



GAHC010193502013



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

WRITPETITION (C) No. 5846/2013

Sri Gulshan Nand Kapoor,
Son of Late Nirmal Kumar Prasad
Ex-Constable No. 001360097
Central Industrial Security Force,
Indian Oil Limited, Duliajan,
District-Dibrugarh, Assam
Presently residing at native place at
Village- Rajghat, P.O. Mojampati,
P.S.-Barhara,
Dist.-Purnia, Bihar,
PIN-854201

.....Petitioner

-Versus-

1. Union of India, through the Secretary to the
Govt. of India, Ministry of Home Affairs, Sansad
Marg, New Delhi-110001.



2. The brief facts are that the petitioner was employed as a constable under the Central Industrial Security Force (CISF) and was allotted Force Number 001360094. Petitioner was posted at the CISF unit at Indian Oil Limited, Duliajan, Post Office- Duliajan, District- Dibrugarh, Assam at the relevant point in time. During his posting at the same place, he was served with an order of suspension dated 20.09.2008 intimating that he was placed under suspension pending disciplinary proceedings. Pursuant to said order of suspension, a charge-sheet was issued to the petitioner bearing number V-15014/Mak-20/GNK/L&D/OIL(D)/2008-15528 dated 18.10.2008 by the Commandant, CISF, Oil India Limited, Duliajan framing as many as four articles of charges against him. The following articles of charges were framed against the petitioner:

CHARGE-I

Force No. 001360097 Ct. G.N. Kapoor who is posted in the industrial sector in CISF unit Oil Duliajan that on 20.09.2008 at around 00450 hours without any special reason he created an atmosphere of disturbance and abused Force No. 064870164 Ct. Dipak, slapped his face and enraged cocked the service rifle AK47 Reg SBA-436188 (Bn. No. 83) issued for duty and pointed it at his chest. This act of Force No. 001360097 Ct. G.N. Kapoor shows grave misconduct, irresponsible behaviour and indiscipline and also expresses his criminal nature.

CHARGE-II

Force No. 001360097 Ct. G.N. Kapoor who is posted in the industrial sector in CISF unit Oil Duliajan that on 20.09.2008 at around 0650 hours he left his post at the tank farm backside watch tower without the permission of his superior officers and without handing in the service rifle AK-47 Reg



SBA-436188 (Bk No. 83) issued to him for duty and with the purpose of influencing the department came to his official residence No. A X 24 and locked himself in with the weapon. This behaviour of a members of an armed force show great indiscipline, misconduct and irresponsibility.

CHARGE-III

Force No. 001360097 Ct. G.N. Kapoor who is posted in the industrial sector in CISF unit Oil Duliajan that on 20.09.2008 at around 0800 hours when HC D.K. Siyog unit BHM and H.C. P.K. Dey HQ group CHM ordered him to come out of his quarters and surrender the weapon/ammunition he threatened to fire at them. This act of Force No. 001360097 Ct. as shown great indiscipline, irresponsible behaviour and grave conduct and also his criminal nature.

CHARGE-IV

Force No. 001360097 Ct. G.N. Kapoor who Is posted in the industrial sector in CISF unit Oil Duliajan that during his seven years of service he has committed acts of indiscipline and misconduct and got six (06) punishments and alongwith having a bad service record he has acquired the incorrigible habit of repeating indiscipline, misconduct, irresponsibility and ignoring lawful orders. Out of these six (06) punishments there were five for quarrelling, dereliction of duty and irresponsible behaviour.

3. The enquiry proceeded against the petitioner and by enquiry report vide Memorandum No. V-15014/Maj-20/GNK/L&D/OIL(D)2009-2752 dated 26.03.2009, the petitioner was found guilty of the charges levelled against him. In response to the enquiry report submitted, the petitioner filed a



representation stating that he was suffering from mental disease and therefore under provisions of section 84 IPC 1860 nothing committed by a person of unsound mind can be treated to be an offence. It was stated in the representation that the Enquiry Officer did not take into consideration any of these provisions and the findings of the Enquiry Officer to hold that the charges according to the petitioner hold to be proved was based on no evidence. The doctor who had treated the petitioner was not examined although he was a vital witness. The Commandant CISF, Indian Oil Limited, Duliajan without taking into consideration these issued passed the Final order bearing No. V-15014/BAD/30/GNK/ANU/OIL-D/09-3797 dated 26.03.2009 imposing the penalty of removal from service of the petitioner from service. The appeal and the revision preferred against the said order of removal was also dismissed by the appellate authority and the revisional authority respectively confirming the final order dated 26.03.2009 passed by the Disciplinary Authority. Aggrieved, the writ petitioner has assailed these order before this Court.

