. P.M. witness no.2 Moolchand came and informed the witness no.1 company that the petitioner has been found out. He was found in a state of intoxication and was abusing. This was also reported to the adjutant. The adjutant ordered the said petitioner for medical examination. Medical letter was issued from the office and it was sent to the MI room for medical examination and report was placed before the adjutant. Witness no.1 i.e. Force no. 1690360432 S.I./G.D. Shivaji Pandey was examined by the enquiry officer. The questions which





were put to the witness no.1 and the answers of the same are extracted herein below:

"Questions and answers asked from Force Number 690360432 SI/GD Shiaji Pandey.

Q1. Were all the personnel in the map reading course briefed?

Ans= Yes Sir there were briefed.

Q2. Where was you at the opening of the map reading course on 02.04.2007?

Ans= Sir, I was in the Opening Ceremonial Parade at the time.

Q3. Who gave you the report about not attending the course of Force No.911123804 CT/GD Narendra Gogai?

Ans= Sir, Course C.I. Sergeant (Havaladar) Moolchand.

Q4. Whom did you order to search for Force Number 911123804 CT. Narendra Gogai?

Ans= Sir, I ordered to Sergeant (Havaladar) Moolchand.

Q5. Where did search party found Force No.911123804 CT Narendra Gogai?

Ans.= Sir, the search party did not found the Delinquent personnel in the campus area. Later, Sergeant (Havaladar) Moolchand informed that the Delinquent have entered the personnel line.

Q6. Did the Delinquent personnel have consumed alcohol?

Ans.= Yes Sir.

Q7. Did the Delinquent personnel beat or abuse anyone?

Ans= Sir, before me nobody assaulting any one.

Q8. Who did the medical examination of the Delinquent personnel?

Ans.= Sir, Health Officer of GHC Hospital Rani Kamrup, Assam.

Q9. Did he (Delinquent personnel) pressurized anyone to not undergo medical examination?



Ans.= Yes Sir.

Q10. Has the Delinquent personnel had also consumed alcohol during duty earlier this?

Ans.= Sir, the Delinquent have come from A-65 Battalion to do a map reading course, so I do not know about his earlier behavior.

Q11. What do you know about Force no.911123804 CT. Narendra Gogai's character?

Ans= Sir, his character is very bad when he consumes alcohol.

Q12. Can you provide a copy of the hindi order and briefing debriefing register available to the investigating officer?

Ans.= Yes sir.

**12.** The witness no.2 Force No. 821191525 Sergeant (Havaladar)/GD Moolchand deposed that he had come as an instructor for Map Reading Course on 31.01.2007. The opening of the course took place on 02.04.2007. All the personnel were represented at the opening. Later it was followed again at 10:00 and during this time it was found that the Force no.91123804 CT/GD, Narendra Gogai A-65 Battalion, namely the petitioner was not present there. This was brought to the notice of SI Shivaji Pandey, the witness no.1, who was the In-charge of the Map Reading Course. Later on order was given by SI Shivaji Pandey to search for the petitioner in the camp, as he was not found there. At around 03:00 P.M., the delinquent personnel was found in the personnel line in a



drunken state and was abusing. This was informed to SI Shivaji Pandey.

The following questions were asked to be witness no.2:

"Questions and answers asked to Force No.321191525 Sergeant (Havaladar) G.D. Moolchand.

Q1. Where did you search Force No.911123804 CT Narendra Gogai?

Ans= Sir, I have searched into the camp lines.

Q2. Who informed you that the Delinquent personnel have returned to the camp?

Ans= Sir, no one told me I got him in the line.

Q3. What action did you take after that?

Ans= Sir, I had informed it to Force no.690360432 S.I. Shivaji Pandey.

Q4. Did the Delinquent personnel consumed alcohol at that time?

Ans.= Yes Sir.

Q5. Did he abused?

Ans.= Yes Sir.

