HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

SWP No. 16/2005

Reserved on: 01.12.2022
Pronounced on: 13.04.2023

Mohd. Ashraf Shah …..Appellant(s)/Petitioner(s)

Through: Mr. Ajay Sharma, Advocate.

VERSUS

Union of India and Ors. ….. Respondent(s)

Through: Mr. Suneel Malhotra, GA

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

J U D G M E N T

BRIEF FACTS:

01. The petitioner through the medium of the present writ petition has sought the following reliefs:

a. Writ in the nature of Certiorari quashing order No. R-XIII-12/2003-EC-III dated 28.11.2003 passed by respondent No. 3 in the appeal filed by the petitioner against order No.P-VIII-9/2001-EX-II dated 14.12.2022 passed by the respondent No.4, whereby, he has upheld the order of termination passed by respondent No. 4.
b. Certiorari quashing order No. P-VIII-9/01-ec/II dated 14.12.2002 passed by respondent No. 4, whereby services of the petitioner have been terminated arbitrarily, capriciously and without adhering to the service rules applicable to the petitioner.
c. Certiorari quashing the order of inquiry passed by respondent No. 4 vide his order bearing No. P-VIII-9/01-EC-II dated 23.09.2002, whereunder, inquiry was initiated against the petitioner for the charges on which the petitioner had already been punished and also for quashing all the proceedings taken in pursuance to order mentioned supra.
d. Mandamus commanding the respondents to reinstate the petitioner with all consequential service and monetary benefits from the date of his illegal removal from service.

ARGUMENTS ON BEHALF OF PETITIONER: -

02. The brief facts giving rise to the filing of instant petition are that the petitioner was enrolled as a Constable in the Central Reserve Police Force.

When the petitioner was posted in Assam, he was diagnosed as a case of 'Encephalitis Sequelae' by the Medical Officer, 22nd Bn CRPF and remained under treatment in the hospital w.e.f. 07.11.2001 to 20.11.2001. The petitioner was again admitted in the hospital on 24.11.2001 and discharged on 05.12.2001. It is further submitted that during the period of his absence with effect from 01.11.2001 to 10.12.2001 i.e. 39 days and with effect from 27.12.2001 to 28.12.2001 i.e. one day, the petitioner has remained under constant treatment and re-joined his duties after he recovered from medical ailment. The alleged absence from duty on the part of the petitioner was only because of the circumstances, which were beyond his control.

03. It has been further projected that he suffered from Encephalitis Sequelae (seizure) disorder. The petitioner had lost his control over his body completely for a long time. It was known to respondent No. 4 that the petitioner was suffering from mental ailment and was being treated for the same which is evident from the medical record annexed with the writ petition.

04. The further case of the petitioner is that petitioner was enrolled as Constable in CRPF and was diagnosed as a case of Encephalitic Sequelae (seizure disorder) by Medical Officer 22nd Bn CRPF and remained admitted w.e.f. 16.07.2000 to 17.08.2000 and w.e.f. 07.09.2000 to 29.09.2000.

05. It is further urged by the petitioner that vide MRD 311, he remained under treatment for the aforesaid disease in the hospital w.e.f. 07.11.2001 to 20.11.2001. The said fact is evident from discharge slip issued by the Health Department Kashmir Division along with the investigations and treatment sheet and he further remained admitted on 24.11.2001 and discharged on

05.12.2001, which fact is substantiated from the perusal of discharge slip issued by the J&K Government Health Department, Kashmir Division MRD No. 416.

06. Further stand of the petitioner is that during the period of absence without leave w.e.f. 01.11.2001 to 10.12.2001 for 39 days and w.e.f. 27.12.2001 to 28.12.2001 for 01 day, he was under constant treatment and re-joined his duties after he recovered from medical ailment. The alleged absence from duty is the solitary lapse on the part of the petitioner and because of the circumstances which were beyond his control.

07. It is further pleaded by the petitioner that Commandant 22nd Bn CRPF ordered departmental enquiry for the alleged absence from duty of the petitioner under Rule 27 of CRPF Rules, 1955, read with Section 11(c) of CRPF Act, 1949 and accordingly, appointed Sh. B. K. Toppo, Deputy Commandant as Enquiry Officer to enquire into the charges framed against the petitioner. The said commandant also appointed another Enquiry Officer, namely, Sh. A. N. Biswas, Deputy Commandant. The said office order was served upon the petitioner at Anantnag.

08. It has been further averred by the petitioner that while he was suffering from mental disease, absented himself from duties for some days and soon after he gained senses, he went to join duties but the respondent No. 4 put the petitioner under suspension and ordered inquiry against him for the offence of desertion.

09. The further case of the petitioner is that the enquiry was directed to be conducted against the petitioner by the then, Commandant 22nd Bn, CRPF vide No. P.VIII-9/01-EC-II dated 06.02.2002. However, the said

Commandant even prior to holding of inquiry, revoked the suspension of the petitioner and the petitioner was served with memorandum of following Articles of charge vide No. P-VILI-9/01-EC-II dated 29. 12.2001:

> **ARTICLE-I:**
>
> ***"That the said No. 983360335 CT Mohd Ashraf Shah of 22 BN, CRPF unit posted as such committed an offence of misconduct in his capacity as a member of the force under section II(I) of CRPF Act, 1949, in that he was given movement order on 1/11/01(FN) for BH-III, CRPF, Guwahati for treatment, but he failed to report to BH-III, CRPF, Guwahati and deserted enroute. He reported at unit HQ/22BN,CRPF at his own on 10/12/2001 (FN) by absenting himself for 39 days without prior permission of competent authority which is prejudicial to the good order and discipline of the Force." &***
>
> **ARTICLE-II:**
>
> ***"That the said No. 983360335 CT Mohd. Ashraf Shah of D/22 BN, CRPF while posted as which committee an offence of misconduct in his capacity as a Member of the Force under section II(I) of CRPF Act, 1949, in that he desired From HQ/22 BN. CRPF copy lines on 27.12.2001 at about 0615 hours without prior permission of the competent authority without caring that the unit is deployed in the most terrorist infested area. He reported at the unit HQ at his own 28.12.2001 at 1600 hours which is prejudicial to the good order and discipline of the force."***

10. It is further pleaded by the petitioner that the enquiry was conducted against him at a time when the petitioner was suffering from mental ailment and he was not in a position to defend himself and ultimately the inquiry was completed and the respondent No. 4 (disciplinary authority) on the basis of inquiry report, awarded punishment of "removal from service" and the period of alleged desertion was treated as "*Dies Non*."

11. It is further urged by the learned counsel for the petitioner Mr. Ajay Sharma that the petitioner filed an appeal against order of punishment to the appellate authority and the appellate authority has dismissed the appeal filed by the

petitioner and confirmed the order of Commandant issued vide his order dated 28.11.2003. The order passed by the appellate authority was received by the petitioner after a considerable time.

12. The specific stand of the petitioner is that the petitioner was serving in Para-Military Force, he remained target of anti -social and antinational elements. He was even abducted by militants from his place of residence when he was at his home on leave in the year 1999-2000, an FIR was also registered about his abduction in the local Police Station. After his release, when he went back to his Unit, the proceedings on account of unauthorized absence were revoked after he produced the copy of FIR. Since then, the petitioner and his family had to migrate from his native village and had to live at one place or the other to save himself and his family from the brunt of militants. Though the petitioner belonging to Kashmir province, however, has filed the writ petition at Jammu due to this threat perception.