4. The learned counsel for the petitioner submits that the articles of charges No. I, II & III have raised serious allegations against the petitioner which are in the nature of criminal offences alleged to have been committed by the petitioner. However, no FIR or GD entry was lodged by the CISF authority and no evidence thereto was referred to during the Enquiry proceedings. It is further submitted that the article of charge No. IV was an accumulation of six punishments which the petitioner had earlier undergone and therefore the same could not be used as a fresh charge to impose further punishment on the petitioner in respect of punishment which he had already undergone in the past. It is submitted by the learned counsel to the petitioner that the petitioner was under treatment at his



native place at Village Rajghat, District- Purnia in the State of Bihar where he was required to undergo periodical medical checkups as advised by the doctors during the treatment he had undergone at Assam Medical College & Hospital, Dibrugarh. It is submitted by the learned counsel for the petitioner that initially a writ petition was filed before the Allahabad High Court which was numbered as W.P(C) No. 1244(W) of 2011 which however was dismissed at the initial stage by order dated 06.06.2011 on being withdrawn while granting liberty to the petitioner to approach the appropriate High Court. Subsequently, this writ petition was preferred before this Court and therefore there was a certain amount of delay that had occurred. The learned counsel for the petitioner submits that the entire enquiry was conducted without taking any evidence on record more particularly the evidence of the treating doctor. It is further submitted that medical prescriptions and certificates were also not taken into account during the enquiry proceeding which supports the case of the petitioner that he was under treatment for mental illness. Consequently, it is submitted that the entire enquiry and the consequential orders which have been passed by the respondent authority were violative of Articles 14, 21 and opposed to the principles of natural justice and fair play and therefore, the same deserves to be interfered with, set aside and quashed.

5. The respondents contested the case projected by the petitioner by filing their counter affidavit. In the affidavit filed by the respondents, it is stated that in the enquiry conducted all reasonable opportunity to defend the case was offered to the petitioner in compliance with the statutory Rules. It is stated that he was supplied with a brief note of the Presenting Officer as well as the report of the Enquiry Officer for submission of defence. It is only on the consideration of the same and the evidence



collected during the course of the enquiry that the conclusion of the Enquiry Officer was arrived at and which was accepted by the Disciplinary Authority and the final order dated 26.03.2009 was issued. It is stated that during his short span of service, petitioner was awarded six minor punishments for various acts of indiscipline and misconduct and he was given all opportunity to mend his ways but despite all the opportunities provided, petitioner continued to indulge in indisciplined activities. It is submitted that the charges against the petitioner are of serious nature and there are witnesses who had deposed during the enquiry proceedings in support of the charges framed. It is submitted that the reference to Section 84 IPC by the petitioner is completely misplaced. It is stated that after indulging in the misconduct, petitioner reported to the OIL, Duliajan Hospital on 20.09.2008 at about 12.40 PM and got admitted into the Hospital from where he was discharged on 21.09.2008 at about 2.20 PM. Thereafter, he was admitted to the Assam Medical College & Hospital, Dibrugarh on 22.09.2009 to 04.10.2008 for further investigation and treatment. The medical documents produced at the time of the enquiry conducted did not reveal that petitioner suffered from any mental illness. The Enquiry Officer took into consideration the written reply of defence submitted by the petitioner as well as a representation submitted by the petitioner against the written brief of the Presenting Officer during the course of the enquiry. There is no infirmity in the enquiry and the order of removal dated 20.03.2009 has been correctly passed by the disciplinary authority. The learned counsel appearing for the respondents submits that in this writ petition although the prayer for interference of the disciplinary proceedings have been made, along with the interference with the orders passed by the appellant and the revisional authority, there is no specific



prayer made for interfering and setting aside the order dated 26.03.2009 by which the petitioner was removed from service. In view of there being no specific prayer made, the writ petition ought to be dismissed on that account itself. It is further submitted by the learned counsel for the respondents that every opportunity as contemplated on the provisions of the Act and the Rules have been offered to the petitioner during the enquiry. The evidence is presented by the petitioner were duly taken into account and thereafter, the enquiry report was submitted holding the charges framed against the petitioner to have been proved. The order of removal passed with the disciplinary authority vide the order dated 20.03.2009 is a detailed order which reveals that the disciplinary authority also applied its independent mind on the enquiry report submitted. Therefore, no interference is called for on any account. Consequently, no interference is also called for in the orders dated 29.06.2009 and 31.12.2009 passed by the appellate authority and the revisional authority confirming the order passed by the Disciplinary Authority for removal of service.

6. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused. Although the proceedings are in vernacular but translated copies have been furnished before the Court.

7. The charges against the petitioner are that on 20.09.2008 at about 0450 hours, the petitioner created an atmosphere of disturbance and abused his colleague, Constable Dipak, slapped his face and cocked the service rifle allotted to the petitioner and pointed it at the chest of his colleague. This is considered to be an act of grave misconduct, irresponsible behavior and indiscipline and is also criminal in nature.