Q6. What do you know more about the Delinquent personnel?

Ans.= Sir, nothing"

**13.** The witness no.3 Force no.005121838 CT/ Nursing Assistant Ramesh Chand Meena was examined and he stated that he was working in Munir Hospital on 02.04.2007. He stated that Force no.831130171 Sergeant (Havaladar) G.D. Jai Bhagwan (B.H.M.) came and ordered that delinquent personnel Narendra Gogai had consumed alcohol and his medical examination had to be done at CHC Hospital Rani. As per the order of the Force no.831130171 Sergeant (Havaladar) G.D. Jai Bhagwan (B.H.M.) was



posted on duty of B.H.M. took the delinquent constable, namely the petitioner to the CHC Hospital Rani. Thereafter, the medical officer posted there had conducted the examination of the said constable and the report which was issued by the medical officer was submitted to the adjutant. The following questions were put to the witness no.3 Force no.005121838 CT/ Nursing Assistant Ramesh Chand Meena.

*"25. Questions answer asked to the Investigating Officer.*

*Q1. Did the Delinquent personnel refuse to undergo a medical examination?*

*Ans= No Sir, he did not.*

*Q2. Was he abusing during the Investigation?*

*Ans.= No Sir, he was not doing.*

*Q3. According to you, where the Delinquent personnel was intoxicated?*

*Ans.= Yes Sir.*

*Q4. To whom the medical report was submitted by you after the completion of medical examination?*

*Ans.= Sir, I have submitted the medical examination report of the Delinquent personnel to the Adjutant Sir.*

*Q5. Can you provide a photocopy of the medical report to the investigating officer?*

*Ans.= Yes Sir."*

**14.** In addition to these three witnesses, the enquiry officer also presented one more witness, namely Force no.951850106 A.S.I (M) Ajay Kumar 65 Batallion C.R.P.F. and an intimation there was issued to the petitioner. The force Force no.951850106 A.S.I (M) Ajay Kumar deposed



that he was posted to 65 Battalion CRPF since 27.09.2005 and was posted on Establishment-two in the Head Office 65 Battalion, from 12.05.2006.

**15.** He was working as In-charge of the said Establishment-two. Due to this charge on 21.04.2007 he was asked for details about misconduct committed earlier by the petitioner Narendra Gogai. The particulars were sought through wireless No. P VIII-I/2007-EC-II from Group Centre, Neemuch.

**16.** In response to that request made by wireless No. P VIII-I/2007-EC-II the details of this misconduct committed earlier by the said delinquent constable was sent and thereafter, correspondence was received from the concerned office about the full details of misconduct committed by the delinquent constable. The details of the misconduct stated to have been conducted earlier by the delinquent constable namely, the petitioner was handed over to the enquiry officer. The said details was a photo copy of the same.

**17.** All the four witnesses were examined and the opportunity was granted to the petitioner to cross-examine these weaknesses but the same was declined. The signatures of the witnesses, the enquiry officer and the petitioner are seen in the documents available in the records. From the examination/re-examination of the petitioner, he had replied in affirmative



that the statements of the prosecution witnesses no.1 to 4 were recorded in his presence, and that he was given a chance to cross-examine the prosecution witnesses (which he had declined) and that he had been given the opportunity to see and understand the charge sheet. The questions put to the petitioner during examination are extracted as under:

*"Force No. 911123804 CT. G.D. Narendra Gogoi made an statement in the preliminary inquiry that the charge no. 1 in appendix-I he does not accepted his guilty in that.*