13. The further case of the petitioner is that the order of appointment of enquiry officer is arbitrary inasmuch as the same has been passed without recording satisfaction, which was mandatory requirement under the relevant Act of the CRPF, as such, prayed that the order of removal from service is liable to be set aside.

14. Further stand of the petitioner is that the petitioner has not pleaded guilty during the course of so called enquiry as alleged in the orders impugned, as such, the charges were vehemently denied. There was no evidence that the petitioner deserted from the force, whereas on the other hand, there were ample proof of the facts that the petitioner due to his ill health and serious mental ailment could not join the duties and as soon as he gained senses, he

rushed to join the duties. The charges have not been proved during the so-called inquiry.

15. The main ground of challenge of the petitioner is that section 11 of CRPF Act, provides for minor punishment and the punishment of removal from service cannot be awarded to a person under the provisions of section-11 (Sub-section 1) as the same is a major punishment. A plain reading of the section makes it clear that in lieu of or in addition to suspension or the punishment of removal from service, some other punishment can be awarded only in case the subject is found guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the force. Otherwise, the facts and circumstances of the case and even the charges leveled against the petitioner at the best **establish the offence of unauthorized absence** from service as provided under Section 10(m) and is not desertion as provided under section 9(f). Thus, the offence is clearly a minor one and punishment of removal from service is totally disproportionate to the gravity of offence.

16. Feeling aggrieved of the same, the petitioner through the medium of the present writ petition has called in question the order impugned dated 28.11.2003 by virtue of which, the appeal filed by the petitioner against the order of termination dated 14.12.2002 passed by respondent No. 4, against the petitioner, has been upheld by the respondent No. 3. Besides, petitioner has also called in question the order passed by the respondent No. 4, whereby services of the petitioner have been terminated arbitrarily, capriciously and without adhering to the service rule applicable to the petitioner. The petitioner has also called in question the enquiry initiated by respondent

No. 4 vide order dated 23.09.2002, with a further direction against the respondent to reinstate the petitioner with all consequential benefits.

OBJECTIONS ON BEHALF OF RESPONDENTS: -

17. Objections have been filed by the respondents, in which it is stated that the petitioner was tried departmentally vide memorandum No. P-VIII.9/2001-EC.II dated 29.12.2001 and Mr. A. N. Biswas D/C of the Unit was appointed as enquiry officer. The enquiry officer conducted the enquiry in accordance with the provisions of rules and instructions. The articles of charges framed against the petitioner were proved on the basis of documents and evidence adduced during the course of enquiry. On the basis of the report of enquiry officer, the then Commandant 22nd Bn being the Disciplinary Authority of CRPF has awarded the punishment of removal from service with effect from 14.12.2002 vide office order No. P/VIII.9/2001.EC.II dated 14.12.2002. Thereafter the petitioner had preferred an appeal to the appellate authority which was rejected by the DIGP, CRPF, Jammu vide its office order dated 28.11.2003.

18. The further stand of the respondents in the objections is that the petitioner himself admitted that he has participated in the enquiry from beginning to end and had availed the ample opportunity for his defence. Further as per medical documents submitted by the petitioner in his defence, it was evident that he was declared fit for light duties and the plea taken by the petitioner that he was in mental disorder during the course of enquiry is not tenable as he was given best available treatment and was declared fit for duty. Therefore, the punishment awarded to the petitioner is very well covered under Section 11(1) of CRPF Act, 1949.

19. The further stand of the respondents in the objections is that though the enquiry was ordered by the then Commandant 22nd Bn, CRPF on 29.12.2001 and was in progress even after his transfer from the Unit. The Enquiry Officer has submitted the departmental proceedings vide his memo dated 04.11.2002, when Mr. V. P. Shukla was holding the charge of Commandant 22nd Bn CRPF. Thus, the enquiry proceeding were never dropped and the procedure in completion of enquiry adopted was strictly in conformity with the rules and instructions on the subject.

20. It is further submitted by the respondents that the petitioner has not adopted proper channel for submission of his request under the provision of Rule 29 of CRFP Act, 1949, the petitioner ought to have preferred a revision petition to the competent authority when his appeal has been rejected by the appellate authority but the petitioner in this matter failed to do so and crossed that channel. Hence, his petition may be rejected.

21. It is further submitted by the respondents in their objections that none of the grounds stated in the original petition is tenable. The enquiry report is based on facts, material evidence and other relevant facts. The departmental enquiry has been held on specific charges and after affording him all the opportunities for defence, he has been found guilty and in fact, the petitioner has admitted that he has deserted enroute while he was proceeding to BH-III, Guwahati and then again repeated the same offence.

22. That the enquiry report was examined thoroughly and it was decided to impose on the petitioner a penalty consistent with the guilt. None of the actions of the respondent is either illegal or violative of any Article of the

Constitution of India as alleged. The writ petition therefore, totally lack merits and is liable to be dismissed.

23. The petitioner has also filed a detailed rejoinder affidavit to rebut the stand taken by the respondents in the counter affidavit. It has been stated in the rejoinder affidavit that as per the official medical record, the petitioner was referred to Civil Hospital, District Barpeta, Assam. Thereafter on 16.07.2000, the petitioner was referred to GMC, Hospital Guwahati and remained admitted w.e.f. 16.07.2000 to 30.08.2000 and during hospitalization, the petitioner developed neck rigidity and multiple compulsions and remained in the state of coma for about 10 days. The petitioner has denied that the enquiry officer conducted the enquiry in accordance with the provisions of Rules and instructions. It is further submitted that when the department has treated the period of absence from duty as *dies non*, the presumption would be that the absence period has been regularized and if it is regularized the question of imposing punishment by treating the delinquent absence would not arise. It is further contended that in the present case, the petitioner has not been charged either under Section 9 or 10 of the CRPF Act, 1949, in particular when the alleged offences are covered under Sections 9(f) and 10(m) of the Act, the procedure as laid down in Rule 36 of the CRPF Rules was not followed and instead the respondents have fallen back on the provisions of Section 11, which envisages minor punishment. As a matter of fact, the punishment of removal from service is not a minor punishment.

24. Besides, the petitioner has taken other pleas, which are not pleaded in the writ petition. It is pertinent to mention here that the **petitioner cannot be**

permitted to raise a new plea under the garb of filing rejoinder affidavit, or to take a plea inconsistent to the pleas taken by him in the petition. The petitioner can't be permitted to take altogether new stand by way of rejoinder affidavit which the petitioner has failed to take in the main petition nor he can be allowed to improve upon his case by filing rejoinder affidavit which the petitioner has missed while filing the main petition.

25. Learned counsel for the petitioner, Mr. Ajay Sharma submits that the Disciplinary Authority and the appellate authority have not considered the medical documents submitted by the petitioner with respect to the alleged absence period of 39 days and 01 day respectively while considering the case of the petitioner. The finding of the enquiry officer to the effect that the petitioner has produced some medical documents runs contrary to the finding returned at para 10. It is further submitted that the departmental enquiry conducted against the petitioner is in violation of Rule 27(c) of CRPF Rules, which provides for procedure for conducting departmental enquiry and during enquiry, the petitioner was not allowed to inspect the documents relied upon in support of the charge, as envisaged in Rule 27 (c)(3). He further submitted that the petitioner was not examined nor his statement was recorded by the enquiry officer.

26. Learned counsel for the petitioner further argued that the petitioner has rendered five year unblemished service and for a single act of alleged absence for a period of 39 days and 1 day, which was neither willful nor intentional but because of serious mental ailment, was awarded punishment of removal from service which is shockingly disproportionate to the charge.