8. The charge No. II is that on 20.09.2008 at about 0650 hours he left his post without permission of his superior Officer and without handing over his service rifle issued to him for duty. When his superior Officers came to his official quarter, he was found to have locked himself inside the quarter with the weapon. This was considered to be an act of great indiscipline, misconduct and irresponsible behaviour as a member of the armed force.

9. In so far as charge No. III is concerned, it is alleged that on 20.09.2008 at around 0800 hours when the Head Constable D.K Siyog and Head Constable P.K. Dey ordered him to come out of the quarters and surrender the weapon and ammunition, he threatened to fire at them. This is seen as an act of breaking discipline, irresponsible behavior, grave misconduct and also criminal in nature.

10. The IVth Charge brought against the petitioner is that during his seven years of service, he committed acts of indiscipline and misconduct and was awarded six punishments and thereby earned bad service record due to his incorrigible habit of repeating indiscipline, misconduct, irresponsibility and ignoring lawful orders. Out of these six punishments, five were for quarreling, dereliction of duty and irresponsibility.

11. On these charges, the petitioner was asked to show-cause. On the aspect of admission or denial of charges on being asked, the petitioner denied the charges leveled against him and stated that he could not recollect the same. A perusal of the enquiry report reveals that during the enquiry, the petitioner in his statement of defence stated that he could not say anything about the charges levelled against him due to his mental disorder although presently he has recovered. In support of his defence, he



submitted medical papers which were exhibited as exhibits D (i)(ii)(iii)(iv)(v)(vi) and (vii). In addition thereto, medical bills and records were submitted by the petitioner which were marked as Sl. No. 01 to 10. The Enquiry Officer recorded the finding that no reports or prescriptions were given by the specialist doctors. Petitioner also did not submit his last medical certificate. The enquiry report reveals that a Presenting Officer was appointed and he had duly presented the case of the department and called upon as many as 13 prosecution witnesses during the course of the Enquiry. The inquiry was stated to have been conducted on the Rule 37 of the CISF Rules 2001. The petitioner was specifically asked if he had any objection regarding the person appointed as the enquiry officer to which, he replied that he had no objection. The petitioner was asked to submit the names of any person as defense assistance if required, however, he declined the said offer.

12. During the enquiry the following documents were presented on behalf of the Department:

1. Photocopy of daily attendance No. 634 dated 20.09.2008 of Industrial Sector Control Room (W-I, Exbt./P-I). In this document the facts relating to quarrel by Const. G.N. Kapoor with Const. Dipak Dahiya and learning the duty place by Const. G.N. Kapoor with arms to the official quarter and regarding deposit of arms in the cot have been recorded.

2. Special report regarding forward of the Letter No. 1044 dated 21.09.2008 to the Deputy Inspector General issued from the office of the Industrial Sector (PW-[Exbt./P-II]).

This report is about assaulting Const. Dipak Dahiya by Const. G.N. Kapoor and placing of rifle in his chest after cocked and leaving the duty place with arms to the official quarter, and depositing the rifle in the cot.



3. Photocopy of Duty Roster dated 20.09.2008 issued from the Industrial Sector (PW-III Exbt./P-I & II).

In this document the schedule of duty of Const. G.N. Kapoor in the first shift has been mentioned.

4. Photocopy of the first shift duty Register dated 20.09.2008 of - Industrial Sector (PW-III Exbt./P-III).

The document is regarding placing of Const. G.N, Kapoor in the first shift duty with arms at the Farm Tank, Back side of Watch Tower on 20.09.2008 at the interval of every four hours (PW-III Exbt./P-IV) from 500 hrs to 0900 hrs

5. Photocopy of the daily duty register Sl. No. 631 dated 20.09.2008 of the Industrial Sector Control Room (PW-III Exbt./P-V).

In this document the incident of quarrel by Const, G.N. Kapoor with const. Dipak Dahiya and the incident of placing the cocked rifle in the chest of Dipak Dahiya has been mentioned.

6. Photocopy of the duty roster dated 20.09.2008 placing the Const. G.N. Kapoor for duty at the Farm Tank, back side of Watch tower. (PW-III Exbt./P-VI).

In this documents placing of G.N. Kapoor in the duty has been mentioned.

7. Photocopy of the service book of Const. G.N. Kapoor (PW-XIII Exbt./P-I & II).

In this document the bad service record acquired by Const. G.N. Kapoor during his service period has been mentioned. 8. Photocopy of the Register dated 20.09.2008 of the Industrial Sector Kot regarding issuance of rifle to the Const. G.N. Kapoor . (PW-VIII Exbt./P-I).

In this document there is mention of issuance and deposit of AK-47 & bullets by G.N. Kapoor issued for his duty.

13. In so far as the petitioner is concerned, he relied upon the following documents:



1. Photocopy of the referral Letter dated 21.09.2008 of the OIL Hospital referring Const. G.N. Kapoor to AMCH, Dibrugarh (D/Exbt/D-I).

In this document there is mention of referring the Const. G.N. Kapoor to AMCH, Dibrugarh for advanced treatment.