*In the charge no. 2 of appendix-I, the following allegation is that the Force no. 91123804 CT. G.D. Narendra Gogoi (A-65 Battalion C.R.P.F.), while serving as a Ct./G.D. in the C.R.P.F., has also done misconduct in the past being as a member of the force, under Section 11(1) C.R.P.F. Act 1949 due to which he was sentenced to 10 days of line imprisonment during the year 1993, and to stop the increment of 2 years during the year 2003, 30 days of line imprisonment during the year 2004, and from 15.06.04 to 19.06.04 half pay leave without pay, sentenced to 30 days line imprisonment during year 2006 from 16.09.06 to 15.10.06 which proves that that person is accustomed to do repeated misconduct. The act of a personnel is a serious offense under Section 11(1) of the C.R.P.F. Act 1949, which is punishable under the Rule 27 of the C.R.P.F. Rules 1955.*



*Force no. 911123804 CT.G.D. Narendra Gogoi made a statement in the preliminary inquiry that he has accepted his guilty under the Charge no. 2 in the appendix-1.*

***Statement of all four witnesses:-***

*The statements of all the witnesses were recorded from 23.06.07 to 20.08.07 in the presence of Delinquent personnel. It was given full opportunity to cross-examine to the Delinquent personnel from all witnesses and the copy of the statements of the witnesses were given to the Delinquent personnel, and he has received copy and for that it was signed and indorsed on the main copy by the Delinquent personnel, and verified by the Investigating Officer.*

*On 31.08.07 the Delinquent Personnel had examined through question/answer during this proceeding personnel has accept his guilty for both charges and denied to submit any oral, written or any other evidence to the investigating officer in his defense.*

*Today on 07.09.07, the investigation is being ended by the Investigating Officer, and the final report is being prepared.*

*(Investigating Officer)"*

- 18.** The inquiry report, it reflects that the petitioner has refused to submit written or other evidence and did not avail the opportunity to examine or cross-examine the witnesses. The enquiry officer concluded in the enquiry



that the statement of four witnesses or evidence presented and the allegations made by the delinquent personnel during the retrial of charge-1 have been accepted and the petitioner has refused to submit any oral or written statement or any evidence in his defense. The enquiry officer held that from the evidence it is clear that the petitioner had consumed alcohol on 02.04.2007 while he was on duty and then on joining the line he started abusing. The delinquent personnel, namely, the petitioner was examined at CHC Rani and it was found that the delinquent personnel had consumed alcohol and to some extent were in his senses. Therefore, the allegations made with regard to item no.1 (Charge-I) has been proved. In so far as the charge no.2 is concerned since after evaluation of the evidences and statements made by the witnesses, the enquiry officer concluded that misbehavior has also been committed in the past by the delinquent personnel may be the writ petitioner due to which he was punished again and again and therefore the charge no.2 also stood.

**19.** Thereafter, the enquiry report was considered by the disciplinary authority. The disciplinary authority, upon consideration of the inquiry report had come to a decision that the allegations against the delinquent personnel are of serious nature of. It is on the basis of the evidence, the disciplinary authority had arrived at a conclusion that while on duty in a





highly sensitive area, the petitioner had consumed country made Liquor on 02.04.2007 and was found in a state of intoxication. The delinquent constable used abusive language, which is against the rule of the discipline force and such behavior is not acceptable in a discipline force like the CRPF. The crime of the delinquent personnel is unforgivable. The disciplinary authority also took into account that in the past minor punishments were given to the petitioner for misconduct, which he committed many times but no corrective attitude was adopted by the petitioner after that and he maintained the habit of committing misconduct. As such, exercising his powers under the provisions contained in Rule 27 of Central Reserve Police Force (CRPF) Rules 1955 read with section 11 (1) of the CRPF Act, 1949, the delinquent personnel, namely the petitioner, was dismissed from service on 01.12.2007. It was held to be effective and the petitioner is taken out from the strength of his battalion from 01.12.2007. All the medals and ornamentations his Identity Cards must be seized.

