**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**
**AT SRINAGAR**

***SWP No. 2319/2015***

**Reserved on: 09.11.2023**

**Pronounced on: 23.11.2023**

**Nazir Ahmad Najar S/O Ghulam Ahmad Najar**
**R/O Utterpos Beerwah Budgam.**

…Petitioner(s)

Through: Mr. Sofi Manzoor, Advocate.

**Vs.**

1. **Union of India through**
   **Ministry of Defense, New Delhi.**
2. **Director General, Sashastra Seema Bal,**
   **V.R.K. Puurnam New Delhi.**
3. **Commandant Officer, Training Centre Sapri**
   **SSB Kangra Himachal Pradesh.**
4. **Commandant Officer, Training Centre Kumar Sain**
   **Sashastra Seema Bal, Simla Himachal Pradesh.**

…Respondent(s)

Through: Ms. Rekha Wangnoo, CGC.

**CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE**

**JUDGMENT**

**1.** Petitioner has filed this petition assailing the Order No. T9/TCS/SSB/08-8363-70 dated 13.04.2010 (for short 'the impugned order') issued by respondent No.3-Commandant Training Centre Sapri SSB Himachal Pradesh, whereby he has been removed from service for his unauthorized absence from duty.

**2.** The grievance projected by the petitioner is that the impugned order has been passed in clear and brazen violation of the provisions of Central Reserve Police Force, Act 1949 and Rules, 1955 framed thereunder. It

is alleged that neither enquiry was conducted in the matter nor principles of natural justice were followed, while removing the petitioner from service.

**3.** The facts and circumstances giving rise to the present litigation, as alleged by the petitioner, emanate from refusal of taking back the petitioner into service. It is contended that the petitioner was appointed to the post of Constable (GD) in pay scale of Rs.3050-75-3950-80-4590 in Sashastra Seema Bal (SSB) in the year 2008 and, at the time of appointment, petitioner was asked to report at Training Centre SSB Sapri Himachal Pradesh, thereafter, was deputed for Basic Recruits Training Course (BRTC) at Training Centre Kumarsain HP. It is further contended that while the petitioner was undergoing the BRTC in the year 2008 in Himachal Pradesh and had put in three and a half months in training, the Amar Nath Land Row agitation erupted in the home State of the petitioner i.e., J&K. Further it is stated that the scale of the said agitation was so enormous, which created an adverse atmosphere and sense of insecurity among the local people in J&K particularly serving the Armed forces. The petitioner serving SSB, his family back home was receiving threats of dire consequences from the antinational elements. It is stated that in such a situation, when the family of the petitioner was living under threats, at the hands of antinational elements, petitioner thought it proper to visit his family at home in J&K and accordingly, requested for leave to his superiors, which according to the petitioner was not sanctioned. After a number of requests made in this behalf, petitioner was not allowed to visit his family, compelling the petitioner to leave the training half way to visit his family in J&K only to let them have some sense of security.

**4.** The said turmoil of 2008 continued for a long time in Kashmir Valley, which did not allow the petitioner to join his duties back, however, when the normalcy was restored, the petitioner reported back for re-joining the service but was not allowed to re-join his services without affording hearing to him.

**5.** It is contended that number of representations were made to the respondents for allowing him to re-join his duties, but none of the representations were considered or replied. However, vide communication dated 04.03.2011, the petitioner was informed that he has been removed from service, but no termination/removal order was ever supplied to the petitioner. Non-supply of termination/removal order, which is impugned herein, made the petitioner unable to know the reasons of his removal from service and to challenge the same in the court of law or to make appeal to appropriate authorities, which constrained the petitioner to file the present writ petition, praying therein for direction to the respondents to supply impugned order to the petitioner so that he may be able to work-out the appropriate remedy against that order. According to the petitioner, it is only when the respondents filed their reply to the writ petition, the petitioner saw the impugned order for the first time, which they enclosed with the reply.

**6.** It is alleged that the impugned order is purported to have been issued under Rule 14 of Central Civil Services (CCA) Rules 1965 read with Rule 27 of CRPF Act 1949 with Rules 1955, however, according to the petitioner, CCA Rules are not applicable in the instant case which speaks pure non-application of mind on the part of the respondents while passing the impugned order.

