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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 9261 of 2023

Order Reserved on 09.02.2026

Order Delivered on 24.03.2026

1 - S. K. Pradhani S/o Shri Khattu Pradhani Aged About 40 Years Constable (Gd) - Terminated Having Batch No. 025040067 At 39th Battalion, Central Reserve Police Force (Crpf), Narayanpur, District Narayanpur (C.G.) Now At Peddavutupalli, Gannavaram, Vijaywada, District Krishna, Andhra Pradesh - 521101 R/o Village Bissam Cuttack, District Rayagada, Odisha

--- **Petitioner(s)**

versus

1 - Union Of India Through Secretary, Government Of India, Ministry Of Home Affairs, North Block, Central Secretariat, New Delhi - 110001

2 - Director General Central Reserve Police Force (Crpf), Block No. 1, Cgo Complex, Lodhi Road, New Delhi - 110001

3 - Additinoal Director General Central Reserve Police Force (Crpf), Hq South Zone, Hyderabad, Telangana-500005

4 - Deputy Inspector General Of Police Central Reserve Police

Force (Crpf), Bhubneshwar Range Hqr, District Bhubneshwr, Odisha 751001

5 - Inspector General Of Police Central Reserve Police Force (Crpf), Southern Sector Hqr, Road No. 10/c, Jubilee Hills, New Mla/mps Colony Quarters, Hyderabad, Telangana - 500033

6 - Commandant 39th Battalion, Central Reserve Police Force (Crpf), Peddavutupalli, Gannavaram, Vijaywada, District Krishna, Andhra Pradesh - 521101

--- **Respondent(s)**

WPS No. 9419 of 2023

1 - Jaipati Yadav S/o Kalapnath Yadav Aged About 41 Years Constable (Gd)- Terminated Having Batch No. 025021125 At 39th Battalion Narayanpur, District Narayanpur (C.G.), R/o Village Gahila Devariya, P.S. Maeel, District Devariya, Uttar Pradesh.

---**Petitioner(s)**

Versus

1 - Union Of India Through Secretary, Government Of India, Ministry Of Home Affairs, North Block, Central Secretariat, New Delhi- 110001

2 - Director General Central Reserve Police Force (Crpf), Block No. 1, Cgo Complex, Lodhi Road, New Delhi- 110001

3 - Additional Director General Central Reserve Police Force (Crpf), Hq South Zone, Hyderabad, Telangana- 500005

4 - Deputy Inspector General Of Police Central Reserve Police Force (Crpf), Bhubneshwar Range Hqr, District Bhubneshwar, Odisha- 751001

5 - Inspector General Of Police Central Reserve Police Force (Crpf), Southern Sector Hqr, Road No. 10/c, Jubilee Hills, New Mla/mps Colony Quarters, Hyderabad, Telangana- 500033

6 - Commandant 39th Battalion, Central Reserve Police Force (Crpf), Peddavutupalli, Gannavaram, Vijaywada, District Krishna, Andhra Pradesh- 521101

... Respondents

(Cause-title taken from the Case Information System)

For Petitioners :- Mr. Mayank Kumar, Advocate

For Respondents:- Mr. Ramakant Mishra, DSGI and Mr. Bhupendra Pandey, C.G.C.

SB- Hon'ble Shri Justice Amitendra Kishore Prasad

CAV Order

1. Since common question of facts and law is involved in both the cases, as such, both the petitions are being disposed of by this common order.

2. WPS No. 9261 of 2023 *(S.K. Pradhani vs. Union of India and others)* has been taken as lead case in order to decide the issues involved in these matters.

3. The present petitions are directed against the impugned

order dated 13.10.2023 passed by Respondent No. 5, namely the Inspector General of Police, Central Reserve Police Force, Southern Sector Headquarters, whereby the joint representation submitted by both the petitioners seeking reinstatement to the post of Constable with all consequential benefits and back wages was rejected. The petitions further assail the revision order dated 08.04.2013, by which the revision preferred by the petitioners was dismissed by the respondent authorities. The said revision arose out of the dismissal order dated 09.11.2009, whereby the petitioners were dismissed from service with effect from 09.11.2009 by invoking the provisions of Section 11 of the CRPF Act, 1949 read with Rule 27-CC(ii) of the CRPF Rules, 1955. The petitioners also challenge the appellate order dated 21.03.2011, passed by the Appellate Authority, by which the appeal filed by the petitioners were rejected as being devoid of merit. By way of these petitions, the petitioners seek appropriate reliefs including quashment of the aforesaid orders and consequential reinstatement in service with all attendant benefits.