**20.** Against the order of dismissal dated 01.12.2007, the petitioner preferred an appeal to the appellate authority, which also came to be dismissed by the appellate authority. The appeal was preferred before the Deputy Inspector General of Police (CRPF) Neemuch, Madhya Pradesh on



19.12.2017. A perusal of the appeal preferred does not reveal that there was any ground taken by the petitioner that the enquiry was not conducted as for the statute or that he was not given any opportunity to examine or cross examine the witnesses. It is stated that upon receipt of the show-cause notice, he was directed to file the reply within 15 days, but he could not submit the same as the enquiry officer was out of station at that time and before getting a chance to submit, he fell ill and was admitted to the hospital on 13.10.2007. He was discharged on 29.11.2007 and he reached the camp on 30.11.2007 and on the next day, which is 01.12.007, he was discharged from service. This further urged that as he was punished earlier for alleged offenses which he never committed, the punishment of dismissal will amount to punishing the petitioner twice for the same offense. He denied that he had taken alcohol during his duty on 02.04.2007, nor abused anybody as alleged in the show-cause notice. He submits that he is maintaining his family with two school going children and because of the discharge from service he is facing trouble in respect of maintaining his family. Accordingly, he prayed before the authority for reversal of the dismissal order and for reinstating him in service. The appellate authority rejected his appeal by order dated 22.09.2008. The appellate authority held that the plea of the appellant that he was not



given opportunity of defense is baseless and that in spite of being given the opportunity to prefer any representation within 15 days after a copy of the entire report was served on him the petitioner did not prefer any representation. The appellate authority had that he got admitted in the hospital in a planned manner. Appellate authority held that the inquiry report was served on him on 25.09.2007 and he was admitted to hospital on 13.10.2007. Therefore, his plea that he could not submit the enquiry report as the enquiry officer was out of station cannot be accepted. The appellate authority also took into account the medical report indicating the state of the petition that he was in an inebriated condition. The earlier punishments for misconduct committed by the petitioner were also taken note of. The appellate authority held that he was habituated to misconduct and disobedience and is responsible for the present condition. It was held that the plea of the petitioner cannot be accepted as there is no logic for retaining an indisciplined person in the service of the force. It is under such circumstances, the application of the petitioner was rejected.

**21.** The basic thrust of the arguments made by the learned counsel for the petitioner is that after the judgment of the Apex Court in Ram Lakhan Sharma (supra) it is no longer *res integra* that the disciplinary proceedings, if conducted without appointing a presenting officer, are liable to be



interfered with as the same are in contravention with the judgment of the Apex Court in the law laid down therein as well as the judgments of this Court following the law laid down by the Apex Court It is submitted that following the judgment of Ram Lakhan Sharma (supra) this Court in another matter arising out of disciplinary proceedings conducted by the CRPF authorities by the judgment and order dated 01.02.2019 passed in WA. No. 305/2019 (Union of India vs. Ex Constable GD Sri Atul Chandra Kalita, affirmed the findings of the learning Single Judge interfering with the enquiry conducted without appointing the presenting officer.

**22.** The learned counsel for the respondent, on the other hand, vehemently argued that at the relevant point in time, there was no requirement under the rules as well as under the statute to appoint the presenting officer while conducting disciplinary proceedings. Learned counsel for the respondents submits that the judgment of the Apex Court in Ram Lakhan Sharma (supra) was rendered in the year 2018 and the disciplinary proceedings against the petitioner, namely, Narendra Gogai, were conducted much earlier and the petitioner was dismissed from service on 01.12.2007.

**23.** Since the enquiry was conducted well prior to the law expounded by the Apex Court and followed by this Court and at the relevant point in time



there was no requirement for appointment of Presenting Officer, as such the enquiry proceedings conducted ought not to be interfered with on that count. The order passed by the Division Bench of this Court in W.A. 305 of 2007 was also rendered on 01.02.2019 which was well after the date of enquiry conducted in the present case. The department conducted the inquiry strictly as per procedure. Opportunity was given to the petitioner, the questions were put to the petitioner and sufficient opportunities were given to cross examine the witnesses. However, as is evident from the records as also from the pleadings filed, the petitioner did not avail of any opportunity to file his written statements pursuant to the inquiry conducted and did not avail the opportunity to examine the witnesses although such opportunity was provided to the petitioner.

