



GAHC010107502019



**THE GAUHATI HIGH COURT AT GUWAHATI**  
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)  
**Principal Seat at Guwahati**

**Writ Petition (Civil) No. 3248/2019.**

No. 065134801 CT/GD,  
Shri Parag Jyoti Nath,  
S/o Sri Rajani Kanta Nath,  
R/o Koitahidi, P.O. – Bongora,  
P.S. – Polashbari Mirza, Dist. – Kamrup, Assam,  
PIN – 871101.

**..... Petitioner.**

**-Versus-**

- 1.** The Union of India,  
Represented by the Home Secretary to the Government of India,  
New Delhi,  
PIN – 110001.
- 2.** The Director General, Central Reserve Police Force,  
Block No. 1, CGO Complex,  
Lodhi Nagar, New Delhi,  
PIN – 110003.
- 3.** The Deputy Inspector General of Police,  
Central Reserve Police Force,  
Range Imphal, Manipur,  
PIN – 795001.
- 4.** The Commandant – 87 Battalion,  
Central Reserve Police Force,  
SCT/CIAT Complex, Unchathal, Jiribam, Manipur,  
Guwahati, Assam,  
PIN – 795116.

**..... Respondents.**



**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

Advocate for the Petitioner	:-	Mr. R.P. Sarma, Sr. Adv., Mr. P.N. Sarma.
Advocate for the respondents	:-	Mr. K.K. Parasar, CGC.
Date of Hearing	:-	24.06.2025.
Date of Judgment & Order	:-	28.07.2025.

**JUDGEMENT & ORDER (CAV)**

Heard Mr. R.P. Sarma, learned Senior counsel assisted by Mr. P.N. Sarma, learned counsel for the petitioner and Mr. K.K. Parasar, learned Central Government Counsel (CGC hereinafter) for the respondents.

**2.** In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the order, No. P-VIII-5/2018-87-EC-2, dated 31.07.2018, issued by the respondent No. 4, by which the petitioner was dismissed from his service with immediate effect.

**Background facts:-**

**3.** The backgrounds facts, leading to filing of this petition, are adumbrated herein below:-

“The petitioner was serving as a Constable/GD of Central Reserve Police Force (CRPF hereinafter) in the 87<sup>th</sup> Battalion, Unchathal, Jiribam, Manipur. He joined the service on 25.01.2006, and



discharged his duties with utmost sincerity and dedication. Since the time of his joining, he was posted in various places, where he discharged his duties with best of his ability and judgment and there was no complaint in discharge of his duty except, however, some complaints, regarding consumption of liquor, occasionally.

Thereafter, on 30.11.2017, at about 05.00 pm, he returned to his camp, having performed his duties continuously for three days as 'Quarter-Guard'. On account of performing his duties continuously for three days as Quarter-Guard, he got exhausted and felt tired, and with a view to get relax and relieve, he took four pegs of wine in the force's canteen. And while he was relaxing and taking rest, he was again entrusted with the duty at VIP Gate for two hours from 07:00 pm to 09:00 pm. As a result of exhaustion in discharging his duty for whole day, he could not remain stand and he fell down on the ground. Thereafter, he was taken to the hospital and there medical test was conducted which gave positive test of alcohol consumption.

Then a departmental enquiry was initiated against him. And on the basis of the enquiry report, punishment of 'Dismissal from Service' with immediate effect was inflicted upon him, vide impugned order No. P-VIII-5/2018-87-EC-2, dated 31.07.2018, issued by the respondent No. 4, on the charge of allegedly lying in the state of intoxication, by drinking alcohol, during the duty hours on the duty of Morcha (Post).



Thereafter, he had preferred an appeal, under Section 28(a) of the CRPF Rules, 1955, before the Deputy Inspector General of Police, CRPF, Range Imphal, Manipur, (respondent No. 3). But, the respondent No. 3, vide its order No. R.XIII.87/2018-EC-I, dated 16.10.2018, had dismissed the appeal.

It is the contention of the petitioner that on the alleged basis of the alcoholic medical test and attending circumstances, he was inflicted with the punishment of 'Dismissal from Service', which is a bolt from the blue and he was prejudiced. During enquiry, though he was given an opportunity to adduce evidence, yet, due to the scaring circumstances, as it happens in the Force, for lower grade employees, and also on account of his health condition, he could not made any attempt to adduce any evidence of any member of his unit, as every member of the unit was scared to give evidence in his favour on the face of scary eyes of senior officers in his defense, except however himself. Although, he had made a prayer for allowing him to perform his duty, but the same was rejected by the official respondents, instead, he was dismissed from service, which is arbitrary, discriminatory, unjust, improper and against the principles of natural justice and administrative fair play and as such, the same is liable to be set aside and quashed.