4. Subject matter in brief are that these petitions arise out of the second round of litigation between the parties. The petitioners were appointed and posted as Constable (GD) in the 39th Battalion of the Central Reserve Police Force (CRPF) at Narayanpur (now Vijayawada). During the course of service, an

FIR No. 12/2009 was registered against the petitioners and other co-accused for offences under Sections 147, 148, 294, 506-B and 307 of the Indian Penal Code, 1860. On account of his arrest in the said criminal case, the petitioners were placed under suspension with effect from 23.10.2009. Considering the alleged gravity of the accusations, the Disciplinary Authority formed an opinion that it was not reasonably practicable to conduct a departmental enquiry, and accordingly, no departmental enquiry was held. The petitioners were dismissed from service w.e.f. 09.11.2009 by the Commandant, 39th Battalion, CRPF, by invoking Section 11 of the CRPF Act, 1949 read with Rule 27-CC(ii) of the CRPF Rules, 1955. Aggrieved by the dismissal order dated 09.11.2009, the petitioners preferred a statutory appeal before the DIG, Range, CRPF, Bhubaneswar, which came to be rejected vide order dated 21.03.2011. Thereafter, the petitioners preferred a revision, which was also rejected by the competent authority vide order dated 08.04.2013. Meanwhile, the criminal trial proceeded before the learned Additional Sessions Judge, Kondagaon in Sessions Case No. 161/2012. Vide judgment dated 09.08.2012, the learned Trial Court acquitted the petitioners of all major charges and convicted him only under Section 323 IPC, imposing a fine of Rs. 500/-. Against the said conviction, the petitioners preferred Criminal Appeal No. 744/2012, wherein this Hon’ble

Court, vide judgment dated 15.05.2014, set aside the conviction and acquitted the petitioner of all charges. Upon their acquittal attaining finality, the petitioners submitted representations before the respondent authorities seeking reinstatement in service with all consequential benefits including back wages. However, due to inaction and uncertainty as to the competent authority, the petitioners was constrained to approach this Hon'ble Court by filing Writ Petition (S) No. 2269/2015 (Jaipati Yadav & Anr. v. Union of India & Ors.). The said writ petition was disposed of vide order dated 27.06.2023, directing the respondent authorities to consider and decide the petitioner's representation within a stipulated period. Pursuant thereto, a fresh representation was submitted by the petitioners; however, the same has been rejected by Respondent No. 5 vide the impugned order dated 13.10.2023, without proper application of mind. It is submitted that the sole foundation of the petitioners' dismissal was the criminal case registered against him, and once the petitioner stood fully acquitted by this Hon'ble Court, the very basis of the dismissal ceased to exist. The judgment of acquittal has attained finality, having not been challenged before the Hon'ble Supreme Court. Despite this, the respondent authorities have arbitrarily rejected the petitioner's claim for reinstatement. Hence, the present petitions.

5. The petitioners have prayed for certain reliefs in the present writ petitions. Though there are some sort of differences in respect of prayer made by the petitioners in both the petitions, however, in sum and substance, the reliefs are altogether similar and identical. The reliefs prayed in ***WPS No. 9261/2023 (S.K. Pradhani vs. Union of India and others)*** are quoted hereinbelow in order to consider both the cases and to decide the same.

> *"10.1) This Hon'ble Court may kindly be pleased to set-aside/quash the order dated 13.10.2023 passed by Respondent no. 5, wherein the representation of the petitioner for his reinstatement to the post of Constable (GD) with all consequential benefits and back wages has been rejected (Annexure P/1).*
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> *10.2) This Hon'ble Court may kindly be pleased to set-aside/quash the order dated 08.04.2013 passed by the Revisional Authority i.e. by Inspector General of Police, Southern Sector, CRPF Hyderabad, wherein revision preferred by the petitioner was rejected. (Annexure P/3).*
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> *10.3) This Hon'ble Court may kindly be pleased to issue such directions/orders to the respondent authorities to reconsider the candidature of the petitioner for his reinstatement to the post of Constable (GD) with all consequential benefits including back wages along with interest.*

10.4) Any other relief which this Hon'ble Court deems fit and proper may also kindly be granted to the petitioner, in the interest of justice."

6. Facts of the case are that the petitioners were appointed and posted as Constable (GD) bearing Batch No. 025040067 in the 39th Battalion of the Central Reserve Police Force (CRPF) at Narayanpur (now Vijayawada). On 23.10.2009, on the basis of allegations arising out of an incident during operational duty and the subsequent registration of FIR No. 12/2009 for offences under Sections 147, 148, 294, 506-B and 307 of the Indian Penal Code, 1860, the petitioners along with other co-accused were arrested and placed under suspension with effect from 23.10.2009. Considering the circumstances, the Disciplinary Authority formed an opinion that it was not reasonably practicable to conduct a departmental enquiry and, accordingly, by invoking Section 11 of the CRPF Act, 1949 read with Rule 27-CC(ii) of the CRPF Rules, 1955, the petitioners were dismissed from service w.e.f. 09.11.2009 by the Commandant, 39th Battalion, CRPF. The statutory appeal preferred by the petitioners was rejected by the DIG, Range, CRPF, Bhubaneswar on 21.03.2011, and the revision petition was also dismissed by the IGP, Southern Sector, CRPF, Hyderabad on 08.04.2013. Meanwhile, the criminal trial proceeded before the learned Additional Sessions Judge, Kondagaon in