**7.** Respondents have filed their reply, stating therein that the present writ petition is not maintainable, inasmuch as, the petitioner has been removed from the service vide impugned order dated 13.04.2010. It is further stated that the petitioner was aware of the said order of removal and has not deliberately challenged the said order and on this count alone the writ petition is liable to be dismissed. It is the further stand of the respondents that the order impugned has been passed at District Kangra Himachal Pradesh, as such, cannot be challenged in the present petition, as this Court lacks the territorial jurisdiction to entertain the said petition. Further it is stated that without invoking the remedy of appeal, the petitioner has directly approached this Court. Respondents further stated that as per the preliminary enquiry/court of enquiry, the petitioner was served with notices for rejoining the service but neither he responded to the said notices nor submitted any request for re-joining his duty. Only after 1 ½ years, his request to re-join the duty was received vide application dated 04.03.2011, when he was already removed from service. Finally, the respondents stated that the allegations of the petitioner were false and fabricated just to mislead this Court, and accordingly, prayed for dismissal of the present writ petition.

**8.** Mr. Sofi Manzoor, learned counsel appearing for the petitioner, while making submissions, states that Rule 27 of CRPF Act 1949 read with Rules 1955 framed there-under prescribe punishments and procedure for imposition for such punishments. The said Rule 27 is self-contained code for imposition of punishment and Rule 102 specifically excludes the application of any other law/rules so far as imposition of punishment is concerned. Learned counsel further submits that removal

from services is a major punishment and can be imposed only after conducting of formal departmental enquiry. He further submits that no enquiry, as envisaged under Rule 27 of CRPF Rules has been conducted. The said Rule 27 prescribes and elaborates procedure, right from framing of article of charges to enquiry and imposition of punishment. None of the conditions of Rule 27 were followed in the petitioner's case.

**9.** Learned counsel for the petitioner submits that while passing the order impugned, respondents have invoked Rule 14 of CCA Rules in aid of Rule 27 of CRPF Act 1949 and Rules 1955, which is not applicable in the present case and is purely non-application of mind on the part of the respondents. Even, if CCA Rules are applied which are more stricter than Rule 27, none of the provisions of Rule 14 of CCA Rules were followed while passing the order impugned. Learned counsel further submits that the respondents banked upon the court of enquiry and preliminary enquiry while passing the order impugned, while as these enquiries are unilateral enquiries for limited purposes and cannot be substitute of formal departmental enquiry, as envisaged under Rule 27. The fact is that no formal departmental enquiry was conducted at all in the instant case.

**10.** Learned counsel for the petitioner vehemently argued that one person namely Nisar Ahmad Bhat, who was also removed from service on the same charges, had filed a civil suit before competent court of law, challenging his removal and on the basis of decree passed by the court below, the said person was reinstated and, according to learned counsel for the petitioner, the respondents never questioned the said decree/judgment. Copy of the communication dated 25.07.2023

addressed by Commandant, CTC, SSB Sapri (H.P) to the said Nisar Ahmad Bhat, directing him to rejoin his duties, is annexed with the petition. Learned counsel for the petitioner submits that the petitioner has not willfully absented himself from duty; it was only because of the turmoil of 2008 which constrained him to leave the station to see his family in Kashmir Valley in order to let them have some sense of security.

**11.** With regard to territorial jurisdiction of this Court, as has been raised by the respondents, learned counsel for the petitioner urged that respondents at this stage cannot raise this issue when the petition has already been admitted way back in the year 2018 vide order dated 27.08.2018 and the respondents have failed to raise such objection in their reply at the admission stage of the petition. It is, therefore, clearly an after-thought on the part of the respondents to take such an objection at the final stage of the instant case. Learned counsel with regard to territorial jurisdiction of this Court has placed reliance on the judgment of the Supreme Court titled '***Nawal Kishore Sharma Vs. Union of India & Ors.' (Civil Appeal No. 7414/2014)*** decided on ***07.08.2014*** and the judgment of this Court titled '***Altaf Ahmad Mir Vs. Union of India & Ors.' (SWP No. 1121/2012)*** decided on ***25.10.2016.***

**12.** Ms. Rekha Wangnoo, learned CGC, ex-adverso, submits that the present Petition is liable to be dismissed on the ground of delay and latches as no reasonable explanation has been given by the petitioner for filing the petition after a long delay. She contends that the order impugned stands issued on 13.04.2010 and the petitioner has approached this Court in the year 2015. In this regard, she has placed reliance on the Supreme Court judgment in case titled **Union of India**