27. ***Per contra***, Mr. Suneel Malhotra, learned GA submitted that the petitioner remained unauthorized absent from duty without prior permission from the competent authority. A departmental enquiry for this misconduct of petitioner, who, at the relevant time, was deployed in the most terrorist infested area, was held on specific charges and after affording the petitioner all the opportunities for defence, he has been found guilty. After conclusion of the inquiry, punishment of removal from service was passed against him. The petitioner preferred an appeal against the order of his removal from service before the appellate authority and the appellate authority has dismissed the appeal and upheld the order on merits and accordingly submitted that this petition is without merit and is liable to be dismissed.

LEGAL ANALYSIS

28. At the outset it would be desirable rather pragmatic to deal with the primary contention i.e. **Whether the punishment is disproportionate to the charge framed**.

29. The petitioner rendered 5 years of unblemished service and was terminated from his services for a single act of alleged absence for a period of 39 days and 1 day, which was neither willful nor intentional but because of serious mental ailment. The petitioner has been awarded a punishment of removal from service which is disproportionate to the charge, as per the Articles of Charge, the petitioner has been charged with absenting himself from service for 39 days w.e.f. 27.12.2001 to 28.12.2001, without prior permission of the competent authority and for desertion of 01 day w.e.f. 27.12.2001 to 28.12.2001. The alleged offences come under the ambit of Section 9(f) and

Section 10(n) & (q) of the Central Reserve Police Force Act, 1949. For the reference, the relevant sections are reproduced below: -

> "**9**. Every member of the force who -
> *(f) deserts the Force;*
> **10.** Every member of the force who -
> *(n) absent himself without leave, or without sufficient cause overstays leave granted to him:*
> *The punishment for the offence of desertion has been provided under Section 10(q) as:*
> *(q) commits any of the offences specified in clauses (e) to (1) (both inclusive) of section 9, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months pay, or with both."*

29. Rule 31 of the CRPF Rules 1955, also deals with the issue of desertion and unauthorized absence, for reference it is reproduced as below: -

> "**31**. **Desertion and Absence without leave**
>
> (a) *If a member of the Force who becomes liable for trail under clause (f) of Section 9, or clause (m) of section 10 or for deserting the Force while not on active duty under clause (p) of section 10 read with clause (f) of Section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayal of leave, then the Commandant shall assemble a Court of Inquiry consisting of at least one Gazetted Officer and two other members who shall be either superior or subordinate officers to inquire into the desertion, absence or overstayal of leave of the offender and such other matters as may be brought before them. (b) The Court of Inquiry shall record evidence and its findings. The Court's record shall be admissible in evidence in any subsequent proceedings taken against the absentee. (c) The Commandant shall then publish in the Force Order the findings of the Court of Enquiry and the absentee shall be declared a deserter from the Force from the date of his illegal absence, but he shall not thereby cease to belong to the Force. This shall, however, be no bar to enlisting another man in the place of a deserter."*

30. From the perusal of the record it is evident that the petitioner was held liable for desertion for one day and unauthorized absence for 39 days, thereafter he

returned to his services out of his free will. On a bare perusal of Rule 31, it is clear that such a person shall not cease to belonging to the Force.

31. Reliance is placed on the decision of the Supreme Court in **Capt. Virendra Kumar v. The Chief of the Army Staff. New Delhi and Ors. 1986 (1) Services Law Reporter 422**, it has been contended that, "***provisions of Sections 38 and 39 of Army Act are akin to that of Sections 9 and 10 of the present Act. In this decision the Supreme Court has clarified the word 'desertion' and has explained that it would mean that an employee who had not come to join his service. According to the learned Counsel for the petitioner, since the petitioner himself appeared in the Unit on 28.12.2001, therefore, he cannot be said to be a deserter."***

32. In light of the provisions of law stated above coupled with the judicial pronouncements, it can be validly be said that the **punishment is disproportionate to the alleged charge and is not warranted by the law**.

Reliance is placed on **Bhagwan Lal Arya Vs. Commis*sioner* of Police, Delhi and Ors,** reported in **2004 SCSR 632,** where it is held that:-

> ***"We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the Disciplinary Authority inflicting a penalty of removal from service is ultra vires of Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeals Rules, 1980) and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of not only he but his entire family totally dependant on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the Disciplinary Authority is to be set aside.***

The Disciplinary Authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of appellant's service under Temporary Service Rules did not materialize. No reasonable Disciplinary Authority would term absence on medical grounds with proper medical certificates from government Doctors as grave misconduct in terms of Delhi Police (Punishment & Appeal Rules, 1980). Non-application of mind by quasi-judicial authorities can be seen in this case. The very fact that respondents have asked the appellant for re-medical clearly establishes that they had received applicant's application with medical certificate. This can never be termed as willful absence without any information to competent authority and can never be termed as grave misconduct.

Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the Disciplinary Authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated upto the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spend on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

33.I am also fortified by the view of Hon'ble Supreme Court of India in **Ranjit Thakur Vs. Union Of India And Ors,** reported in **1987 AIR 2386**, wherein, it was held that: -

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the

conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. All powers have legal limits.

It would be pertinent to refer to the judgment of the division bench of the Allahabad High court tilted Board of basic education v. Arvind Prakash Dwivedi special appeal defective no. 898/2020, wherein it was observed that the government authorities must be quite sensitive while imposing the severe punishment of dismissal as a consequence to disciplinary action.

The Division Bench has, in the impugned Order, relied upon the authority of this Court in the case of Bhagat Ram v. State of H.P. reported in AIR 1983 SC 454, for proposition that the penalty must be commensurate with the gravity of mis-conduct and that any penalty disproportionate to the gravity of mis-conduct would be violative of Article 14 of the Constitution. To be noted that this case was not under the Army Act, but in respect of a civil servant.

The act committed by the petitioner warranted a minor punishment but he was inflicted with a major punishment which is clearly in contravention of the provisions of the law and the precedents laid out by the Apex Court."

34. Further, Supreme Court of India in **Union of India and Ors. Vs. Giriraj Sharma** decided on **17th March, 1993,** reported in **AIR 1994 SC 215** has held as under: -

"We are of the opinion that the punishment of dismissal for over-staying the period of 12 days in the said circumstances which have not been contravened in the counter is harsh since the circumstances show that it was not his intention to willfully flout the order, but the circumstances force him to do so. In that view of the matter the learned Counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty. If they so desired, but a major penalty of dismissal from service was not called for We agree with this submission."

35. Further, Supreme Court of India in **Bhagwan Lal Arya Vs. Commissioner of Police Delhi,** reported in **2004 AIR(SC) SC 2131** has held as under: -

"We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the Disciplinary Authority inflicting a penalty of removal from service is ultra vires of Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeals Rules, 1980) and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of not only he but his entire family totally dependant on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the Disciplinary Authority is to be set aside.

Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the Disciplinary Authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated upto the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spend on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

36.The Hon'ble Supreme Court in the decision reported in **Chett Singh vs. M.G.B Gramin Bank, Pali**, reported in **2015(1) SCC L&S 251** held that, ***"if the absence is not willful the extreme penalty of dismissal of a person from service shall not be imposed."***

37. In yet another case, Hon'ble Supreme Court of India in **Krushnakant B, Parmar vs Union of India & Anr**., decided on 15th February, 2012 has held that: -

> ***"Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.***
> ***In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the Disciplinary Authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct."***

38. In light of the facts of the instant case, wherein, it clearly provided that the petitioner was absent from his duties owing to his mental sickness and, as such, his absence cannot be called willful or intentional. There is ample evidence on record to show that the petitioner was suffering from mental sickness and was admitted in various hospitals for the treatment and as soon as the petitioner regained his mental health, he rejoined his duties.