2. Photocopy of prescriptions dated 04.10.2008, 17.10.2008, 24.10.2008, 24.11.2008 and 28.01.2009 issued to Const. G.N. Kapoor (D/Exbt/D-II, III, IV & V).

The above referred documents are prescriptions issued by the Doctors, AMCH in different dates in connection with the disease of Const. G.N. Kapoor.

3. Photocopy of the Discharge Certificate dated 24.10.2008 issued by the AMCH (D-Exbt/D-VI).

In this document there is mention of admission and discharge of G.N. Kapoor from AMCH w.e.f. 22.09.2008 to 24.10.2008.

4. Photocopy of bill dated 17.10.2008 showing purchase of medicines from Alom Medical Hall, Dibrugarh (D/Exbt/D-VII).

In this document there is mention of purchase of medicines prescribed by the Doctors of AMCH.

5. Photocopies of medicine bills of different dates and medical reports.

14. As many as 13 witnesses were examined. Out of the witnesses examined, the evidences of P.W.-3 SI/Insp. Sri Sankar Chakraborty, P.W.-6 HC/GD, Sri D.K. Neog. P.W-IX, Ct. Sri P.K. Chouhan, P.W.-X, Sri Ct. M.K. Sarma and P.W-XI Ct. Sri Kukil Mili are relevant as they are eye witnesses to the allegations made against the petitioner.

15. In his evidence P.W.-III, Sri Sankar Chakraborty stated that on 20.09.2008 during the duty period from 0500 hrs. to 1300 hrs he entrusted the petitioner in the first batch of duty with arms and entrusted constable Dipak Dahiya for traffic control from 0500 hours to 0900 hours. He stated



that after receiving the arms from the armory while they were on their way in the vehicle to the first shift duty in the industrial sector, the petitioner came up from his seat and started talking to constable Dipak Dahiya and thereafter everything appeared to be normal. After some time, P.W.-III saw the petitioner slapping constable Dipak Dahiya and the petitioner cocked his rifle and put it in the chest of the said constable Dipak Dahiya. Constable M.K. Sharma immediately snatched the rifle from the petitioner and the situation was brought under control. After arriving at the main gate of the industrial sector, this information was communicated to the Sector Commander who directed him to lodge a report in the daily duty register. Thereafter, the force personnel were briefed about their respective duty and were directed to go to their respective posts. At about 0650 hour, constable G.N. Kapoor left the duty without permission from the authorities and came to the main gate of the industrial sector and wanted to go to his official quarter when he was stopped by a member of the force and the Company Commander was informed over telephone.

16. P.W-IX, Constable Prabain Kr. Chauhan in his deposition repeated the incident which took place in the vehicle while they were proceeding towards their duty post on the same date which is 20.09.2008. The statements made by P.W-III in his deposition are also supported by the depositions of P.W.-10, M.K. Sarma as well as Constable Kukil Mili, P.W-XI. As such P.W.-III, P.W.-IX, P.W.-X and P.W.-XI were present when the incident occurred and they were eye witnesses to the incident alleged against the petitioner.

17. P.W.-VI, Constable D.K. Neog in his deposition stated that on 20.09.2008 at about 0730 hours he was informed by HC/GD P.K. Dey that



the petitioner had left his duty post and had gone to the quarter with his rifle. Thereafter, both of them went to the quarter and found the door closed. When HC/GD, P.K Dey knocked on the door of the quarter, the wife of the petitioner opened the door. Then the petitioner came from the front room with a rifle in his hand and stated that they should leave otherwise he will shoot them. Both P.W-VI, Constable Sri D.K. Neog and HC/GD P.K. Dey thereafter came out of the quarter. After some time, Ins./Off. P.K. Nayak and the Deputy Commandant alongwith other force members also came there and after lot of attempts the petitioner opened the door at about 0900 hours and thereafter the rifle and the magazine was taken along with the ammunition and the same was deposited in the armory.

18. The evidences adduced were very elaborately discussed by the enquiry officer. In his discussion it is stated that the petitioner was offered opportunity to cross examine the prosecution witnesses but he declined to cross-examine saying that he will not ask anything as he did not remember anything about the incident. The plea of the petitioner was also discussed by the enquiry officer elaborately. The petitioner took up the defence of mental illness and stated that he does not remember any of the incident as he was suffering from mental illness at the relevant point in time. During the enquiry, the petitioner stated that he was suffering from mental illness prior to 20.09.2008 and therefore he remembered nothing. The Enquiry Officer held that the medical papers submitted by the delinquent from the department of Psychiatric Department of the Assam Medical College Hospital revealed that he refused to take food and was suffering from Jaundice before one year but there was no diagnosis of any mental disorder for family problems etc. On these materials, the enquiry officer



came to the finding that the charges have been held to be proved under Rule 36 of the CISF Rules.