Sessions Case No. 161/2012, wherein vide judgment dated 09.08.2012 the petitioners were acquitted of all major charges and convicted only under Section 323 IPC with a fine of Rs. 500/-, which conviction was subsequently set aside by this Hon'ble Court in Criminal Appeal No. 744/2012 vide judgment dated 15.05.2014, resulting in the petitioners' complete acquittal. After their acquittal attained finality, the petitioners submitted representations seeking reinstatement with all consequential benefits; however, due to inaction, they were constrained to file Writ Petition (S) No. 2269/2015, which was disposed of on 27.06.2023 with a direction to the respondent authorities to consider their representation. Pursuant thereto, a fresh representation dated 08.07.2023 was submitted, which came to be rejected by Respondent No. 5 vide impugned order dated 13.10.2023, despite the fact that similarly situated co-delinquents, who were dismissed by the same order dated 09.11.2009 and later acquitted, were reinstated in service, thereby compelling the petitioners to file the present petitions seeking redressal of their grievance.

7. Fact of the case in hand is that on 23.10.2009, pursuant to registration of FIR No. 12/2009 for offences under Sections 147, 148, 294, 506-B and 307 of the IPC, the petitioner along with other co-accused was placed under suspension. Thereafter, vide order dated 09.11.2009, the petitioner was dismissed from service by the

Commandant, 39th Battalion of the Central Reserve Police Force, by invoking Section 11 of the CRPF Act, 1949 read with Rule 27-CC(ii) of the CRPF Rules, 1955. The statutory appeal preferred by the petitioner was rejected by the DIG, Range, CRPF, Bhubaneswar on 21.03.2011, and the revision petition was also dismissed by the competent authority vide order dated 08.04.2013. Meanwhile, the learned Additional Sessions Judge, Kondagaon, in Sessions Case No. 161/2012, vide judgment dated 09.08.2012, acquitted the petitioner of all major charges and convicted him only under Section 323 IPC, imposing a fine of Rs. 500/-. The said conviction was challenged before this Hon'ble Court in Criminal Appeal No. 744/2012, and vide judgment dated 15.05.2014, the petitioner was acquitted of all charges. Subsequently, due to inaction on the part of the respondent authorities, the petitioner approached this Hon'ble Court by filing Writ Petition (S) No. 2269/2015, which was disposed of on 27.06.2023 with a direction to the respondents to consider and decide the petitioner's representation within a stipulated period. Pursuant thereto, the petitioner submitted a fresh representation on 08.07.2023, which, however, came to be rejected by the respondent authorities vide the impugned order dated 13.10.2023, giving rise to the present petition.

8. Learned counsel for the petitioners submit that the suspension and subsequent dismissal of the petitioners were founded solely on the registration of FIR No. 12/2009 and the conviction recorded by the Trial Court, and once this Hon'ble Court, vide judgment dated 15.05.2014, acquitted the petitioners of all charges and the said judgment has attained finality having not been challenged before the Hon'ble Supreme Court, the very substratum of the impugned termination ceased to exist, thereby entitling the petitioners to reinstatement with all consequential benefits. It is further submitted that even assuming, though denied, that the acquittal was on benefit of doubt, the same does not dilute the legal effect of acquittal, particularly when no independent departmental enquiry was ever conducted and the dismissal was passed by invoking extraordinary powers under Rule 27-CC(ii) of the CRPF Rules, 1955. Learned counsel submits that the petitioners have been made to suffer for more than a decade without any justification, depriving them of livelihood and dignity, and the rejection of their representation reflects complete non-application of mind. It is also contended that similarly situated co-delinquents, who were dismissed by the same order dated 09.11.2009 and later acquitted, have already been reinstated in service, and denial of the same relief to the petitioners amounts to hostile discrimination and violation of Articles 14 and 21 of the

Constitution of India. Learned counsel therefore submits that the impugned order is arbitrary, unsustainable in law, and liable to be quashed, and the petitioners deserve reinstatement in service in the Central Reserve Police Force with all consequential benefits. Reliance has been placed on the judgments of the Hon'ble Supreme Court in the matters of ***Vijay Singh Bhadauriya vs. State of Madhya Pradesh and others 2025 SCC OnLine MP 3832, Zuber Ahmed vs. The Union of India and others 2015 SCC OnLine P&H 8826*** and also the order passed by this Court in ***WPS No.1371/2023 (Nansai vs. South Easter Coal Ltd. And others).***