**& Ors. Vs. N.Murugesan Etc.** reported as **2022(2) SCC 25**. It is the further submission of learned CGC, that law is well settled that mere filing of representation or applications before the authorities does not extend the period of limitation and in case it is found that the petitioner is guilty of delay and latches the petition deserves to be dismissed at the very threshold. In this regard, she relied upon the judgment of Apex Court in **State of Tamil Nadu Vs. Seshachalam** reported as **(2007) 10 SCC 137.**

**13.** Learned CGC further submits that in the present case, the petitioner was appointed as Constable (GD) on 10.07.2008 at Training Centre, SSB Sapri Himachal Pradesh and after joining the SSB, he was deputed for Basic Recruits Training Course (BRTC) conducted at Training Centre, SSG Kumarsain Himachal Pradesh; that the petitioner absconded from the campus on 30.10.2008 and an FIR was lodged at Police Station Kumarsain on 31.10.2008; thereafter court of enquiry was conducted at Kumarsain Himachal Pradesh and order declaring the petitioner as deserter was passed at Training Centre Sapri Himachal Pradesh, and also the impugned order dated 13.04.2010 was passed by the Commandant Training Centre SSB at Sapri Kangra Himachal Pradesh, as such, this Court lacks the territorial jurisdiction in the present case. Ms. Wangnoo, in support of her submissions, placed reliance on the following judgments **(i) Shahnawaz Ahmad Vs. Union of India (SWP No. 1175/2011)** decided on **26.07.2023,** and **(ii) Zahoor Ahmad Baba Vs. Union of India & Ors.** reported as **2012(3) JKJ 119 (HC)**

**14.** Heard learned counsel for both the sides, perused the record produced by the learned CGC and considered.

**15.** The first and foremost question to be addressed in this petition is with regard to territorial jurisdiction of this court. The removal order impugned in this petition, had been issued by the respondents in the State of Himachal Pradesh, beyond the territorial jurisdiction of this court but was directed to be served upon the petitioner within the territorial jurisdiction of this Court in Budgam district. The respondents, however, in their reply had not raised the objection of lack of territorial jurisdiction before this court. The petition was filed in this court in the year 2015 and was also admitted to hearing. At the time of admission also, no such objection was raised. Therefore, respondents cannot raise this plea now at the fag end. Moreover, the Paramilitary Force SSB who had passed the order has a pan India presence being a Force of the Union of India, as such, the same is subject to the jurisdiction of every High Court in India including this High Court. The petitioner being permanent resident of the Union Territory of J & K, has filed the petition in this local High Court. The law on jurisdiction is not longer *res-integra*. The Apex Court, in case ***'Nawal Kishore Sharma Vs. Union of India & Ors.' (Civil Appeal No. 7414/2014)*** has settled it, and the relevant Para is reproduced as under:

> *We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant exported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscle disease). As a result, the Shipping Department of the Government of India issued an Order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter*

> *was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in his native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.*

**16.** Since, the petitioner had resided within the territorial jurisdiction of this Court, being permanent resident of district Budgam, after his alleged desertion from his Unit and the removal/termination order was served upon him at his permanent address, the petitioner is competent to maintain his Writ Petition before this Court, in view of the afore-stated judgment of the Apex Court, part of cause of action having been accrued to him within the jurisdiction of this Court.

**17.** Even the provisions of Rule 14 of CCA Rules 1965 were also not followed, though the respondents claimed to have conducted enquiry in

the case of the petitioner under the provisions of the said Rule 14 of CCA, while passing the order impugned, . Rule 14 of CCA Rules is reproduced hereunder:-

> *"14. The provision mentioned at para 11(a) above, grants power to the disciplinary authority to impose penalty without conducting inquiry if the Government servant has been convicted in a criminal case. Conducting a departmental inquiry after the employee has been held guilty in a criminal case would be an exercise in futility. Hence the power granted by the Second Proviso to Article 311 may be availed and appropriate penalty may be imposed on the employee. It must, however, be noted that this provision only grants a power to the disciplinary authority to impose the penalty without inquiry when the employee has been convicted in a criminal case. It is not mandatory for the disciplinary authority to dismiss the employee whenever he has been convicted in a criminal case. The authority concerned will have to go thorough the judgment and take a decision depending upon the circumstances of the case."*

**18.** The Patna High Court in **Sudhanshu Shekhar Deo vs The Union Of India & Ors. decided** 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."***

Thus, in the light of the aforesaid settled legal proposition, in the considered opinion of this Court, it can be held 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.