19. In response to the enquiry report furnished to the petitioner, a representation was submitted before the Commandment CISF Unit where the petitioner reiterated that because of the mental illness he had suffered and by reason of unsoundness of mind, he was incapable of knowing the nature of the act, or that what he was doing is either wrong contrary to law. It is further stated that because of the illness he suffered, he required treatment in the hospital for which he had admitted in the hospital. The disciplinary authority considered the enquiry report and gave detailed reasons arriving at his conclusion and agreeing with the findings of the enquiry officer and thereafter passed impugned order for imposing a punishment of removal of service with immediate effect in respect of the petitioner is concern. He was also given an opportunity to file an appeal, if so required. He was also held that he will not be entitled to any salary or allowances except subsistence allowances.

20. The Judgments pressed into service by the parties need to be referred to at this stage.

21. The learned counsel for the petitioner relies upon B.C. Chaturvedi Vs. Union of India and Ors., reported in (1995) 6 SCC 749 in support of his contentions. In this case, the Apex Court was examining disciplinary proceedings conducted against an Officer which resulted in imposition of punishment of dismissal from service. The Tribunal before whom this order was assailed after considering of the facts and circumstances of the case substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. The appellant therein was



working as an Income Tax Officer and an investigation was made by the CBI on the basis of evidence collected which disclosed that the appellant had assets disproportionate to his known sources of income although the evidence collected were not strong enough to lay prosecution under Section 5(1)(e) of the Prevention of Corruption Act, 1947, the competent authority decided to proceed against the appellant in a departmental enquiry. Charge-sheet was submitted and the enquiry officer conducted the enquiry and the report of the enquiry officer held that the charges to be proved against the appellant. After due consultation with the UPSC, the appellant was dismissed from service. The Tribunal after appreciating the evidence upheld all the charges as having been proved but converted the order of dismissal into one of compulsory retirement. The Apex Court after examining the issues involved although held that the Tribunal or High Court can appropriately mould the relief, however, came to the finding that the reasons on the basis of which the punishment of dismissal from service was alter to one of compulsory retirement to impose by the disciplinary authority are wholly unsupportable. The reasons were held to be not relevant or germane to modify the punishment. In view of the gravity of the misconduct, namely that the appellant was found to be in possession of assets disproportionate to the known sources of his income, the interference with the imposition of punishment was held to be unwarranted. The Apex Court held that although there is no provision parallel to Article 142 relating to the High Courts, it can be no ground to think that they have not to do complete justice and if moulding of relief would do complete justice between the parties, the same can be ordered as the High Court too can exercise power of order which inheres in every court of plenary jurisdiction the power to do complete justice. It held that

that the power of to do complete justice is not as wide as the Supreme Court under Article 142. The Apex Court held that where the punishment is disproportionate and shocks be conscience of the Court then it has its jurisdiction to modify the punishment or penalty by moulding the relief.

22. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in *Indian Express Newspaper (Bombay) Private Limited and Ors. Vs. Union of India & Ors.*, reported in AIR 1986 SC 515 in support its contention that arbitrariness comes within the embargo of Article 14 of the Constitution and therefore once it is shown that arbitrariness is present in conduct of any proceedings like the disciplinary proceedings then it is hit by Article 14. The relevant paragraphs are extracted below:

76. Prof. Alan Wharam in his article entitled "Judicial Control of Delegated Legislation: The Test of Reasonableness" in 36 Modern Law Review 611 at pp. 622-23 has summarised the present position in England as follows:

(i) It is possible that the courts might invalidate a statutory instrument on the grounds of unreasonableness or uncertainty, vagueness or arbitrariness; but the writer's view is that for all practical purposes such instruments must be read as forming part of the parent statute, subject only to the ultra vires test.

(ii) The courts are prepared to invalidate bye laws, or any other form of legislation, emanating from an elected, representative authority, on the grounds of unreasonableness. uncertainty or repugnance to the ordinary law: but they are reluctant to do so and will exercise their power only in clear cases.

*(iii) The courts may be readier to invalidate bye-laws passed by commercial undertakings under statutory power, although cases reported during the present century suggest that the distinction between elected authorities and commercial undertakings, as explained in *Kruse v. Johnson* [(1898) 2 QB 91 : 67 LJQB 782 : 78 LT 647 : 46 WR 630] might not now be applied so stringently.*

*(iv) As far as subordinate legislation of non-statutory origin is concerned, this is virtually obsolete, but it is clear from *In re French Protestant Hospital* [1951 Ch 567 : (1951) 1 All ER 938 (Ch D)] that it would be subject*

to strict control. [See also H.W.R. Wade: *Administrative Law* (5th Edn.) pp. 747-748.]

77. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

78. That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned has been held by this Court in *Tulsipur Sugar Co. Ltd. v. Notified Area Committee, Tulsipur* [(1980) 2 SCC 295 : AIR 1980 SC 882 : (1980) 2 SCR 1111] , *Rameshchandra Kachardas Porwal v. State of Maharashtra* [(1981) 2 SCC 722 : AIR 1981 SC 1127 : (1981) 2 SCR 866] and in *Bates v. Lord Hailsham of St. Marylebone* [(1972) 1 WLR 1373 : (1972) 1 All ER 1019 (Ch D)] . A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc, etc. On the facts and circumstances of a case, a subordinate legislation may be struck down a arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.

79. We do not, therefore, find much substance in the contention that the courts cannot at all exercise judicial control over the impugned notifications. In cases where the power vested in the Government is a power which has got to be exercised in the public interest, as it happens to be here, the Court may require the Government to exercise that power in a reasonable way in accordance with the spirit of the Constitution. The fact that a notification issued under Section 25(1) of the Customs Act, 1962 is required to be laid before Parliament under Section 159 thereof does not make any substantial difference as regards the jurisdiction of the Court to pronounce on its validity.



23. In so far as B.C. Chaturvedi (Supra) is concerned, there is no quarrel with the fact that the writ Court has the power to mould the relief. However, such power has to be exercised sparingly and on such facts as to the necessitate moulding of any such relief. The learned counsel for the petitioner has relied upon B.C. Chaturvedi (Supra) to counter the arguments of the learned counsel for the respondents that notwithstanding there being no specific challenge made to the impugned order or dismissal from service, the High Court has inherent power to mould the relief. There is absolutely no doubt that in a given case, the Courts have the power to mould the relief where required subject to such grounds being available In the facts of the present case the writ petition was filed in the year 2013 although the order of dismissal was an order passed in the year 2009 and it is submitted by the learned counsel for the petitioner that this order of dismissal was served to him later and therefore the counsel who had filed the writ petition by oversight did not challenge it. There is no need to dwell on this issue as the very disciplinary proceedings has been put under challenge. It is the considered view of this Court that if the Court ultimately comes to interfere with the disciplinary proceedings itself, then all consequential order(s) passed pursuant to such disciplinary proceedings will also have to be interfered with.

24. In so far as the *Indian Express Newspaper (Bombay) Private Limited* (Supra) is concerned, this Judgment has been pressed into service to support the contention of the petitioner that arbitrariness is within the ambit of Article 14 of the Constitution of India. This famous Judgment by a Full Bench of the Apex Court was dealing with the challenge made to a subordinate legislation. The challenge before the Apex Court was the imposition of import duty and the levy of auxiliary duty on news paper on



the ground of infringement of the freedom of press by imposing burden beyond the capacity of the industry and also affecting the circulation of the news papers and the periodicals. The Apex Court allowed the writ petitioner and made suitable order under Article 142 of the Constitution of India. The Apex Court held that freedom of press is the art of social and political intercourse and it is the primary duty of the Courts to uphold freedom of press and invalidate all laws or administrative actions which interfered with contrary to the Constitutional mandate. This Judgment is pressed into service by the learned counsel for the petitioner in support of his contention that where there is arbitrariness, Article 14 is violated and if required Courts are not powerless to render justice, is a salutary principle with which there can be absolutely no quarrel. However, the facts emanating from the present proceedings relate to disciplinary proceedings initiated against the petitioner for alleged misconduct committed by the petitioner during his service period. As such while this Court respectfully agrees and accepts the principle laid down by the Apex Court in *Indian Express Newspaper (Bombay) Private Limited* (Supra) and *B.C. Chaturvedi*(Supra), however, the same does not come to the aid of the petitioner in the facts and circumstances of the present case.

25. On the other hand, the learned counsel for the respondents has relied upon the recent judgment of the Apex Court in *Ex Sepoy Madan Prasad Vs. Union of India*, reported in 2023 LiveLaw (SC) 580; 2023 INSC 656 to support her contention that there can be no compromise on the discipline required to be maintained by a member of any armed force. The CISF being the armed force, the discipline required to be maintained by its member cannot be compromised. In the Judgment referred to by the learned counsel for the respondents, the Apex Court while examining an



appeal directed against the Judgment and order passed by the Armed Forces Tribunal. In *Ex Sepoy Madan Prasad (Supra)*, held that the discipline is the hall mark of the armed forces and a non-negotiable condition of service.

26. A reference to the statute and the Rules framed thereunder is necessary at this stage. The CISF was constituted by an Act of the Parliament under the CISF Act, 1968. Under Section 3 of the Act, it is provided that an armed force of the union to be called the CISF shall be constituted and maintained by the Central Government for better protection and security of industrial undertakings owned by the Government, Joint Venture or private industrial undertakings and to performed such other duties as may be entrusted to meet by the Central Government.

27. Under Section 7, the Superintendence of the force shall vest in the Central Government and subject thereto and subject to the provisions of the Act and the Rules made thereunder; the command, supervision and Administration on the force shall vest in the Director General.