9. Learned counsel for the respondents submits that the dismissal of the petitioners from service was not based solely on the registration of FIR No. 12/2009 or the outcome of the criminal proceedings, but on the petitioners' alleged conduct involving indiscipline and misconduct during operational duty, which was considered serious in the context of a uniformed force like the Central Reserve Police Force. It is submitted that a Preliminary Enquiry was conducted at the spot and the material on record, including statements of concerned personnel and medical records, indicated involvement of the petitioner, and in view of the prevailing circumstances, the Disciplinary Authority formed an opinion that it was not reasonably practicable to hold a regular

departmental enquiry, leading to invocation of Section 11 of the CRPF Act, 1949 read with Rule 27-CC(ii) of the CRPF Rules, 1955. Learned counsel further submits that the acquittal of the petitioners in the criminal appeal does not automatically entitle them to reinstatement, as departmental action and criminal proceedings operate in different fields and are governed by different standards of proof. It is also contended that the petitioners' appeal and revision were duly examined and rejected by the competent authorities and that the impugned order dated 13.10.2023 was passed after considering the petitioners' representation and relevant records. Learned counsel submits that discipline is an important consideration in a force such as CRPF and, therefore, no case for interference with the impugned order is made out, and the petitions are liable to be dismissed.

10. I have heard learned counsel for the parties and perused the material available on record.

11. From a bare perusal of the impugned order removing the petitioners from service, it appears that the procedure envisaged under Section 11 of the CRPF Act, 1949 read with Rule 27(CC)(II) of the CRPF Rules, 1955 has not been followed in its true spirit. No proper opportunity of hearing was afforded to the petitioners. The appellate as well as revisional authorities have mechanically affirmed the order of punishment merely on the premise that the

disciplinary authority had recorded satisfaction that holding a regular departmental enquiry was not reasonably practicable, and accordingly proceeded to remove the petitioners from service without conducting any enquiry. It is significant to note that none of the witnesses were examined in the so-called enquiry. The department justified this omission on the ground that no witness was willing to come forward to depose and, therefore, their statements were not recorded. Such an approach is wholly contrary to the settled principles governing disciplinary proceedings.

12. Removal from service entails serious civil consequences. Therefore, the competent authorities are required to strictly adhere to the mandatory procedural safeguards prescribed under law. The delinquent employee must be given adequate opportunity at every stage — issuance of show cause notice, framing of definite charges, supply of relevant documents, leading of evidence, and opportunity to cross-examine departmental witnesses as well as to adduce defence evidence. Unless such procedure is duly followed, imposition of a major penalty like removal from service, without holding a proper enquiry and without granting reasonable opportunity of hearing, cannot be sustained in the eyes of law.

13. In the present case, the initiation of the so-called enquiry appears to have been founded solely upon a criminal case

registered against the petitioners. They were convicted for the offence punishable under Section 323 IPC and sentenced to pay a fine of Rs. 500/- each. However, their conviction was subsequently set aside by this Court in Criminal Appeal No. 744/2012 on the ground that the prosecution failed to prove the case beyond reasonable doubt and the appellants were entitled to benefit of doubt.

14. Though it is true that departmental proceedings and criminal proceedings operate in distinct spheres, once the departmental enquiry itself was not conducted in accordance with the procedure prescribed under law and no reasonable opportunity of hearing was granted to the petitioners, the entire action stands vitiated. In the absence of a proper enquiry, it would be difficult to uphold the orders passed by the disciplinary authority and affirmed by the appellate and revisional authorities.

15. It is also pertinent to mention that other co-delinquents, who were similarly charged and were acquitted in the criminal case, were reinstated in service. The present two petitioners, who were initially convicted under Section 323 IPC but subsequently acquitted in appeal, were not extended similar benefit. The nature of the dispute leading to the criminal case also indicates that the incident arose out of a petty altercation which was not ultimately proved in accordance with law.

16. All these circumstances cumulatively demonstrate that non-compliance with the mandatory procedural requirements has resulted in miscarriage of justice. In a case where a major punishment such as removal from service is imposed, strict adherence to the prescribed procedure and grant of adequate opportunity to the delinquent employee is indispensable. Failure to do so renders the impugned action unsustainable in law.