It is the further contention of the petitioner that the prime allegation against him is that of lying in the state of intoxication by drinking alcohol during the period of duty, leaving aside his



personal arms and ammunitions unattended. However, he was not lying down there due to excess consumption of alcohol, but due to over exhaustion of the body for continuous duty for three days prior to entrustment with the duty at VIP Gate and as such, the punishment of dismissal from service, so imposed upon him is violative of the provisions of Article 14, 16, 21 and 311 of the Constitution of India and therefore, the same is liable to be interfered with.”

**4.** The respondent authorities have filed their affidavit-in-opposition, wherein a stand has been taken that the petitioner was enlisted in CRPF on 25.01.2006, and after completion of his basic training, he was posted at 27<sup>th</sup> Battalion, CRPF with effect from 17.07.2007. Thereafter, he was posted in 210<sup>th</sup> COBRA Battalion and thereafter, in 87<sup>th</sup> Battalion on 20.10.2014. And while he was posted in 210<sup>th</sup> COBRA Battalion, he was suffering from ADS (Alcohol Dependence Syndrome), for which he was under LMC and treated at Central Hospital, Guwahati. During his stay in 87<sup>th</sup> Battalion, on 09.08.2015, at about 21:40 hrs, on night guard duty at Morcha No. 04 of F/87 location, he had consumed liquor and misbehaved with his Company Commander and cocked his personal weapon with wrong intention. For this act of misconduct, a disciplinary inquiry was initiated against him, vide 87<sup>th</sup> Battalion, CRPF Office Memo, dated 24.09.2015, and during the course of inquiry, the charges leveled against him were proved. Accordingly, after taking into account his 10 years long service and family problems, a lenient view was taken to award minor



punishment of withholding of 1 increment without cumulative effect, vide 87<sup>th</sup> Battalion, CRPF Office Order, dated 15.07.2016.

**4.1.** Thereafter, on 30.11.2017, he was found sleeping on the floor in a state of intoxication on sentry duty in Morcha and to find out the fact of his misconduct, a preliminary inquiry was conducted and upon which, a departmental inquiry was initiated against him vide 87<sup>th</sup> Battalion, CRPF Office Memo dated 23.12.2017. During the course of enquiry, the charges leveled against him were proved and thereafter, taking into the account the gravity of charge and his previous records of service, punishment of 'Dismissal from Service' was awarded to him vide 87<sup>th</sup> Battalion, CRPF Office Order dated 31.07.2018.

**4.2.** Further stand of the respondent authorities is that the contentions made by the petitioner in paragraph No. 4 of the writ petition are baseless and therefore, the same is denied by the respondent authorities and that in every post of duty, there is off time in which the personnel can take adequate rest and that the petitioner was on night guard duty at about 20:55 hrs, on 30.11.2017 and he was found under the heavy influence of liquor and sleeping on the floor of the Morcha in an intoxicated state and he had thrown away his personal weapon, which is against the good orders and discipline of force, leaving the camp security in danger and he urinated in the Morcha itself and he was totally out of sense. It is the prime responsibility of a Jawan to perform his duties attentively with alertness in each sentry post.



**4.3.** It is further stated that the pattern of duty as Quarter Guard, is 2 hours, followed by rest. As such, the question of over exhaustion of body due to duty, does not arise and it was due to excessive consumption of liquor, as per finding of medical report of the petitioner and as such, it is established that on 30.11.2017, at about 22:00 hours, the petitioner had consumed alcohol and was under the influence of alcohol and not due to duty performed by him as Quarter Guard and he was given ample opportunity, at every stage of the departmental inquiry, to defend him and the punishment was awarded by the disciplinary authority after going through the departmental proceedings, documentary evidence and facts.

**4.4.** It is further stated that the dismissal order issued by the competent authority, vide order No. P VIII 5/2018-87-EC-2, dated 31.07.2018, is as per provision of Section 9(g) of CRPF Act, 1949 which is punishable under Section 11(1) of CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955, which commensurate to the gravity of the offence and under such circumstances, it is contended to dismiss the petition.