Section 8 of the Act provides for dismissal, removal etc of the members of the force subject to the provisions of Article 311 of the Constitution of India and to such rules as the Central Government be made under this Act. Such dismissal or removal can be made by any supervisory officer empower.

Under Section 8(i), any supervisory officer may dismiss, remove, order of compulsory retirement or reduce in rank any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same.



Section 9 provides for an appeal and revision that may be preferred by any member of the Force aggrieved by an order made under section 8.

Under Section 15, the Officers and Members of the Force to be considered always on duty and liable to be employed anywhere in India.

Under Section 22 empowers the Central Government by notification in the Official Gazette to make Rules for carrying out the purposes under this Act.

In order to give effect to the Act, the CISF Rules, 2001 was published in the Official Gazette dated 05.11.2001.

Under Rule 32, the Disciplinary Authority in respect of an enrolled member of the Force have been specified as per Schedule-I appended to the Rules. Under the said Schedule-I for suspension, dismissal and removal of all enrolled members of the force except Inspector have been shown to be empowered by the Commandant.

Penalties are prescribed under Rule 34. Amongst the major penalty prescribed, dismissal from service which shall ordinarily be a disqualification for future employment under the Government is one of the penalties prescribed.

Under Rule 36, the procedure for imposing major penalties are prescribed. For imposing any of the major penalties prescribed under Clauses (i) to (v) of Rule 34, the same shall be made after inquiries to be held as per the procedure prescribed under the Rules.



Under Rule 36 (2) where the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct against an enrolled member of the Force, it may inquire into, or appoint an authority to inquire into the truth thereof.

Under Rule 36 (4), Disciplinary authority shall deliver or cause to be delivered to the enrolled member of the Force a copy of the articles of charge, the statement of imputations of misconduct or misbehavior and a list of documents and witnesses. Thereafter after receipt of the written statement of defence the disciplinary authority may under Rule 36 (5)(a) proceed to enquire the allegations into the allegations itself or appoint an enquiring authority not below the rank of inspector for the said purpose.

Under Rule 36(6) where the inquiring officer is appointed, the copy of the article of charge, the statement of imputation, copy of written statement, copy of the statement of witnesses, evidence shall be forwarded to the inquiring authority along with copy of the order appointing the presenting officer.

Under Rule 36(7), the enrolled member of the Force shall appear in person before the inquiring authority within ten working days from the date of receipt of article of charge.

Under Rule 36(8), the enrolled member of the Force so charged may be permitted by the inquiring authority to present his case with the assistance of any other member of the Force posted at the place of inquiry.

Under Rule 36(9), the inquiring authority shall ask the enrolled officer whether he is guilty or has any defence to make and if he pleads guilty to



any of the articles of charge, the enquiring authority shall record the pleas, sign the record and obtain the signature of the enrolled officer.

Under Rule 36(10), the inquiring authority shall return a finding of guilt in respect of those articles of charge to which the enrolled member of the Force pleads guilty.

Rule 36(18) prescribes the procedure under which the enquiry is to be conducted.

Under Rule 36(19), upon conclusion of the inquiry, a report shall be prepared which shall contain the article of charge, the defence of the enrolled member, assessment of evidence and the findings on each articles of charge and the reasons thereof. The inquiring officer shall forward the same to the disciplinary authority to finding the enquiry.

Under Rule 36(22) where the disciplinary authority having regard to its findings on all or any of the articles of charge on the basis of evidences adduced, is of the opinion that any major penalties specified under Rule 34 should be imposed, it shall make an order imposing such penalties and it shall not be necessary to give the enrolled member any opportunity of making representation on the penalty proposed to be imposed.

Under Rule 46, there is a provision for appeal to be filed by the member of the force against the penalty imposed.

Under Rule 5, any authority superior to the authority making the order may either on his own motion or otherwise call for the records of the inquiry and revise any order made under these rules and may confirm, modify or set aside the order.



28 Upon careful perusal of the CISF Rules of 2001, it is seen that the Rules of 2001 prescribes detailed procedures for conducting enquires and for imposition of punishments including major penalties. Before this Court, no procedural irregularity has been pleaded by the petitioner with specific reference to the Rules. The grievance of the petitioner is that the enquires was in violation of the settled principles of natural justice as the petitioner suffered from mental illness and was not recollecting any of the allegations made against him and if any such act was indeed committed by him then Under provisions of Section 84 IPC such acts cannot be considered to be offences committed by him. Therefore, the Enquiry Officer did not consider this aspect of the matter and failed to examine the treating medical doctor. Therefore the findings arrived at by the Enquiry officer and confirmed by the disciplinary authorities and the consequential orders of dismissal for punishment of removal from dismissal from service are essentially based on no evidence.