**24.** Under such circumstances, there is no infirmity in the procedure by which the enquiry was conducted, the impugned inquiry ought not to be interfered with and the writ petition may be set aside and quashed.

**25.** The pleadings and the reports presented before the Court has been scrupulously perused. The question which is raised before the Court for a decision in the present proceedings is whether the principles of natural justice had been followed when the inquiry was conducted?

**26.** The principles of natural justice is inherent in every procedure that is adopted and required to be followed by any authority. From the basic two principles that no one shall be judge in his own laws and no decision shall be given against a party without affording a reasonable opportunity, the various Courts of this country, including the Apex Court has expounded the law by incorporating various other faculties and ingredients into this principle.

**27.** The basic purpose of adhering to the rules of natural justice is to secure justice and to prevent miscarriage of justice. In the facts of the present proceedings, it is seen that the inquiry officer was appointed as an "Investigating Officer". The said "Investigating Officer/ Enquiry Officer proceeded with the inquiry, examined the witnesses, called for the documents along with the medical reports from the Headquarters in respect of past misconducts of the petitioner. The Enquiry Officer who is appointed to conduct a disciplinary proceeding, performs a quasi judicial function and is required to be impartial in order to arrive at a definitive finding in respect of the guilt of the delinquent employee vis-a-vis the charges made against the delinquent employee. The enquiry officer is not expected to be a mere representative of the departmental authorities. From the records presented before the Court, it is seen that the enquiry



officers besides examining the witnesses also called for additional documents as well as arrayed a fourth witness, namely Force no.951850106 A.S.I (M) Ajay Kumar 65 Batallion C.R.P.F. This also prima facie reflects the mind of the Enquiry Officer that the enquiry has been proceeded with the sole objective of arriving at a guilt in respect of the charges leveled against the delinquent employee. A careful perusal of the records and the enquiry proceedings revealed that the Enquiry Officer proceeded as a Presenting Officer for the department. Such procedure adopted by the Enquiry Officer during the course of a departmental inquiry cannot be countenance of the basic tenets of the principle of natural justice. The principle that justice delivered must be seen to have been delivered is well accepted, is a well accepted principle. The manner in which the Departmental Inquiry was conducted as is evident from the records, does not reflect the impartiality that is expected out of an enquiry officer appointed by the department. That at the relevant point in time the statute or the rules did not require appointment of a presenting officer, and that the said has now been brought into effect by notification issued by the CRPF authorities pursuant to the judgment of Ram Lakhan Sharma (supra). But the rules of natural justice, being inherent in every procedure adopted to enquire into the charges leveled against the delinquent employees,



cannot be overlooked merely because there was no requirement for appoint a Presenting Officer.

**28.** As have been discussed above, the purpose of adhering to the principles of natural justice is not only to secure justice, but to prevent the miscarriage of justice. The procedure adopted in conducting the impugned disciplinary proceedings against the petitioner, as is evident from the reports, has resulted in miscarriage of justice. The very basis of leveling the charge of misconduct against the petitioner is the episode of the petitioner being intoxicated while on duty on 02.04.2007. Although a photocopy of the medical report is available, there is no explanation as to why the original medical report was not called for or the treating doctor was not examined. As has been held in *Kuruk Singh Negi* (supra) although the standard of proof in a disciplinary proceeding need not be to the extent of the standard maintained in criminal proceedings, however, the basic principles for proof of documents and statements under the Indian Evidence Act of 1872, will have to be adhered to by the departmental authorities. The charge that the petitioner was intoxicated on the given date was required to be proved by medical reports. Production of a photocopy of the original record cannot be accepted to be proof of the document under the Indian Evidence Act, 1872.