17. The Hon'ble Supreme Court in **Zuber Ahmed (Supra)** has held that dispensing with a regular departmental enquiry on the ground that it is "not reasonably practicable" to hold such enquiry is an exceptional power, which must be exercised strictly in accordance with law. The authority is required to record cogent and convincing reasons demonstrating real and objective satisfaction that holding the enquiry was not feasible. Mere *ipse dixit* of the disciplinary authority or vague apprehensions cannot justify bypassing the mandatory safeguards of natural justice, particularly when a major penalty like dismissal or removal from service is imposed. The relevant paragraphs are quoted hereinbelow:-

> *"63. That the dismissal from service of the petitioner by orders dated March 19. 1993 is not in accordance with s. 12 CRPF Act read with r. 27 enquiry which is mandatory under r. 27(c) could not have been of the CRPF Rules. This dismissal without conducting a departmental dispensed with since the petitioner had not been convicted on a "Criminal Charge" stricto sensu as carefully urged*

by Mr. Cheema to take the trial out of the charge framed against the accused. Therefore, any power exercised of dismissing the petitioner without an enquiry and Invoking r. 27(cc) is not permissible since the petitioner was convicted of an offence under s. 10(n) I.e. of an act or omission "prejudicial to good order and discipline". Hence, the impugned order passed without enquiry only on the ground of conviction under s. 10(n) cannot be sustained since the petitioner has not been convicted on a criminal charge by a Court of a criminal offence under the Penal Code, 1860.

64. Mr. Malhotra submits that under s. 4 Cr.P.C. all offences under the IPC shall be Investigated, inquired into, tried and dealt with according to the provisions contained in the Cr.P.C., 1973. Section 26 prescribes that any offence under the IPC may be tried by a Court, which such offence is shown in the First Schedule of the Cr.P.C. to be triable. Under the First Schedule to the Cr.P.C., any offence under s. 354 IPC i.e. assault or use of criminal Force upon a woman with intent to outrage her modesty, is triable by a Magistrate which as per the explanatory note No. 2 to the First Schedule means a Magistrate of First Class/Metropolitan Magistrate, but not an Executive Magistrate. Hence, the petitioner could neither be tried nor was he tried or punished under s. 354, IPC by the 6th respondent acting as Chief Judicial Magistrate by virtue of being a Commandant in CRPF. Therefore, the petitioner was not convicted on a criminal charge under the IPC. Hence, r.27(cc) of the CRPF Rules was wrongly invoked by the 6th respondent in passing the impugned order dated March 19, 1993 as the petitioner was neither charged, nor tried or convicted of any offence under the IPC, much less s. 354, IPC. Therefore, the petitioner could not have been dismissed from service without compliance of r. 27(a) and r. 27(c) requiring holding of a departmental enquiry.

65. Submits that the order of dismissal from service has been passed by the 6th respondent in a routine manner without any application of mind. The action of dismissal being a severe major punishment, it has to be awarded only if there are

very serious charges and the action of dismissal from service should be commensurate to the gravity of the charges. In the case of the petitioner, he was not tried or convicted of a more heinous offence under s. 9 of the CRPF Act. In fact,even under s. 10 stipulating less heinous offences, a residuary charge i.e. s. 10(n) prescribing an act or omission, which, though not specified in this Act, which is prejudicial to good order and discipline, was levelled against the petitioner. The 6th respondent did not level any serious allegations against the petitioner under s. 9 CRPF Act. Therefore, dismissing the petitioner from service, which is a major punishment for a less heinous offence without holding any departmental enquiry which is mandatory under rls. 27(a) and (c), clearly shows non-application of mind and evidence of bias. See Ranjit Thakur and Mohd. Zakir cases supra. Therefore, the impugned order of dismissal from service of petitioner cannot be sustained in law.

Disproportinate and petitioner: excessive punishment imposed on petitioner:

66. That the punishment of dismissal from service is grossly disproportionate, excessive and is not commensurate with the alleged charge which does not establish any proved misconduct which is defined or identified under the CRPF Act. There is no charge proved which is remotely made out alleging use of criminal force with intent to outrage the modesty of a woman. Hence, an undefined act which is stated to be prejudicial to good order and discipline is highly subjective. The opinion of the 6th respondent in alleging this charge as prosecutor, judge and disciplinary authority is highly opinionated and blased. The powers given to one individual to judge the parameters for this offence as a residuary clause without any reasons being given or justification to support it, makes of award of punishment of dismissal highly inequitable and unjust. It was unfair to impose this punishment without even giving a hearing or holding a departmental enquiry in the service matter. Therefore the punishment imposed shocks the conscience of any individual and in terms of the law laid down in Union of India v. Parma

Nand, AIR 1989 SC 1185 and also reiterated in Commandant, 22 Battalion, CRPF Srinagar v. Surinder Kumar, (2011) 10 SCC 244, the punishment of dismissal from service on the petitioner is strikingly disproportionate and warrants interference by this Court as being perverse and irrational having regard to the nature of the charge of misconduct which was not a criminal charge, molestation attempt not having being established when the complainant resiled from her previous statement and failed to recognize Zuber Ahmed as the person charged. For judicial treatment of difference between 'strikingly disproportionate' punishment and 'merely disproportionate', see Union of India v. R.K. Sharma, AIR 2001 SC 3053. Hence, the dismissal from service of the petitioner cannot be sustained for this reason as well.