**5.** Mr. Sarma, learned Senior counsel for the petitioner, submits that the punishment, so imposed upon the petitioner, is grossly disproportionate to the allegation leveled against him. Mr. Sarma further submits that the petitioner was asked to attend duty continuously for three days and after three days, when he was released, he refreshed himself and thereafter, he consumed liquor for the exhaustion. But, thereafter, he was again asked to attend duty at



Morcha and because of over exhaustion he fell down and lying unconscious and his personal weapon was lying beside him. Mr. Sarma further submits that the petitioner has made a categorical contention in respect of his three days continuous duties and thereafter, again he was asked to attend duty at Morcha gate, and he attended the duty and because of his over exhaustion he lied unconscious and referring to the said contention, being made in the petition, at paragraph No. 4 & 10, Mr. Sarma submits that the respondent authorities had made an evasive reply in respect of the same and that the respondent authorities in its affidavit-in-opposition in paragraph No. 10 & 14 had failed to controvert/traverse the contention made by the petitioner. Mr. Sarma further submits that the departmental inquiry against the petitioner was initiated for commission of less heinous offences, but the punishment imposed upon him is for heinous offences and as such, serious prejudice is caused to the petitioner for imposing punishment for heinous offences and that during the departmental inquiry, he could not adduce his evidence in defence as the junior staffs scared to adduce evidence in his favour and on such count, also the departmental inquiry is unfair. Mr. Sarma also submits that though an appeal was preferred by the petitioner before appellate authority, the same also came to be dismissed and that the petitioner had rendered his service for 12 years 6 months without any stigma. Under such circumstances, Mr. Sarma has contended to set aside the impugned order.



**5.1.** In support of his submission, Mr. Sarma has also referred to a decision of Hon'ble Supreme Court in the case of **Union of India and Others vs. Diler Singh**, reported in (2016) 13 SCC 71.

**6.** Per-contra, Mr. Parasar, learned CGC, submits that the departmental inquiry was initiated for major punishment, under Section 11 of the CRPF Act. He further submits that the petitioner was never allotted duty continuously for three days and in between there was gap for taking rest. Mr. Parasar further submits that on previous occasions also, the petitioner was found guilty in a departmental inquiry initiated against him, for the misconduct of consuming alcohol and therefore, punishment of withholding of one increment was also imposed upon him. Then again for the second time, he was found in intoxicated state, while on duty, and that he was found lying down on the floor and his personal weapon was also lying unattended and his breath analysis was conducted by the doctor and it was found to be 1.79, and the statement of the doctor was recorded by the authority and the same is available on the record and that while 0.08 is the normal limit of breath analysis, but, his report was found to be 1.79 and the same is much higher in side. Mr. Parasar further submits that he was suffering from ADS and he was treated for the same. Referring to the decision referred by Mr. Sarma, learned senior counsel for the petitioner, Mr. Parasar submits that the said decision is factually distinguishable from the case of the present petitioner and that the petitioner is 41 years old now and he is not in service for last 7 years.



Under the above facts and circumstances, Mr. Parasar has contended to dismiss the petition.

**7.** Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also the impugned order No. P-VIII-5/2018-87-EC-2, dated 31.07.2018, issued by the respondent No. 4, and also the decision, referred by Mr. Sharma in **Diler Singh (Supra)**.

**8.** Before a discussion is directed into the issues raised in this petition, it would be in the interest of justice to understand the legal proposition concerning the scope and power of the writ court to interfere with the findings in disciplinary proceeding, specially with the punishment imposed upon the charged officials. While dealing with the issue, in the case of **Noharlal Verma vs. District Cooperative Central Bank Limited, Jagdalpur**, reported in **(2008) 14 SCC 445**, Hon'ble Supreme Court has held that normally in exercise of power of judicial review, a writ court will not substitute its own judgment or decision for the judgment or decision of the disciplinary authority, unless it comes to the conclusion that it has shocked the conscience of the Court, or the punishment is such that no reasonable man would impose such punishment, or the decision is so absurd that the decision maker, at the time of making the decision, must have taken leave of his senses.



**9.** In the case of **State Bank of India v. Ram Lal Bhaskar & Anr.**, reported in **(2011) 10 SCC 249**, Hon'ble Supreme Court has held that in a proceeding under Article 226 of the Constitution of India, the High Court does not sit as an appellate authority, over the findings of the disciplinary authority, and so long as the finding of the disciplinary authority are supported by some evidence, the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence.