39. Therefore, in light of the facts stated, arguments advanced and the judicial precedents cited, **I hold that the punishment awarded was disproportionate to the gravity of the alleged offence of the petitioner and needs to be quashed**.

40. Another contention that needs to be dealt with in the present case is the enquiry process conducted by the respondents.

On the perusal of the record, it is apparent that **the enquiry was conducted in contravention of the Rule 27(c) of CRPF Rules, 1955**, which is reproduced below for reference: -

"(c) The procedure for conducting a departmental enquiry shall be as follows:-

(1) The substance of the accusation shall be reduced to the form of a written charge which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of Guilty or Not Guilty after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral:

(i) it shall be direct:

(ii) it shall be recorded by the Offer conducting, the enquiry himself in the presence of the accused:

(iii) the accused shall be allowed to cross examine the witnesses.

(3) When documents are relied upon in support of the charge, they shall be put in evidence as exhibits and the accused shall, before he is called upon to make his defence be allowed to inspect such exhibits.

(4) The accused shall then be examined and his statement recorded by the officer conducting the enquiry. If he accused has pleaded guilty and does not challenge the evidence on record, the proceedings shall be closed for orders. If he pleads "Not guilty". he shall be required to file a written statement and a list of such witnesses as he may wish to cite in his defence within such period, which shall in any case be not less than a fortnight, as the officer conducting enquiry may deem reasonable in the circumstances of the case. If he declines to file a written statement, he shall again be examined by the officer conducting the enquiry on the expiry of the period allowed.

(5) If the accused refuses to cite any witnesses or to produce any evidence in his defence, the proceedings shall be closed for orders. If he produces any evidence the officer conducting the enquiry shall proceed to record the evidence. If the officer conducting the enquiry considers that the evidence of any witness or any document which the accused wants to produce in his defence is not material to the issues involved in the case he may refuse to call such witness or to allow such document to be produced in evidence, but in all such cases he must briefly record his reasons for considering the evidence inadmissible. When all relevant evidence has been brought on record, the proceedings shall be closed for orders.

(6) If the Commandant has himself held the enquiry, he shall record his findings and pass orders where he has power to do so. If the enquiry has been held by any officer other than the Commandant, the officer conducting the enquiry shall forward

his report together with the proceedings to the Commandant who shall record his findings and pass order where he has power to do so."

41. It is pertinent to mention here that neither the petitioner was examined, nor his statement was recorded by the enquiry officer. The petitioner was made to face the enquiry at the time when he was ailing under serious mental ailment and was not in a position to understand the consequences of his actions. The petitioner was not given a chance to be defended by a counsel.

42. Further, the Apex Court in **Mohammad Yunus Khan v. State of Uttar Pradesh and Ors.,** reported in **(2010) 10 SCC 539**, has held that: -

"***We have to proceed keeping in mind the trite law that holding disciplinary proceedings against a government employee and imposing a punishment on his being found guilty of misconduct under the statutory rules is in the nature of quasi-judicial proceedings. Though the technical rules of procedure contained in the Code of Civil Procedure, 1908 and the provisions of the Evidence Act, 1872 do not apply in a domestic enquiry, however, the principles of natural justice require to be observed strictly. Therefore, the enquiry is to be conducted fairly and reasonably and the enquiry report must contain reasons for reaching the conclusion that the charge framed against the delinquent stood proved against him. It cannot be an ipse dixit of the enquiry officer. Punishment for misconduct can be imposed in consonance with the statutory rules and principles of natural justice. (See Bachhittar Singh v. State of Punjab [AIR 1963 SC 395], Union of India v. H.C. Goel [AIR 1964 SC 364], Anil Kumar v. Presiding Officer [(1985) 3 SCC 378: 1985 SCC (L&S) 815 : AIR 1985 SC 1121], Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] and Union of India v. Prakash Kumar Tandon [(2009) 2 SCC 541 : (2009) 1 SCC (L&S) 394] .)***

Also, the requirements of morale, discipline and justice have to be reconciled. There is no scarcity of examples in history, and we see it in day-to-day life also, that even in disciplined forces, forced morale and discipline without assured justice breeds defiance and belligerency. Our Constitution protects not only the life and liberty but also the dignity of every person. Life convicts and hardcore criminals deprived of personal liberty are also not wholly denuded of their constitutional rights. Arbitrariness is an anathema to the principles of reasonableness and fairness enshrined in our constitutional provisions. The rule of law prohibits the exercise of power in an arbitrary manner and/or in a manner that travels beyond the

> ***boundaries of reasonableness. Thus, a statutory authority is not permitted to act whimsically/arbitrarily. Its actions should be guided by the principles of reasonableness and fairness. The authority cannot be permitted to abuse the law or to use it unfairly."***

43. The petitioner further contended that there wasn't fairness in the appointment of the presenting officer and, as such, no presenting officer was appointed. Reliance is placed upon the judgment passed by the Supreme Court in **Salam Kosho Singh Vs. State of Manipur & Ors:,** reported in **2011 (1) GLT 287**, wherein it was held that: -

> ***"In the present case, there is no dispute that no Presenting Officer was appointed. This fact is confirmed from the relevant record of the disciplinary proceeding produced by add the learned senior Govt. Advocate. It is well settled that an Enquiry Officer cannot assume the role of a Judge and also a Prosecutor. Even if the relevant service rules is silent about the appointment of a Presenting Officer, absence of a Presenting Officer will make the enquiry totally vitiated as the Enquiry Officer cannot be allowed to assume the role a Judge as well as a prosecutor. In this connection, we may refer to various decisions of this Court, such as Dr. Raja Mallu Buzar Barua Vs. Assam Administrative Tribunal & Ors. : 1983 (1) GLR (NOC) 71, Chelfrumog Vs. State of Tripura & Ors. : 2002 (2) GLR 604, Baharul Islam (CT) Vs. Union of India & Ors. 2001 (1) GLT 621, State of Manipur & Ors. Vs. Chongtham Homendro Singh : 2005 (3) GLT 154. In Kumar Madal Vikar Nigam Limited Vs. Giriya Shankar Pant & Ors. (2001) 1 SCC 182, the Apex Court held the same effect. In the State of U.P. & Ors. Vs. Saroj Kumar Sinha: (2010) 2 SCC 772, the Hon'ble Apex Court held to the effect that an Enquiry Officer acting in a quasi-judicial authority is in a position of an independent adjudicator, and as such, he is not supposed to be a representative of the department/Disciplinary Authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved."***

44. In the present case also, no presenting officer was appointed by the authority in connection with the said enquiry. The petitioner was not given any opportunity to appoint his Defence Assistance. No notice was issued to him before imposition of penalty against him. In view of the above, the impugned

orders passed by the Enquiry Officer and the order passed by the Appellate Authority are liable to be set aside.