Impermissible concurrent exercise of powers by respondent No 6:

67. That the simultaneous exercise of power in three different capacities by Sh. Pushkar Singh Ie. the 6th respondent in his separate official positions as Chief Judicial Magistrate and Commandant is offjustified, Impermissible and legally untenable in accordance with the prevailing provisions of the Cr.P.C., 1973 on account of the following reasons which are supplemented by the description in written submissions.

68. Even though there is no formal amendment Incorporating the provisions of Cr.P.C., 1973 in the CRPF Act, 1949 and the CRPF Rules, 1955, the provisions of Cr.P.C., 1973 may have to be read into the various provisions of the CRPF Act and Rules as a substitute to the Cr.P.C., 1898, which stands repealed by s. 484 of the Cr.P.C., 1973. Hence, by necessary Implication, the 1973 Code shall stand automatically substituted.

80. framed by the Central Government in exercise of powers conferred by s. 18 of the CRPF Act. A brief summary of the relevant provisions is set down as hereunder:

(1) Ss. 9 and 10 of The CRPF Act prescribe and contain "more heinous offences" and "less heinous offences". s. 10(n) contains a residuary punishment clause, "which, though not specified

in this Act, is prejudicial to good order and discipline" and entailspunishment as for other "less heinous offences". No provision in the Act defines or prescribes a determination process of any such "less helnous offence" though r. 27 stipulates the authority and the procedure provided for conducting enquiries and punishments to be inflicted after a formal departmental enquiry.

(il) Section 11 of The CRPF Act prescribe that the "competent authority" may, subject to the Rules under the Act, "award in lieu of, or in addition to, suspension or dismissal anyone or more of the following punishments to any member of the Force" which have been stipulated as reduction in rank, fine, confinement to quarters/quarter guard or removal from distinction/special emolument in the Force. S. 12 states that, "every person sentenced under this Act to imprisonment may be dismissed from the Force" and every such person shall, if so dismissed, be Imprisoned in the prescribed prison, or be confined in the quarter-guard or such other place as the Commandant or the Court may consider suitable. Section 2(b) of the Act defines, "close arrest and s. 2(e) defines "open arrest" as specified in s. 15.

(III) That under s. 16 of the Act, "Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) the Central Government may invest the Commandant or an Assistant Commandant with the powers of a Magistrate of any Class for the purpose of enquiring into or trying any offence committed by member of the Force and punishable under this Act, or any offence committed by a member of the Force against the person or property of an another member."

(iv) Rule 27(cc) is part of a provision which deals with procedure to be adhered to in disciplinary enquiries, prescribes three grounds where the competent authority, 'may' impose a departmental penalty considering the circumstances of the case, to make such orders thereon as it deems fit. Thus, this provision of the rules, if Invoked, do not require any notice, hearing, opportunity of rebuttal or defence before any penalty is Imposed on a

delinquent member of the Force. It may be pointed out at the outset that if r. 27(cc) is compared and contrasted with Article 311(2) of the Constitution, then, r. 27(cc) is differently worded. Rule 27(cc) dispenses with the applicability and requirement of a Departmental enquiry in three contingencies and states that, "the authority competent to Impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit." In so far Article 311(2) is concerned, it provides that if a person is dismissed, removed or reduced in rank, "this clause shall not apply," inter alia, "where a person is dismissed or removed or reduced in rank on the ground of conduct which hasled to his conviction on a criminal charge."

(v) Hence, the distinguishing featurich the ERPF distrit the use of the word 'may' in r. 27(cc) which gives a discretion to the whereas Article 311(2) prescribes punishing authority, a mandatory 'shall' leaving no discretion to the punishing authority as explained by the Supreme Court in past precedents. Hence, Invoking of r. 27(cc) prescribing the use of word, "may" in the light of Interpretation of Articles 14, 16 and 21 of the Constitution, would require reasons to be recorded in exercising any discretion dispensing with an enquiry if any of the three contingencies of r. 27(cc) when are invoked for dismissing the services of a Member of the Force.

(vi) Rule 36 of the CRPF Rules prescribes that, "all trials in relation to any one of the offences specified in s. 9 or 10 shall be held in accordance with the procedure laid down in the Code of Criminal Procedure Code, 1898." Though, there seems to be no formal amendment replacing it with the Code of Criminal Procedure, 1973, a note in the Bare Act indicates "see now the Code of Criminal Procedure, 1973" which is merely editorial and not the voice of Parliament.

(vii) Rule 36(B) of the CRPF Rules enjoins that for the purposes of Chapter VI-A dealing with place of trial and adjustment of jurisdiction of ordinary Courts, "Magistrate" means a Magistrate other than the Commandant or an Assistant Commandant on whom the powers of a

Magistrate have been conferred under sub s. 2 of s. 16.