**10.** In the case of **Apparel Export Promotion Council vs. A.K. Chopra**, reported in **(1999) 1 SCC 759**, while dealing with jurisdiction of High Court or Tribunal, it has been held that judicial review, not being an appeal from a decision, but a review in the manner in which the decision was arrived at, the Court while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principle established by law and the rules of natural justice and the individual has received a fair treatment to met the case against him, the Court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the jurisdiction of that authority.

**11.** In the case of **B.C. Chaturvedi v. Union of India & Ors.**, reported in **(1995) 6 SCC 749**, Hon'ble Supreme Court has held that the disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary



enquiry, strict proof of legal evidence and finding on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court/tribunal.

**11.1.** In the said case, it has also been held as under:-

“A review of above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court or tribunal while exercising the judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould relief, either directing the disciplinary authority/appellate authority to consider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reason in support thereof.”

**12.** In the case of *Union of India & Ors. vs. Ex. Constable Ram Karan*, reported in (2022) 1 SCC 373, Hon'ble Supreme Court has held that High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of competent authority and



the interference made by the High Court is in a cavalier manner while recording the finding of penalty to be disproportionate without taking into consideration the seriousness of the misconduct committed by the respondent which is unpardonable and not sustainable in law.

**13.** Further, in the case of **Diler Singh (Supra)**, while dealing with similar issues, in paragraph No. 22, Hon'ble Supreme Court has held as under:-

“22. The learned counsel for the respondent has submitted that even if the charges have been proven, the punishment of dismissal in the obtaining factual matrix is absolutely Tharsh and shocking to the conscience. It is his submission that the punishment is disproportionate. The respondent was a part of the disciplined force. He has left the campus without prior permission, proceeded to the market, consumed liquor and quarrelled with the civilians. It has been established that he had consumed liquor at the market place, and it has been also proven that he has picked up quarrel with the civilians. It is not expected of a member of the disciplined force to behave in this manner. The submission, as has been noted earlier, is that the punishment is



absolutely disproportionate. The test of proportionality has been explained by this Court in *Om Kumar and others v. Union of India*, *Union of India and another v. G. Ganayutham* and *Union of India v. Dwarka Prasad Tiwari*. In *Dwarka Prasad Tiwari (supra)*, it has been held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.”

**14.** The proposition of law, that can be crystallized from the aforesaid discussion, is that the scope and power of writ court, to interfere with the finding in disciplinary proceeding is very limited. Normally in exercise of the power of judicial review, a writ court will not substitute its own judgment for the decision of the disciplinary authority, unless it had shock the conscience of the court, or the punishment is such that no reasonable man would impose such



punishment. If the decision has been arrived at by the administrative authority, after following the principle established by law and the rule of natural justice and if the individual has received a fair treatment to meet the case against him, the court cannot substitute its own view for that of the disciplinary authority. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the court and the High Court does not re-appreciate the evidence and come to a different finding on the evidence.

**15.** Keeping the aforesaid proposition in mind now an endeavour will be made to examine the case of the petitioner. A careful perusal of the impugned order, dated 31.07.2018, reveals that only one article of charge was framed against him, which is read as under:-

**“That, Force No. 065134801 CT/GD Parag Jyoti Nath, being in the post of Constable/GD, F/87 Bn. CRPF, violated the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949, read with Rule 27 of the CRPF Rules 1955 by violating and disobeying the instructions of the authority, whereby on 30/11/2017 at about 2055 hrs., during duty hours, he was found lying unconscious in an intoxication state, on the floor of his duty post and his personal weapons and L.M.G. were lying unattended far away from his body. Therefore, the act of the force, being against the provisions of Section 11(1) of the CRPF Act, 1949 and Rule 27 of the CRPF Rules 1955, pertaining to the Disciplines and instructions of higher authorities, is punishable.”**



**15.1.** Thereafter, taking the evidence, the Inquiry Officer had found that the article of charge stands established. Accordingly, the disciplinary authority had imposed the punishment of 'Dismissal from Service' with effect from 31.07.2018.