29. The law laid down by the Apex Court as regards Judicial Review of Disciplinary Proceedings is well established by a catena of Judgments rendered. In Pravin Kumar Vs. Union of India and Ors. reported in (2020) 9 SCC 471, the Apex Court while examining the matter pertaining to disciplinary proceedings conducted by the Department in respect of the member of an armed forces namely the CISF, held that criminal proceedings are distinct from civil proceedings. The charges in disciplinary proceedings are required to be established against the delinquent officer by adopting the principle of preponderance of probabilities. The Apex Court held that there is a distinction in the standard of proof required to be accepted between civil and criminal litigation. The Apex Court held that in a disciplinary enquiry, the strict rules or evidence and procedure of criminal



trial is inapplicable. In the said case, the department proceeded against the delinquent officer independently by way of a departmental proceedings against certain allegations which were under investigation by the CBI and during the departmental enquiry, no charge-sheet was filed by the CBI. The Apex Court went onto hold upon examining the entire matter that the appellant therein received fair treatment since he was granted opportunity to seek assistance of other officers, right of representation before each authority and multiple opportunities being granted to lead evidences, cross-examine witnesses, raising of objections and therefore negated the plea of violation of natural justice raised by the appellant therein.

30. In Deputy General Manager (Appellate Authority) and ors. vs. Ajai Kumar Srivastava, reported in (2021) 2 SCC 612, the Apex Court while examining the matter pertaining to departmental enquiry summarized the principles relating to exercise of judicial review by Constitutional Courts under Article 226 of the Constitution of India. The Apex Court held as under:

22. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of T.N. v. T.V. Venugopalan [State of T.N. v. T.V. Venugopalan, (1994) 6 SCC 302 : 1994 SCC (L&S) 1385] and later in State of T.N. v. A. Rajapandian [State of T.N. v. A. Rajapandian, (1995) 1 SCC 216 : 1995 SCC (L&S) 292] and further examined by the three-Judge Bench of this Court in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] wherein it has been held as under: (B.C. Chaturvedi case [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80], SCC pp. 759-60, para 13)

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court/tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, (1964) 4 SCR 718 : AIR 1964 SC 364] this Court held at SCR p. 728 (AIR p. 369, para 20) that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

24. *It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

25. *When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:*

- (i) whether the enquiry was held by the competent authority;*
- (ii) whether rules of natural justice are complied with;*
- (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.*

26. *It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record*

the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

27. *It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.*

28. *The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.*

31. The same view has been reiterated in another Judgment of the Apex Court in State of Karnataka and Anr. Vs. Umesh, reported in (2022) 6 SCC 563. The Apex Court in the said matter held that the Court does not act as an appellate forum over the findings of a disciplinary authority and does not re-appreciate evidence on the basis of which findings of misconduct have been arrived at in the course of disciplinary enquiry. The Apex Court held that the Court while exercising its jurisdiction under Article 226 of the Constitution in exercise of judicial review must restrict its review to determine whether (i) Rules of natural justice have been complied with; (ii) finding of misconduct based on some evidence; (iii) statutory rules governing conduct of disciplinary enquiry were followed; (iv) findings of



disciplinary authority suffer from perversity; and (v) penalty disproportionate to proved misconduct.

32. In the facts of the present case, as discussed above, the evidences adduced during the enquiry by the P.W. III, P.W.-VI, P.W.-X and P.W.-XI categorically supports the acts of misconduct alleged to have been committed by the petitioner. The enquiry report reveals that sufficient opportunities were granted to the petitioner to avail of defence assistance which was declined by the petitioner. Opportunities for cross examine the witnesses and/or examining the witnesses in respect of any documents placed were also declined by the petitioner on the ground that he was suffering from mental illness and did not recall any such acts. The medical documents enclosed to the writ petition in support of his contention that he was hospitalized and was required to undergo treatment did not reveal that the petitioner was suffering from mental illness. The medical findings of the treating doctor is that he was suffering from jaundice. In the writ petition there is an averment that the petitioner was undergoing regular treatment in his hometown as advised by the doctors in Assam Medical College and Hospital. However, no such medical certificate has been enclosed or produced before this Court even at the time of hearing that the petitioner was or had continued to suffer from any mental illness or disorder. No allegations of bias or personal malice has been alleged against any of the officers conducting the enquiry or the disciplinary proceedings. No defence witness in support of the petitioner was examined in spite of opportunities granted. There is no allegation that any of the provisions prescribed under the Act and the CISF Rules have been violated by the competent authority during the conduct of disciplinary proceedings and thereby grave prejudice was caused to the petitioner. The only plea raised by the petitioner is that



there was a violation of natural justice and he having suffered from mental illness, he did not recall any of the acts alleged to have been committed by him. This plea of the petitioner is belied by the evidences adduced during the Enquiry conduct as discussed above.

33. Under such circumstances, considering the principles laid down by the apex Court in respect of the limits of judicial review as regards disciplinary proceedings and in view of the discussions above, there is no merit in the writ petition.

34. The writ petition accordingly stands dismissed. No order as to costs.

35. Any pending interlocutory applications are also dismissed in view of the above.

JUDGE

Comparing Assistant