**29.** The second charge leveled against the petitioner, namely misconduct committed by the petitioner and punishments given accordingly in the past to show that the petitioner was a habitual offender, was a charge which is a part of the charge-sheet served on the petitioner. The lists of documents were shown to be enclosed to the charge-sheet issued to the addition. However, the records revealed that during the course of the inquiry certain documents were called for by the Enquiry/Investigating officer to support the charges leveled against the delinquent employees. Such procedure adopted by the authority cannot be held to be in conformity with the principles of natural justice as well as the procedure prescribed for conducting disciplinary proceedings. Such conduct prima facie reveals that on the day when the charges were framed and charge-sheet issued to the petitioner, the basis for trial of charge two was not even available with the disciplinary authority.

**30.** However, the fact remains that the petitioner admitted to the second charge. There is no dispute that opportunities granted to the petitioner to cross-examine the witnesses was declined. The Enquiry Proceedings records revealed that specific opportunities were granted to the petitioner to avail the opportunity of cross-examining the departmental witnesses. However, the record reveals that he declined to do so. Therefore, it cannot



be said that due opportunity of testing the veracity of the prosecution witnesses were never offered to the petitioner and thereby the same was hit by the principles of natural justice to that extent. There is another aspect which cannot be ignored. It is pleaded by the petitioner that he was indeed suffering from alcohol dependence although the photocopy of the medical record which was relied upon by the Enquiry Officer has been sought to be disputed, no supporting medical records or reports are produced by the petitioner to suggest that he does not suffer from alcohol dependency and is fit to be retained as a member of the disciplined force. The standard of discipline required to be maintained by members of any disciplined force like the C.R.P.F cannot be undermined. The petitioner has not been able to project that he is worthy of being retained as a member of the disciplined force. There are categorical averments in his pleadings that he suffered from alcohol dependence and personality disorder and because of which he had to undergo conservative medical treatment. Although in his pleadings, the petitioner craved leave to produce the relevant medical certificates at the time of hearing, no such certificate could be produced or was produced at the time of hearing. As such on his own admission that he suffered from alcohol dependence and leading to personality disorder which required conservative medical treatment, there



is a serious doubt cast on the credibility of the petitioner that he will be able to perform his duties to the desired level as expected of a member of any disciplined force.

**31.** In conclusion, it is seen that the manner in which the enquiry proceedings were conducted cannot be appreciated considering the fact that the enquiry officer proceeded to act both as an arbitrator and as a prosecutor as is evident from the records. This is not acceptable where a disciplinary proceedings are conducted as per the mandates of the statute, notwithstanding that at the relevant point in time there is no requirement under the Rules to appoint any Present Officer. Ordinarily this Court would have been inclined to interfere with the enquiry proceedings conducted and remand the matter back for de-novo enquiry. However, the Court is conscious of the fact that the incident alleged as well as the enquiry conducted pertains in the year 2007 remanding the matter back to the Department to conduct the de-novo enquiry after 16 years may not serve the purpose as the relevant witnesses and/or documents may not be available as on date to effectively proceed with the enquiry. Under such circumstances, the Court is of the view that since the petitioner has admitted the second charge as well as to his medical condition of alcohol dependency and personality disorder and in the absence of any cogent



materials placed before this Court as to the condition of the petitioner presently, this Court is of the considered view that no fruitful purpose will be served by interfering the enquiry proceedings and remanding the same for fresh de-novo enquiry. The Court is of the view that the ends of justice will be met if the punishment of dismissal from service is modified to that of compulsory retirement.

**32.** Accordingly, the punishment imposed by the respondent authority of dismissal from service is altered to that of compulsory retirement which is also prescribed under the statute. The writ petition stands disposed of in terms of the above.

**33.** Pending Interlocutory application, if any, is also disposed of, in view of the above.

**34.** Original records submitted to the Court are returned back.

**JUDGE**

**Comparing Assistant**