81. From a collective reading of the above provisions, it can be understood that a Commandant under s. 16 of the CRPF Act, whilst acting as a Magistrate and conferred with the powers under the Code of Criminal Procedure Code, 1898 ("see now the Code of Criminal Procedure, 1973") can sentence a person to more or less helnous offences under Ss. 9 and 10 of the Act. Thereafter, under Ss. 11 and 12, further punishments including dismissal from service of the Force can be imposed by the Commandant as the Disciplinary Authority for which under r. 27(cc), discretion can be exercised to make such orders as deemed fit. Therefore, if a member of the Force is convicted on a criminal charge, he can be removed from service without any notice, enquiry or hearing under r. 27(cc) in the discretion of the Commandant as the Disciplinary Authority. However, the provisions in s. 12 using the words that "every person sentenced under this Act to imprisonment may be dismissed" are different from the words "conviction on a criminal charge" used in s. 12 of the Act. Thus, the different wording, may lead to a conclusion that dismissal from service would require a formal departmental enquiry prescribed under r. 27 in respect of aperson sentenced under this Act to imprisonment. The protection of Articles 14 and 16 available to all citizens necessitates the requirements of equality of treatment even to members of a disciplined Force as the CRPF.

82. Thus it may be seen that departmental enquiries in the CRPF are conducted under s. 11(1) of the CRPF Act read with r. 27(c) of the CRPF Rules since s. 11 is subject to rules made under the Act. In contrast, judicial trials are also held under Ss. 9 and 10 of the CRPF Act read with r. 36 and r. 36 E to 36 J of the CRPF Rules. Section 11 deals with minor punishments and contains overlapping of jurisdictions and requires to be read in its principles since it establishes a connection with rules:

"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 considered 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 (b) 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 isof a Chief Judicial Magistrate, almost visibly power drunk but kneeling before and kowtowing to the powers that be, given the formidable location of the alleged occurrence and the overwhelming position of the complainant who ultimately made no complaint whatsoever to put the criminal law into motion or to be taken criminal cognizance of, the entire episode rather murky.
Code of Criminal Procedure, 1898/1973:
84. However, since the functions of a Judicial Magistrate are conferred upon a Commandant of

the CRPF by virtue of s. 16 of the CRPF Act, it may be necessary to examine certain provisions of the Cr.P.C., 1898 authorization and exercise of judicial powers by CRPF Commandants, as as also the present Cr.P.C., 1973, to test the also to simultaneously exercise powers of a disciplinary authority.

85. That under s.s 30, 32 and 34, 36 and 37 of the Cr.P.C 1898, as it originally stood, Deputy Commissioners or Assistant Commissioners were invested with powers to try as a Magistrate all offences not punishable with death. Hence, under Chapter III dealing with power of Courts under the old Cr.P.C., 1898, where the Executive Officers were invested with wide powers to exercise judicial functions as Magistrates.

86. That to make criminal procedure more comprehensive, the Law Commission undertook a detailed examination of the Cr.P.C., 1898 and submitted its report on February 19, 1968. Thereafter, since the Law Commission was reconstituted, another detailed 41st Report was submitted by the Law Commission in September 1969. Thereafter, Bill 41 of 1970 was introduced in the Rajya Sabha on December 10, 1970. The Bill was referred to a Joint Select Committee of both Houses of Parliament. Incorporating the recommendations of this Committee, the Cr.P.C Bill was taken up for consideration by Parliament. This Bill having been passed by both the Houses of Parliament, received the assent of the President on January 25, 1974 and came into Force on April 1, 1974 as the Cr.P.C., 1973. One of the main recommendations of the Law Commission was to provide for the separation of the Judiciary from the Executive on an All India basis to ensure improvement in the quality and speed of all Judicial Magistrates who would be legally qualified and trained persons within the control of and under the different High Courts. Further, to do away with the scope of arbitrary exercise of power and to dispense with discretionary powers and act in a manner consistent with known principles of law, this conscious decision was taken in view of the provisions of Article 50 of the Constitution

providing for the separation of the judiciary from the Executive in public services.

87. That it may also be pertinent to point out that according to Schedule II of the Law Reforms Ordinance, 1978 (Ordinance XLIX of1978) s. 34 was omitted. The Law Commission in the 41st Report took note of the Union Territories (Separation of Judicial and Executive Functions) Bill, 1968 as Introduced in Parliament containing the following clause;

"Where under any law, the functions exercisable by a Magistrate relating to matters which involves the appreciation or shifting of evidence or formulation of any decision which exposes any person to or penalty, detention in custody pending any punishment, Investigation, enquiry or trial or would have the effect of sending him for trial before any court, such functions shall, subject to the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act, be exercisable by Judicial Magistrate; and where such functions relate to matters which are administrative or Executive in nature, such as granting of a license, the suspension or cancellation of a license, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid be exercised by an Executive Magistrate."