45. The Patna High Court in **Sudhanshu Shekhar Deo vs The Union Of India & Ors.** on 25th July, 2013 has been pleased to observe as under: -

> ***"Moreover, since Rule 27 is silent on the point of appointment of Presenting Officer, in view of Rule 102 of the C.R.P.F. Rules one can take aid of C.C.S. Rules for compliance of principle of natural justice in a departmental proceeding.***
> ***102. Other conditions of service. - The conditions of service of members of the Force in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of India of corresponding status."***
> ***On perusal of Rule 27 and 102 of the C.R.P.F. Rules, the court is of the opinion that by taking recourse to Rule 102 of the C.R.P.F. Rules, as quoted above, even in a case of departmental enquiry in relation to members of C.R.P.F., for fair and independent departmental enquiry, aid of Rules prescribed for imposing major penalties under C.C.S. Rules can be taken.***
> ***At this juncture it would be appropriate to quote Rule 14(5)(c); 14(6); 14(14) and 14(19) of the C.C.S. Rules, which are as follows:-***
>
> > ***"14(5)(c) Where the Disciplinary Authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge."***
> > ***14(6) The Disciplinary Authority shall, where it is not the inquiring authority, forward to the inquiring authority -***
> >
> > > ***(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;***
> > > ***(ii) a copy of the written statement of defence, if any, submitted by the Government servant;***
> > > ***(iii) a copy of the statements of witnesses, if any, referred to in sub-rule(3);***
> > > ***(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and***
> > > ***(V) a copy of the order appointing the "Presenting Officer".***
> >
> > ***14(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are***

> ***proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses shall be examined by or on behalf of the Government servant.***
> ***The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross - examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.***
> ***14(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant or permit them to file written briefs of their respective case, if they so desire."***
> ***On perusal of aforesaid C.C.S. Rules, it is evident that in case of imposing major punishments/penalties in a departmental proceeding appointment of Presenting Officer is a must. Since in the departmental proceeding which has concluded against the petitioner no Presenting Officer was appointed, the entire departmental proceeding is not sustainable in the eye of law.***
> ***The authorities of the C.R.P.F. have itself issued order as prescribing for providing Defence Assistant in a case of departmental proceeding against non-gazetted employees and in the present case it was not provided, on this count also the departmental proceeding vitiates.***
> ***The provision of providing an opportunity to have a defence assistant is a part of natural justice. It is well settled principle that everyman doesn't have the ability to defend himself. He can't bring out a point in his favour or weakness in the other side.***
> ***He may be tongue-tied or nervous or wanting in intelligence. He can't examine or cross examine witnesses. If justice is to be done, he ought to have help of someone to speak for him. This is how Lord Denning thought in Pett vs. Greyhound Racing Association (1968) 2 WLR 1411."***

46. Thus, in the light of the aforesaid settled legal proposition, I hold that, "**in case of imposing major punishment in departmental proceedings, appointment of presenting officer is must"**. Admittedly, in the present case, no presenting officer was appointed, the entire departmental proceedings get vitiated and are liable to be set aside.

47. The Disciplinary Authority and the Appellate Authority have not considered the medical documents submitted by the petitioner with respect to the alleged

absence period from 39 days and 01 day, respectively. **The finding of the enquiry officer at para 14 of the enquiry report to the effect that the petitioner has produced some medical documents runs contrary to the findings recorded at para 10 of the said report.**

48. From the record, it appears that, pursuant to the representation submitted by the petitioner, the Disciplinary Authority while issuing impugned order of removal from service has mentioned that, "the enquiry officer has considered medical documents submitted by the petitioners and this aspect of the matter was not considered by the Disciplinary Authority, as well."

49. The appellate authority has not considered the medical documents while passing the order, which is evident from the impugned order dated 28.11.2003, wherein, reference has been made that as per medical documents submitted by the petitioner, he was declared fit for light duty w.e.f. 26.01.2002. Thus, on this account alone, the impugned departmental proceedings get vitiated. Further in **Allahabad Bank and Ors. Vs. Krishna Narayan Tewari,** reported in **2017 AIR (SC) 330,** the Hon'ble Supreme Court has held as under**: -**

> ***"We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are***

> ***justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority."***

50. The departmental enquiry conducted against the petitioner is in violation of Rule 27(c) of the CRPF Rules, which provides the procedure for conducting departmental enquiry. During enquiry, the petitioner was not allowed to inspect the documents relied upon in support of the charge, as envisaged in Rule 27(c)(3). The petitioner was not examined nor his statement was recorded by the enquiry officer, which is in violation of Rule 27(4). Further it is on record that the medical documents were submitted by the petitioner during departmental enquiry proceedings, but the same were not considered by the enquiry officer, which is in violation of Rule 27(c)(5) and, thus, on this count, the impugned enquiry proceedings are vitiated.

51. Thus, the principle of bias comes into play where the enquiry officer himself led the "**examination in chief**" of the prosecution witness by putting questions. The enquiry officer in all fairness has to be independent and not representative of the Disciplinary Authority if starts acting in any other capacity and proceed to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place. I am fortified by the law laid down by the Apex Court in case titled **Union of India and others Vs. Ram Lakhan Sharma,** reported in **2018(7) SCC 670**, relevant are para 27, 32 and 33, which are reproduced as below: -

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

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

32. The Division Bench after elaborately considering the issue summarized the principles in paragraph 16 which is to the following effect:

"16. We may summarize the principles thus:

(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.

(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognized that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the

present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may."

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

7. Action on the enquiry report.—(1) The Disciplinary Authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall thereupon proceed to hold the further enquiry according to the provisions of Regulation 6 as far as may be.

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

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

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

52. Thus, the next question which arises for consideration in the present case is

"**Whether the unauthorized absence amounts to misconduct even if the**

Disciplinary Authority failed to prove that the absence from duty was not willful."

53. From the perusal of the record and also the enquiry report, it is manifestly clear that the Disciplinary Authority has failed to prove that the absence of the petitioner from the duty was not willful and in absence of any such finding, the absence in the present case will not amount to misconduct as alleged by the respondents.

54. I am fortified with the view of the Hon'ble Supreme Court in case titled **Krushnakant B. Parmar Vs. Union of India and another, 2012(3) SCC 178**, relevant are paras 16, 18, 22 and 25, which are reproduced as below: -

> ***"16. The question whether `unauthorized absence from duty' amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.***
>
> ***18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.***
>
> ***22. In the present case, the Disciplinary Authority failed to prove that the absence from duty was willful, no such finding has been given by the Inquiry Officer or the Appellate Authority.***
>
> ***25. In the result, the appeal is allowed. The impugned orders of dismissal passed by Disciplinary Authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside."***

55. Even there is no allegation in the article of charges that the petitioner ever deserted the Force willfully or intentionally for the period of 39 days and 01

day respectively w.e.f. 01.11.2001 to 10.12.2001 and 27.12.2001 to 28.12.2001.There is no finding recorded either by the enquiry officer or by the disciplinary authority or by appellate authority that the petitioner deserted the Force willfully or intentionally.

In absence of any such finding, **I hold that the desertion does not amount to misconduct in the present case.** In this regard, I place reliance on the judgment passed by the Hon'ble Supreme Court in **Chhel Singh Vs. M.G.B. Gramin Bank Pali and Ors.,** reported in **2015 AIR(SC) 598**, relevant is para 15, which is reproduced as under: -

> ***15. From the plain reading of the charges we find that the main allegation is absence from duty from 11.12.89 to 24.10.90 (approximately 10 and ½ months), for which no prior permission was obtained from the competent authority. In his reply, the appellant has taken the plea that he was seriously ill between 11.12.89 and 24.10.90, which was beyond his control; he never intended to contravene any of the provisions of the service regulations. He submitted the copies of medical certificates issued by Doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. There was no allegation that the appellant's unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant's absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason and on the ground of 24 days delay.***

56.I have perused the record minutely and also the stand taken by the petitioner in the rejoinder affidavit and, accordingly, I am of the view **that the departmental enquiry conducted against the petitioner is in violation of Rule 27(c) of the Central Reserve Police Force Rules**, which provides complete procedure for conducting departmental enquiry. During enquiry

proceedings, the charge was not read out to the petitioner by the enquiry officer and instead, has explained the charges on 30.09.2012 at the time of commencement of the enquiry and, thus, the action of the enquiry officer suffer from procedural irregularity.