**16.** It is to be noted here that Section 11(1) of the CRPF Act provides as under:-

**"CRPF Act, 1949**

**Section 11. Minor punishments:-**

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

- (a) reduction in rank;
- (b) fine of any amount not exceeding one month's pay and allowances;
- (c) confinement to quarters, lines or camp for a term not exceeding one month;
- (d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and



- (e) removal from any office of distinction or special emolument in the Force.
- (2) Any punishment specified in clause (c) or clause (d) of sub-section (1) may be awarded by any gazetted officer when in command of any detachment of the Force away from headquarters, provided he is specially authorised in this behalf by the Commandant.
- (3) The assistant commandant, a company officer or a subordinate officer, not being below the rank of subedar or inspector, commanding a separate detachment or an outpost, or in temporary command at the headquarters of the Force, may, without a formal trial, award to any member of the Force who is for the time being subject to his authority any one or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to require prosecution before a criminal Court, that is to say,—
- (a) confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;
- (b) punishment drill, or extra guard, fatigue or other duty, for not more than thirty days, with or without confinement to quarters, lines or camp;



(c) censure or severe censure:

Provided that this punishment may be awarded to a subordinate officer only by the Commandant.

(4) A jemadar or sub-inspector who is temporarily in command of a detachment or an outpost may, in like manner and for the commission of any like offence, award to any member of the Force for the time being subject to his authority any of the punishments specified in clause (b) of sub-section (3) for not more than fifteen days.

**16.1.** It is also to be noted here that the Section 9 of the CRPF Act deals with more heinous offences which are quoted below:-

**Every member of the Force who—**

- (a) begins, excites, causes or conspires to cause or joins in any mutiny, or, being present at any mutiny, does not use his utmost endeavour to suppress it, or knowing, or having reason to believe in, the existence of any mutiny, or of any intention or conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his superior officer; or
- (b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such; or
- (c) shamefully abandons or delivers up any post or guard which is committed to his charge, or which it is his duty to defend; or



(d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State or omits to discover immediately to his superior officer any such correspondence coming to his knowledge;

or who, while on active duty:-

- (e) disobeys the lawful command of his superior officer; or
- (f) deserts the Force; or
- (g) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or
- (h) leaves his commanding officer, or his post or party, to go in search of plunder; or
- (i) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or
- (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or forces a safeguard or breaks into any house or other place for plunder, or plunders, destroys or damages property of any kind; or
- (k) intentionally causes or spreads a false alarm in action or in camp, garrison or quarters; or
- (l) displays cowardice in the execution of his duty, shall be punishable with transportation for life for a term of not less than seven years or with imprisonment for a term which



may extend to fourteen years or with fine which may extend to three months' pay or with fine to that extent in addition to such sentence of transportation or imprisonment.

**16.2.** Section 10 deals with less heinous offences, which are quoted herein below:-

**Every member of the Force who:-**

- (a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march; or
- (b) strikes or attempts to force any sentry; or
- (c) being in command of a guard, piquet or patrol, refuses to receive any prisoner or person duly committed to his charge, or without proper authority releases any person or prisoner placed under his charge, or negligently suffers any such prisoner or person to escape; or
- (d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by lawful authority; or
- (e) is grossly insubordinate or insolvent to his superior officer in the execution of his office; or
- (f) refuses to superintend or assist in the making of any field-work or other work of any description ordered to be made either in quarters or in the field; or



- (g) strikes or otherwise ill-uses any member of the Force subordinate to him in rank or position; or
- (h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition or accoutrements, or any such articles entrusted to him or belonging to any other person; or
- (i) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or
- (j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or
- (k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the Force forthwith deliver up, or duly account for, all or any arms, ammunition, stores, accoutrements or other property issued or supplied to him or in his custody or possession as such member; or
- (l) knowingly furnishes a false return or report of the number or state of any men under his command or charge or of any money, arms, ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Government or to any member of, or any person attached to the Force, or who, through design or culpable neglect,



omits or refuses to make or send any return or report of the matters aforesaid; or

- (m) absents himself without leave, or without sufficient cause over-stays leave granted to him; or
- (n) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline; or
- (o) contravenes any provision of this Act for which no punishment is expressly provided;

or who, while not on active duty,-

- (p) commits any of the offences specified in clauses (e) to (l) (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.

**16.3.** And Rule 27 of the CRPF Rules, 1955 reveals that it prescribes the procedure for the award of punishment.

**17.** In the instant case, perusal of the sole article of charge reveals that the proceeding was initiated for less heinous offences as provided under Section 10(a) of the Act. Further, the article of charge, which is reproduced herein above, indicates that the same relates to lying unconscious by the petitioner in an intoxicated state on the floor of his duty post and his personal weapon was also lying unattended away from his body.