**19.** When the petitioner was offered appointment as Constable (GD) in SSB, it was conditional / stipulated in the order that his appointment/service shall be governed by CRPF Act and Rules framed there-under. The applicability of CCA Rules, in view of Rule 27 of

CRPF Rules being self contained code and no other law/rule is applicable in view of Rule 102 of CRPF Rules, is thus, ousted. The respondents were legally bound and obliged to hold departmental enquiry, as provided under the relevant provisions of the Central Reserve Police Force Act, 1949 and the Rules framed there-under to afford an opportunity of hearing to the petitioner to establish the compelling reasons for his absence or desertion from the training centre. In view of the judgment of Hon'ble Patna High Court in **Sudhanshi Shekhar Deo** case (supra) that the aid of CCA Rules can be taken even in an enquiry contemplated under Rule 27 of the CRPF Rules, as an enabling provision to follow the procedure. Even the prescribed procedure has not been followed in petitioners' case. No structured enquiry requiring serving the articles of charge, so as to satisfy the requirement of natural justice of being heard was not provided. The respondent-Commandant, just after recording unauthorized absence and desertion at the back of the petitioner, ordered his removal from service. Therefore, the impugned order of removal of the petitioner from service, cannot be sustained in law. In consequence thereof, the impugned order, striking off the petitioner from the service as well, cannot be sustained.

**20.** Having regard to the contention that in view of alternate efficacious remedy of Appeal being available to the petitioner, it is also to be considered as to whether the writ jurisdiction of this Court can be exercised. It would be apt to refer to the judgment rendered in case **Radha Krishan Industries v. State of Himachal Pradesh & Ors,** reported as **2021 SCC OnLine 334**, wherein, the Hon'ble Apex Court summarized the principles governing the exercise of writ

jurisdiction by the High Court in the presence of an alternate remedy. The Court laid down the law on the afore-stated subject in para- 28, which is extracted as under:

> *"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. 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."*

**21.** Therefore, in light of the facts stated hereinabove, it can be safely 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/appeal that was available to him under the provisions of CRPF Rules, 1955. It would be apt to refer to the case titled '**Whirlpool Corporation vs. Registrar of Trade marks, Mumbai & Ors'.,** reported as (**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."*

**22.** 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." The instant case, as portrayed above is a clear case of abuse of natural justice wherein, the petitioner had to undergo the departmental enquiry when he was not in a position to participate in the said enquiry. He was in a mental trauma as his whole family back home in J&K was under threat of antinational elements,

while undergoing training in Himachal Pradesh, and in such a situation he could not be expected to have made valid defense for him.

**23.** Rules of natural justice have been recognized 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 & Ors',** reported as **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."*

**24.** With regard to the punishment part, imposed on the petitioner by the respondents, it can be validly said that the punishment of removal from

service is disproportionate to the alleged charge and is not warranted by the law. In this regard I am fortified with the judgment of Supreme Court rendered in a case '**Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and Ors',** reported as **2004 SCSR 632**, wherein it has 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."*

**25.** Furthermore, Supreme Court in '**Union of India and Ors. Vs. Giriraj Sharma'** reported as **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."*

**26.** In view of the legal position and the above discussion, this Petition is allowed. The impugned order bearing No. T9/TCS/SSB/08-8363-70 dated 13.04.2010 issued by respondent No.3, is quashed. Resultantly, the respondents are directed to reinstate the petitioner in service, however, it is provided that the respondents would be free to hold such proceedings against the petitioner, as are permissible under the provisions of the Central Reserve Police Force Act 1949 and the Rules framed there-under, after giving him an opportunity of being heard and

to defend himself in any such proceedings. Further, respondents are directed to allow the petitioner to attend his duties till a decision taken by the Competent Authority whether or not any departmental proceedings need to be initiated against him. The petitioner shall be paid his dues from the date he submits his re-joining report pursuant to this judgment before the concerned authority. The wages of the petitioner for the intervening period would depend upon the outcome of any such departmental proceedings and the orders passed thereon, if initiated by the respondents. Furthermore, it is provided that if no such proceedings are initiated or in case the petitioner is exonerated of any charge framed against him, the petitioner would be entitled to all the dues from retrospective date.

**27.** Record of the case, as produced by learned CGC, for perusal of this Court, be returned to her, against proper receipt.

**28.** Disposed of, as indicated above.

**( M. A. CHOWDHARY )**
**JUDGE**

Srinagar
23.11.2023
*Muzammil. Q*

*Whether the Judgment / Order is Reportable: Yes / No*
*Whether the Judgment / Order is Speaking: Yes / No*