57. Besides, the plea of guilty, recorded by the enquiry officer at the conclusion of department enquiry on 22.10.2002 is in violation of Rule 27(c)(2) of the CRPF Rules, whereas, the plea of guilt as mandated in the aforesaid rule is required to be recorded at the time of commencement of the enquiry. **There is no provision in the CRPF Act and Rules that the plea of guilt is required to be recorded twice at the time of departmental enquiry and on the conclusion of the enquiry.**

The stand has been taken by the petitioner that the statement of the petitioner was not examined by the enquiry officer during enquiry proceedings. On the contrary, the enquiry officer has stated that he will examine the statement of defence witnesses and statement of the delinquent. As a matter of fact, the petitioner was not examined and his statement was not recorded by the enquiry officer, which is in violation of Rule 27(c)(4) of the CRPF Rules.

58. The Disciplinary Authority has considered the irrelevant fact that the petitioner has overstayed from sanctioned 15 days casual leave so sanctioned from 09.05.2002 to 26.05.2002 and the delinquent reported at his own on 22.09.2002 after absenting himself for 118 days. The said period of absence, as considered by the Disciplinary Authority was not a charge against the petitioner for which the departmental enquiry was held. **This shows total non-application of mind of respondent No.5 (Disciplinary Authority), in**

as much as, no enquiry was held in respect of the aforesaid absence period. The said act of the Disciplinary Authority has disabled himself from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case. Furthermore, the finding of the Disciplinary Authority to the effect that the enquiry officer has considered the medical documents submitted by the petitioner and that the desertion period has no bearing on medical grounds, is perverse, and based on no evidence. The Disciplinary Authority has returned the finding that the delinquent/petitioner was declared fit by the medical officer before the commencement of departmental enquiry, is contrary to the record.

59. The Disciplinary Authority vide order dated 14.12.2012 has awarded punishment of removal from service and further regularised the period of desertion to be treated as dies non.

60. The charges framed under section 11(1) of CRPF Act are bad in law and punishment inflicted could not be allowed to stand in the light of the fact that the petitioner was served with the Article of Charges in respect of desertion on 29.12.2001. A bare perusal of charges and the imputation of misconduct, it is gathered that the petitioner deserted for 39 days w.e.f. 01.11.2001 to 10.12.2001 and 1 day from 27.12.2001 to 28.12.2001. It is worthwhile to mention that the charges could not be framed under section 11(1) of the CRPF Act in view of the specific provision mandate in Section 9(f) and 10(m) of the Act. **The term 'desertion' as emphasized in Section 9(f) would mean if the employee remains absent for more than 60 days**. The question that arises for consideration is as to how the term 'desertion' would constitute under the Act. It would be profitable to read Rule 31 of the CRPF

Rules, wherein, it is provided that if a member of the Force who becomes liable for trial under clause (f) of Section 9 of the Act, does not return of his own free will or is not apprehended within 60 days of the commencement of the desertion, then the Commandant shall constitute a court of enquiry to enquire into the desertion, shall record evidence and its findings and thereafter, shall publish in the Force order the findings of the court of enquiry and the absentee in that eventuality, shall be declared a deserter from the Force.

61. In the present case, it is gathered that the petitioner deserted the Force, as alleged by the respondents with effect from 01.11.2001 to 10.12.2001 and 27.12.2001 to 28.12.2001 for 39 days and 1 day respectively. As per the case of the respondents, the petitioner appeared on 10.12.2001 and 28.01.2001 and if that would be the position, the petitioner cannot be said to be a deserter as envisaged in Section 9(f) of the Act. Thus, the charges against the petitioner are bad in law. In this regard, reliance is placed on the judgment passed by the Hon'ble Supreme Court in **N. Hanumantha Vs. Union of India and Ors.,** reported in **2006(4) MPLJ 60**, the relevant portion is reproduced as under:-

> ***"On bare perusal of the imputation of misconduct, it is gathered that the petitioner remained absent w.e.f. 3.8.1999 to 2.9.1999. As per case of Department the petitioner appeared on 3.9.1999 and if that would be the position, the view of this Court is that the petitioner cannot be said to be a deserter as envisaged in Section 9(f) of the Act. Thus, the charge against the petitioner is bad in law on bare perusal of Sections 9(f), 10(m) and Rule 31(1) and (c). In this context I may profitably rely on the decision Capt Virendra Kumar (supra) wherein the similar provisions of Army Act were there and the Supreme Court has clarified that who will be said to be a deserter.***

> ***Since both the charges are found to be bad in law, the punishment inflicted on the said charges cannot be allowed to remain stand."***

62. Further, the charges against the petitioner does not survive in the light of the fact that the respondents have already decided the desertion period by regularizing the same vide impugned order dated 14.12.2002 by treating the same as *dice non*. Reliance is placed upon the judgment passed by the Jammu and Kashmir High Court in **Manoj Singh Vs. Union of India,** reported in **2003(2) S.C.T. 782**, relevant is para 7, which is reproduced for reference as under: -

> ***"7. A perusal of the above indicates that this deals with minor punishments. It appears that the word 'minor punishment has been dealt with in contra distinction with other punishments which have other serious consequences. However, a perusal of the aforementioned Section would indicate that the punishments which can be awarded are the one of suspension or dismissal. So far removal is concerned, this is dealt with in sub-section (1)(e). This deals with removal from any office of distinction or special emoluments in the Force. Therefore, it can safely be concluded that the punishment of removal is not visualised by Section 11(1) of the Central Reserve Police Force Act, 1949. For this reason and for the reasons given in the judgment of the Supreme Court noticed above, this writ petition deserves to be allowed and is allowed hereby.***
>
> ***Petitioner shall stand reinstated with all consequential benefits minus monetary benefits. This is because in these proceedings, it is not possible to record a finding that during this period, the petitioner was not gainfully employed elsewhere. Petitioner, as indicated above, shall stand reinstated with effect from the date, a copy of this order is made available to the respondents by the petitioner."***

63. Another contention raised by the respondents is that the petitioner had a remedy of revision available to him which wasn't availed by him and he jumped to the remedy of writ. Rule 29 of the CRPF Rules 1955 deals with the revision. For reference rule 29 is reproduced below:

> ***"29. Revision: (a) A member of the Force whose appeal has been rejected by a competent authority may prefer petition for revision to the***

next Superior Authority. The power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed. (b) The procedure prescribed for appeals under sub rules (c) to (g) of rule 28 shall apply mutatis mutandis to petitions for revision.

(c) The next superior authority while passing orders on a revision petition may at its discretion enhance punishment, Provided that before enhancing the punishment the accused shall be given an opportunity to show cause why his punishment should not be enhanced:

Provided further that an order enhancing the punishment shall for the purpose of appeal. be treated as an original order except when the same has been passed by the Government in which case no further appeal shall lie and an appeal against such an or.er shall lie. (i) to the Inspector General if the same has been passed by the Deputy Inspector General: and

(ii) to the Director General, if the same has been passed by the Inspector General, and

(iii) to the Central Government, if the same has been passed by the Director 25 General (second proviso substituted vide GSR 476 dated 22.4.80).