**18.** It also appears from the petition and also from the submission of Mr. Sharma, the learned Senior Counsel for the petitioner that he has not challenged the evidence and finding so recorded in the disciplinary proceeding. Nor he had disputed the allegation of consumption of liquor and lying unconscious in the Morcha at the duty hours. What he has challenged is that his dismissal from service by the authority without considering the background facts leading to his consumption of liquor and lying unconscious in the Morcha at duty hours.

**18.1.** It is the categorical contention of the petitioner that he was allotted duty for three continuous days and after being released, he got refreshed and admittedly, he consume four pegs of wine and thereafter, he was again asked to attend the duty at Morcha gate. While the petitioner was on duty continuously for three days and thereafter, while he was taking rest in the camp, after consumption of liquor for relaxation, then he was again asked to attend the duty at Morcha. And under such circumstances, it is quite natural that a person would suffer over exhaustion. Besides, he was under the influence of liquor, which he had admittedly taken while taking rest before he was asked to attend duty at Morcha. And under such circumstances, it is also quite natural that he fell asleep and his arm was lying unattended in the Morcha.

**18.2.** The averment of allotment of duty for three days continuously, so made by the petitioner in paragraph No.4 and 5 of his petition remained un-traversed in the affidavit filed by the respondent



authorities. Mr. Sharma, the learned senior counsel for the petitioner has rightly pointed this out during argument. Having gone through the affidavit-in-opposition filed by the respondent No. 3, in paragraph No.10, I find that the respondent No.3 had simply denied the averment made by the petitioner in paragraph No.4. The denial seems to be evasive. A general denial or a vague statement of non-admission is insufficient to counter the petitioner's factual assertions.

**18.3.** In the given factual scenario, the doctrine of non-traversal can be invoked herein this case that failure to traverse a pertinent plea allows the court to infer its admission, as provided in the Order VIII Rule 5 CPC, and the statement and averment made in para No. 4 and 5 of the petition have to be accepted as admission by the respondent authority. Reliance on the judgment to apply the doctrine of non-traverse is made to the case of (1) **Controller of Court of Ward, Kolhapur & Anr. V. G.N. Gharpade**, reported in AIR 1973 SC 627, and also on a decision passed by (2) **Gobinda Chandra Das v. State of West Bengal**, reported in 1989 (2) CAL LT (HC) 63. Again in the case of **Sushil Kumar v. Rakesh Kumar**, reported in (2003) 8 SCC 673, Hon'ble Supreme has highlighted the obligations under Order VIII Rules 3 and 5 of CPC regarding admissions and denials, holding that vague denials could constitute admissions.

**18.4.** The petitioner has also challenged the fairness of the disciplinary proceeding on the ground that while the departmental inquiry was initiated for minor punishment, under Section 11(1) of the



CRPF Act, the punishment so imposed upon him appears to be grossly disproportionate.

**18.5.** This contention of the petitioner, however, left this Court unimpressed in as much as the disciplinary proceeding was admittedly initiated under Section 11(1) of the CRPF Act, 1949 which provides for minor punishment. And, punishment imposed upon the petitioner is "Dismissal from Service" which is indeed a major punishment. But, it is no more res-integra , in view of the decision of Hon'ble Supreme Court in the case of **Union of India vs. Gulam Mohammad Bhatt** reported in (2005) 13 SCC 228, that punishment of dismissal of service can be informed under Section 11(1) of the CRPF Act. In the said case, it has been held as under:-

**"5. A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the Force who is found guilty of disobedience, neglect of duty or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the Force. According to the High Court the only**



punishments which can be awarded under this section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the Force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.

6. The use of the words “in lieu of, or in addition to, suspension or dismissal”, appearing in sub-section (1) of Section 11 before clauses (a) to (e) shows that the authorities mentioned therein are empowered to award punishment of dismissal or suspension to the member of the Force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clauses (a) to (e) may also be awarded.”

And again in para 7 it has been held that:-

- “7. ... It is, therefore, clear that Section 11 deals with only those minor punishments which may be awarded in a departmental inquiry and a plain reading thereof makes it quite clear that a punishment of dismissal can certainly be awarded thereunder even if the delinquent



**is not prosecuted for an offence under Section 9 or Section 10.”**

**18.6.** The above proposition stands affirmed in the case of **Diler Singh (supra)** also.

**19.** Another contention made by Mr. Sharma, the learned Senior Counsel for the petitioner is that during the departmental inquiry, the petitioner could not adduce his evidence in defence, as the junior staffs scared to adduce evidence in his favour and consequently, the petitioner could not defend his case properly. The petitioner had made categorical contention in this regard in paragraph No. 11 of his petition. And on such count also, the finding in the departmental inquiry, appears to be unfair.

**19.1.** It is also to be mentioned here that in respect of the assertions made in paragraph 11 of the petition also, the respondent authority, in their affidavit-in-opposition had made evasive reply and in view of decision of Hon'ble Supreme Court in **Sushil Kumar (supra)**, this vague denials would constitute admissions.

**19.2.** Moreover, from a careful perusal of the impugned order of dismissal (Annexure-1) following circumstances emerges:-

- (i) When the Charge Sheet, the Articles of Charges, List of Documents and List of Witnesses were furnished to the petitioner vide letter dated 23.12.2017, with a direction to remain present before the Enquiry Officer, the petitioner



did not furnish any representation/application in response to the memorandum issued to him.

- (ii) The petitioner also did not submit any letter/intimation to the Commandant -87 Battalion, though he was informed that if he needs any assistance for his defence he may recommend three force members below the rank of Assistant Commandant to the Commandant-87<sup>th</sup> Battalion out of which one member shall be appointed as Defense Assistant.
- (iii) When the petitioner was asked to join the enquiry proceeding and to adduce witness/evidence, the petitioner, vide his representation dated 28.05.2018, submitted to the Enquiry Officer, confessed that he was in an intoxicated state due to over drinking of alcohol.
- (iv) The impugned order also indicates that the petitioner was given the opportunity to cross-examine all the witnesses so examined by the Enquiry Officer. But, in the impugned order there is no indication that the petitioner had cross-examined the witnesses. However, the relevant file produced by the learned CGC before the Court indicates that none of the ten witnesses examined by the presenting officer was cross-examined by the petitioner herein.
- (v) While he was asked to adduce evidence, the petitioner has filed representation admitting consumption of liquor, which



goes to show that he did not understand the nature and consequence thereof. He filed the representation due to lack of proper guidance and instruction as he was not represented by any assistant.

- (v) After completion of enquiry, the Enquiry Officer had submitted his report and a copy of the report was furnished to the petitioner on 07.06.2018 with a direction to appear before the Enquiry Officer, within 10 days of receipt of the letter, if he want to adduce any witness, evidence in his defence, otherwise it will be construed that he does not want to adduce any witness or evidence in his defence. And the petitioner then submitted a representation dated 20.06.2018, stating that he was in sleeping condition due to over consumption of liquor.
- (vi) Thereafter, the Enquiry Officer, after completion of enquiry, presented the report vide his letter dated 25.06.2018.
- (vii) The Disciplinary Authority had also found that the Enquiry Officer had completed the proceeding by following the due process of law and that the petitioner was given reasonable opportunity to defend his case.
- (viii) Then acting upon the said Enquiry Report, the Disciplinary Authority found the articles of charges proved and thereafter, passed the impugned order dated 31.07.2018.



**19.3.** As discussed herein above, Rule 27 of the CRPF Rules, 1955 provides for procedure for the award of punishment.

**Rule (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 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 Officer 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.

(7) DELETED vide GSR 75 dated 26.1.80

(cc) Notwithstanding anything contained in this rule:

- (i) Where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge: or
- (ii) Where the authority competent to impose the penalty is satisfied for



reasons to be recorded by it in writing that is not reasonably practicable to hold an enquiry in the manner provided in these rules:  
or

(iii) Where the Director General is satisfied that in the interest of security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such order thereon as it deems fit.

(ccc) When a member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not except with the prior sanction of the Inspector General.

(d)(1) Where two or more members of the Force, including those on deputation to the Force are concerned in any case, the Inspector General or any authority competent to impose the penalty of dismissal from service on all such members of the Force



may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note- Where in such a proceeding, the misconduct of a deputationist is to be dealt with, the consent of the disciplinary authority competent to impose the penalty of dismissal shall be obtained for the taking of such a disciplinary action.

(2) such order shall specify-

- (i) the authority which may function as the disciplinary for such a common proceeding;
- (ii) the penalties specified in the table of sub-rule (a) above which such disciplinary authority shall be competent to impose;
- (iii) whether such disciplinary authority shall hold the Departmental enquiry himself or may designate any other enquiry officer for that purpose; and,
- (iv) that the enquiry shall be held in accordance with the provisions of sub rule (a) and sub rule (c)".