(d) The Director General or the Additional Director General or the Inspector General or the Deputy Inspector General may call for the records of award of any punishment and confirm, enhance, modify or annul the same, or make or Direct further investigation to be made before passing such order: (GSR 784 dated 8.10.88).”

64. Provided that in a case in which it is proposed to enhance punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced. It is pertinent to mention here that the provision of revision is an alternate efficacious remedy available to the member of the Force whose appeal has been rejected.

65. It is a common notion that Writs under Article 226 of the Constitution are not maintainable where an Alternative Statutory Remedy is available. The Apex Court and the High Court consistently deprecate the practice of filing writ petitions in the High Court where an alternative remedy has been provided under the relevant statute. But it is not an 'Absolute' Rule of Law and there

are Valid Exceptions where the writ petitions are maintainable in the High Court and in such cases, the petitioner ought not to be relegated to alternative remedy. The Apex Court has consistently held that the High Courts should exercise their discretionary jurisdiction in-spite of availability of alternative remedy, where the authority has acted without jurisdiction or in violation of the principles of natural justice or where vires of the Act has been challenged or for enforcement of a fundamental right.

I would like to refer some important judgments of the Apex Court wherein the exceptions to this rule have been categorically carved out.

It would be trite to refer to **Whirlpool Corporation vs. Registrar of Trade marks, Mumbai & Ors., (1998) 8 SCC 1**, wherein the Apex Court held as under:

> ***"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."***

66. It would be relevant to refer to **Harbanslal Sahnia v Indian Oil Corn. Ltd, (2003) 2 SCC 107**, wherein the Apex Court carved out the exceptions thus:

> ***"In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: () where the writ petition seeks enforcement of any of the fundamental rights, (in) where there is failure of principles of natural justice; or (i) where the orders or proceedings are wholly without jurisdiction an ustice: or of an Act is challenged."***

67. In **CIT vs. Chhabil Dass Agarwal, (2014) 1 SCC 603**, the Apex Court reiterated this proposition and struck a balance between admission and rejection of writ under Article 226 of the Constitution in case of availability of alternative remedy and held as under:

> ***"19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, ie, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Than Singh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself (contains a mechanism for redressal of grievance still holds the field."***

68. This judgment clearly manifests that if the exceptions carved out consistently by the Apex Court exist, the High Courts should entertain writ although statutory alternative remedy is available.

69. It would be apropos to refer to a recent judgment of the Apex Court in **M/S Magadh Sugar And Energy Ltd. Vs. The State of Bihar** in Civil Appeal No. 5728 of 2021 decided on 24 September, 2021, the Court reiterated the hypothesis and categorically held as under:

> ***"19. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in Whirpool Corporation v. Registrar of Trademarks, Mumbai (1998) 8 SCC 1 and Harbanslal Sahni v. Indian Oil Corporation Ltd (2003) 2 SCC 107....."***

70. It is necessary to refer to **Radha Krishan Industries v. State of Himachal Pradesh & Ors** 2021 SCC OnLine SC 334, wherein, the Apex Court

summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. The Court observed thus:

> "**28. The principles of law which emerge are that:**
>
> ***i. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;***
> ***ii. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;***
> ***iii. Exceptions to the rule of alternate remedy arise where:***
> ***a. the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution.***
> ***b. there has been a violation of the principles of natural justice;***
> ***c. the order or proceedings are wholly without jurisdiction; or d***
> ***d. the vires of a legislation is challenged;***
> ***iv. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;***
> ***v. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and***
> ***vi. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its wit jurisdiction, such a view would not readily be interfered with."***

71. At this juncture, it is quite evident that even if an alternate remedy is available the high courts can still exercise their writ jurisdiction, if the case comes within any of the exceptions carved out of the rule of "alternate efficacious remedy."

72. **The instant case, as portrayed above is a clear case of abuse of natural Justice wherein, the petitioner had to undergo the enquiry when he was not in a stable state of mind. He was suffering from a brain ailment by**

virtue of which, he could not be expected to have made valid defence for him, when he was not in a right state of mind. Moreover, no presenting officer was appointed, the enquiry officer himself performed all the functions of the enquiry, thereby violating an important principle of natural justice.

73. Rules of natural justice have been recognised and developed as principles of administrative law. Natural justice has many facets. Its all facets are steps to ensure justice and fair play.

The Hon'ble Supreme Court in **Suresh Koshy George vs. University of Kerala and others, AIR 1969 SC 198** had occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the examination. In paragraph 7, the Apex Court held that the question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of Tribunal and the rules under which it functions. Following was held in paragraphs 7 and 8:

> ***"7...The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions."***
> ***8. In Russel v. Duke of Norfolk, Tucker, L. J. observed:***
> ***"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."***

74. **Therefore, in light of the facts stated, the judicial precedents cited, it can be validly said that the instant case comes within the exceptions and the court is well within its powers to exercise its writ jurisdiction, even if the petitioner has jumped the remedy of revision that was available to him under the provisions of CRPF Rules, 1955.**

75. Lastly, another question which arises for consideration in the present case is whether the relief of reinstatement with continuity in service can be granted where removal of service is found to be invalid. In the present case, since the order impugned is disproportionate to the gravity of the charges leveled against the petitioner and is also vitiated as the procedure as envisaged under the CRPF Act and Rules framed thereunder has not been followed and as a consequence of which, the relief of reinstatement with continuity of service cannot be granted in the light of the principle laid down by the Hon'ble Supreme Court in case titled **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors.,** reported in **2013(10) SCC 324**, which for reference is reproduced below: -

> ***"33. The propositions which can be culled out from the aforementioned judgments are:***
> ***i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
> ***ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.***
> ***iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead***

cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in

most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

The Tribunal found that action of the management to be wholly arbitrary and vitiated due to violation of the rules of natural justice. The Tribunal further found that the allegations levelled against the appellant were frivolous. The Tribunal also took cognizance of the statement made on behalf of the appellant that she was not gainfully employed anywhere and the fact that the management had not controverted the same and ordered her reinstatement with full back wages.

In view of the above discussion, we hold that the learned Single Judge of the High Court committed grave error by interfering with the order passed by the Tribunal for payment of back wages, ignoring that the charges leveled against the appellant were frivolous and the inquiry was held in gross violation of the rules of natural justice."

76. Objections have also been raised by the respondents with regard to the territorial jurisdiction of this Court. Although, the said objections have not been taken in the counter affidavit filed by the respondents, yet, the respondents at the time of arguments have raised this issue that the petitioner, although, was posted in Assam, where the petitioner absented himself from the duties and, hence, the competent authority invoked Section 11 of the CRPF Act and held that the departmental enquiry vis-à-vis misconduct of the petitioner herein and the whole enquiry was conducted at Barpeta in Assam. The enquiry officer after conducting the enquiry submitted the enquiry report to the competent authority and the Commandant 22nd Bn, Jharkhand has passed the order of removal from service dated 14.12.2002.