**20.** It is to be noted here that the requirement following the procedure has been emphasized by Hon'ble Supreme Court in the case of D.K. Yadav v. J.M.A. Industries Ltd., reported in (1993) 3 SCC 259 as under:-



- “11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.
12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is



interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable.

13. In *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress* [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] this Court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Articles 14 and 21 etc. All matters relating to employment include the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Parts III and IV of the Constitution. Article 21 guarantees right



to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Articles 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice are an integral part of the guarantee of equality assured by Article 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of natural justice. Article 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the Court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the effect thereof is the end result.

14. It is thus well-settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an



employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic inquiry conducted complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress* [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without inquiry offended Article 14. The order terminating the service of the employees was set aside.

**20.1.** Again in the case of *A.K. Kraipak v. Union of India*, reported in (1969) 2 SCC 262, Hon'ble Supreme Court has held as under:-

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely:

- (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and
- (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*).



Very soon thereafter a third rule was envisaged and that is:-

that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably.

But, in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala* [1968 SCC OnLine SC 9] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and



circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”

**21.** In the given factual backdrop and having perused the relevant file of departmental inquiry, so produced by the learned CGC and having tested the impugned order, on the anvil of Article 14 and the procedure prescribed by the CRPF Act and the statutory Rules made there under that affecting the civil rights or result in civil consequences, this Court is unable to derive satisfaction that while conducting the enquiry, the enquiry officer had followed the procedure prescribed in Rule 27 (c)(1)(2)(3) and (4) of the CRPF Rules 1955, in its letter and spirit.

**22.** Thus, what can be crystalised from the above discussion is that on the relevant date i.e. on 30.11.2017, the petitioner, after returning to his camp, having performed his duties continuously for three days as 'Quarter-Guard', he took four pegs of wine in the force's canteen with a view to get relaxed. It is not the case of the respondent authority that he had consumed liquor at the duty hours and nothing was recovered from the Morcha, where he was performing his duty. It is an admitted fact that he consumed four pegs of wine, with a view to relax, in the force canteen. Thereafter, while he was taking rest then



again he was asked to attend duty at VIP Gate for two hours from 07:00 pm to 09:00 pm. During which period he was found lying unconscious in the floor of the Morcha. The contention of the petitioner that as a result of exhaustion in discharging his duty for whole day, he could not remain stand and he fell down on the ground remained un-traversed by the respondent authority. Besides, during departmental inquiry, the petitioner was not properly represented and due to lack of proper advice and guidance the petitioner did not even cross-examined the witnesses, not to speak of adducing witness. Besides, his unit members were scared to give evidence in his favour on the face of scary eyes of senior officers in his defense. Throughout the inquiry he had only admitted having consumed liquor. Thus, it cannot be said that the petitioner had received a fair treatment to meet the case against him as held by the Hon'ble Supreme Court in the case of **A.K. Chopra (Supra)**.

**23.** In the backdrop of above facts and circumstances, the punishment of dismissal from service, so imposed by the respondent No. 3, upon the petitioner, appears to be grossly disproportionate. It is not in dispute that on previous occasion also one disciplinary proceeding was initiated against him for consumption of liquor and misbehaved with his Company Commander and cocked his personal weapon with wrong intention. During the course of inquiry, the charges leveled against him were proved. Accordingly, after taking into account his 10 years long service and family problems, a lenient view



was taken to award minor punishment of withholding of increment for one year without cumulative effect vide Order dated 15.07.2016.

**24.** Though Mr. Parasar, learned CGC submits that the punishment is commensurate with the gravity of the article of charge, yet, the said submission left this Court unimpressed. This Court is not oblivious of the requirement of being disciplined for being worked in a disciplined force, but in the given facts and circumstances on the record, this Court is unable to agree with the submission of Mr. Parasar, learned CGC that the punishment so imposed upon the petitioner commensurate with the article of charges.

**25.** Thus, this Court is inclined to interfere with the impugned order, dated 31.07.2018, issued by the respondent No. 4, by which the petitioner was dismissed from his service with immediate effect. Accordingly, the same stands set aside and quashed. Consequently, the petitioner shall be re-instated in service with immediate effect with all service benefits.

**26.** Accordingly, this petition stands disposed of, leaving the parties to bear their own cost.

**JUDGE**

**Comparing Assistant**