Thus, as per the stand of the respondents that mere filing of appeal would not give any cause of action, as the enquiry was held at Assam and the competent authority has passed the order of dismissal at Jharkhand and, accordingly, as per the stand of the respondents, this Court lacked territorial jurisdiction to adjudicate the matter. The judgments cited by the respondents are not applicable to the present case in light of the fact that the petition is pending since eighteen years and was admitted and now, the ground of territorial jurisdiction is not available to the respondents at this stage in the light of the law laid down by the Division Bench of Punjab and Haryana High Court in case titled **Inderpal Singh Vs. Union of India,** reported in **2003(2) S.C.T. 213**, operative portion of which is reproduced as under: -

> ***"Mr. R.S. Rai, Senior Central Government Standing Counsel, for Union of India, while relying upon decision of this Court, in C.W.P. No. 6557 of 2002 decided on November 20,2002, titled as S.B. Tarlok v. Union of India and Ors., has raised a preliminary objection that this Court has no territorial jurisdiction to entertain the present petition filed by the petitioner as neither the alleged incident had taken place nor the Summary Court Martial proceedings were held in the territorial jurisdiction of this Court. He further submitted that even the order dated 2.3.1995 (Annexure P-4) passed by respondent No. 2 was not passed in the territorial jurisdiction of this Court. He submitted that merely because the said order was communicated to the petitioner at his permanent address in the village situated in the territorial jurisdiction of this Court, does not confer any right on the petitioner to get the controversy in question determined from this Court. In the case of S.B. Tarlok (supra), it has been held by this Court that merely because the impugned order has been communicated in the territorial jurisdiction of this Court, it will not confer jurisdiction on this Court to entertain the controversy between the parties, when the cause of action does not arise in the territorial jurisdiction of this Court.***
>
> ***We have considered the submissions made by the learned counsel for the parties. In our view, it will not be appropriate to dismiss the writ petition filed by the petitioner at this stage on the point of territorial jurisdiction. The decision given by the Hon'ble Supreme Court, in Dinesh Chandra Gahtori's case (supra), is folly applicable to the facts and circumstances of the present case and the said decision has been distinguished by this Court in S.B. Tarlok's case (supra), while holding that since the***

> ***matter remained pending for seven long years, therefore, in the peculiar facts and circumstances of the case, the Apex court took the said view. But the said decision was not followed in S.B. Tarlok's case (supra), is in that case, the preliminary objection was raised at the preliminary stage. Therefore, we find no force in the preliminary objection raised by the learned counsel for the respondents regarding maintainability of the present petition."***

77. Another objection, which has been raised by the respondents at the time of arguments is that the grounds which have been pleaded in the rejoinder were not pleaded in the writ petition and is a matter of afterthought, cannot be accorded any consideration.

Admittedly, in the present case, the petitioner has raised that the enquiry proceedings were in violation of the relevant CRPF Act and Rules, though, of course, he did not elaborate as to how the Rules have been violated, but while exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India, it is open to this Court to grant relief to the parties on a contention which is based on facts as borne out from the record, even if, the contention is not set out either in the petition or in the rejoinder to the petition. I am fortified by the view taken by the Division Bench of this Court in LPA No. 7/1976, decided on 03.11.1977, reported in 1978(2) SLR 868, relevant para of the aforesaid judgment is reproduced as under: -

> ***"We are not impressed with the argument of Mr. Nanda that it is not open to the respondent to urge violation of the Rules of natural justice in the conduct of enquiry as do grievance was made by him in the writ petition in that regard Apart from the fact that in the writ petition the respondent had categorically stated that the enquiry proceeding were violative of the Rules of natural justice, though of course, he did not elaborate as to how the rules had been violated, while exercising the extraordinary jurisdiction under S. 103 of the Constitution of Jammu and Kashmir read with Art. 226 of the Constitution of India, it is open to this Court to grant relief to a party on a contention which is based on facts as borne out from the record even if the contention is not set out either in the petition or in the return to the petition."***

78. The Hon'ble Apex Court in case titled Anil Kumar Gutpa Vs. State of Uttar Pradesh and Ors., reported in 1995(5) SCC 173 has also laid down the same principle in para 9, which for reference is reproduced as under: -

> ***"At the outset, we may mention a glaring illegality which has unfortunately not been raised in these writ petitions but is self-evident from the decisions of this Court. Under the revised notification dated December 17, 1994, three percent of the seats have been reserved for candidates belonging to hill areas and another three percent in favour of candidates belonging to Uttaranchal areas. These two reservations along with the reservations in favour of physically handicapped, children of deceased/disabled soldiers and dependents of freedom fighters are treated as horizontal reservations. In other words, the reservations in favour of hill areas and Uttaranchal areas are understood and treated as reservations relatable to Article 15(1) of the Constitution and not as reservations in favour of "socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes" within the meaning of Article 15(4) of the Constitution. It has been held by this Court in State of Uttar Pradesh v. Pradeep Tandon (1975 (1) S.C.C.267) that the reservation of seats in favour of candidates belonging to hill areas and Uttarakhand areas are reservations within the meaning of Article 15(4) of the Constitution, i.e., they are reservations in favour of socially and educationally backward classes of citizens. This Court found that "the State has established that the people in hill and Uttarakhand areas are socially and educationally backward classes of citizens". It, therefore, follows that a separate horizontal reservation of six percent of the seats in favour of candidates from hill areas and Uttaranchal apart from and in addition to twenty seven percent reservation in favour of other backward class candidates is clearly illegal. Though this contention has not been specifically raised in these writ petitions we must yet take notice of this circumstance while making the appropriate directions in these matters. It is indeed surprising that the State of Uttar Pradesh which is a party to the above decision has failed to bear it in mind. The said decision has also been referred to approvingly in Indra Sawhney. The State of Uttar Pradesh shall keep this in mind for future selections as also in respect of those which may be now under way and make necessary corrections."***

79. Thus, **I hold that even if the petitioner has not elaborated the violation of the rules and procedure while filing the main petition, this Court can grant relief to a party if the facts are borne out from the record, which has been perused by this Court, minutely.**

CONCLUSION

80. Thus, in the light of what has been discussed hereinabove, coupled with the settled legal propositions, I am of the view that the order impugned dated

14.12.2002 by virtue of which, the services of the petitioner was terminated **cannot sustain the test of law and is hereby quashed/set aside, as the same is shockingly disproportionate to the alleged charges leveled against the petitioner, besides being violative of the provisions of the CRPF Act and Rules framed thereunder and consequently, the order passed by the appellate authority vide order No. R-XIII-12/2003-EC-III dated 28.11.2003 passed in appeal filed by the petitioner is also quashed/set aside.**

81. Since the punishment of removal from service imposed on the petitioner is highly excessive and disproportionate and was also not permissible to be imposed as per the scheme of the CRPF Act and Rules framed thereunder, and ordinarily, I would have set aside the punishment and sent the matter back to the respondents for *de novo* enquiry and also for reconsidering the order of punishment in accordance with law and consistently with the principles laid down in the judgment referred hereinabove. However, that would further lengthen the life of the litigation as the present writ petition is pending before this Court since 2005 and already eighteen (18) years of time period have been lapsed and in view of the lapsed time, I deem it proper to set aside/quash both the orders of termination and the order passed by the appellate authority and direct the respondents to reinstate the petitioner forthwith by allowing the present petition with all the consequential benefits minus the monetary benefits, in light of the fact that it is not possible for this Court to record the finding that during this intervening period, whether the petitioner was not gainfully employed elsewhere.

82. The petitioner, as indicated above, shall stand reinstated with effect from the date a copy of this order is made available to the respondents by the petitioner in the manner indicated hereinabove. The writ petition is allowed as indicated hereinabove.

83. Registry to handover the record to the learned counsel for the respondents against proper receipt.

84. ***Disposed of,*** accordingly.

(WASIM SADIQ NARGAL)
JUDGE

Jammu
13.04.2023
Vishal Khajuria

Whether approved speaking : Yes
Whether approved for reporting : Yes