88. Based on the above proposal, the Law Commission made a broad classification of the functions of Judicial and Executive Magistrates in the 41st Report.

89. That in Chapter II dealing with the Constitution of criminal courts and offices, the Law Commission in its 41st Report has specifically suggested that Judicial Magistrates shall be appointed by the High Court at such places as the State Government may in consultation with the High Courts duly notified in the official Gazette. Further, Special Judicial Magistrates may be appointed by the High Court by conferring upon any person a Judicial post if he possesses such qualifications as may be prescribed by the High Court. Likewise, the Law Commission also suggested appointment of Executive Magistrates

by the State Government to exercise Executive functions in their jurisdiction.

90. That the above provisions of constitution of Criminal Courts and offices find their statutory place in Chapter II of the Cr.P.C from Ss. 6 to 25. Judicial Magistrates exercising judicial functions are appointed by the High Court and Special Judicial Magistrates can be appointed for a term not exceeding one year at a time, under s. 13 if a person possesses such qualification or experience in relation to legal affairs as the High Court may by rules specify. Likewise, public prosecutors who have been practicing as an Advocate for not less than 7 years can be appointed by the Central Government or the State Government for every High Court. Executive Magistrates can be appointed by the State Government under s. 20 of the Cr.P.C. Thus, there is a clear separation of powers as contemplated by Article 50 of the Constitution and Judicialpowers are not exercised by Executive Magistrates. The amicus had also placed on record on January 28, 2015 the relevant extract of the provisions of the Cr.P.C., 1898 as also the relevant extract of the 41 report of the Law Commission of India, September 1969 where upon the changes were made in the Cr.P.C., 1898 given rise to the current Cr.P.C., 1973.

91. Bearing in mind that the CRPF is the main counter insurgency Force in India serving at all sensitive locations and borders in India, and is also the largest Central Armed Police Force comprising about 230 battalions and reported over 3 lac personnel, it is suggested that an appropriate reference be made to the Law Commission of India for suggesting suitable amendments to the CRPF Act, 1949 and the CRPF Rules, 1955 so that these provisions can be brought at par with the provisions of the Cr.P.C 1973 and the constitutional mandate under Article 50 of the Constitution stipulating a legal mandate to separate the Judiciary from the Executive in the public services of the State. Hence, CRPF Personnel ought to be administered by a law which is in agreement with the provisions of the Constitution without infringing Cr.PC, 1973.

92. It may be useful to quote that the Army Act, 1950 read with the Army Rules, 1954, the Air Force Act, 1950 and the Navy Act, 1957 which are post Constitutional laws conforming to existing laws do prescribe a proper procedure in accordance with law to regulate disciplinary and penal punishments for offences committed in service through a process of Court Martial and other legal procedural methods devised and employed in accordance with law and rules of natural justice.

93. Likewise, the Border Security Force Act, 1968 read with the BSF Rules, 1969, provides a Security Force Court for dealing with offences for members of BSF which conform to the Constitution and do not infringe other existing statutory laws.

94. Since, CRPF is the largest armed Central Reserve Police Force, it can no longer be continued to be administered by an archaic pre-Constitutional law whose provisions are not in accordance with the protections guaranteed under the Constitution of India as also the principle of separation of judicial powers under the Cr.P.C., 1973. It may no longer be legally tenable to conduct judicial trials by the CRPF under the Cr.P.C, 1898."

95. Accordingly, a copy of this judgment is remitted to the Law Commission of India and the Ministry of Law and Justice, New Delhi to contemplate upon devising a mechanism for administration of discipline and imposition of penalties upon CRPF personnel which are the touch stone and main stream of a disciplined Force and by separation ofJudicial and executive power and to consider points in para. 84 above. The Law Commission may also deliberate the issue where the minimum sentence is not prescribed by law then what should be the bare minimum sentence. In other words, how would "minimum" sentence be quantified. This phrase whether requires to be qualified? Whether Judicial discretion requires to be rationed and rationalized when awarding sentence of "till the rising of the Court" on a criminal charge. This is for the Commission and the Parliament to debate.

96. That when s. 12 of the Act is directory in nature and not mandatory then dismissal from service should normally follow formal departmental enquiry in terms of the procedure prescribed under r. 27 (1). That due process established by law was departed from and straight away, on the same day three major events with lifelong consequences were synchronized and inflicted by the Commandant; the conviction, the sentence and the dismissal. Even assuming arguendo that a regular enquiry was not necessary under r. 27, even then, the petitioner should have been served with a show cause notice to hear him out if he had anything to say against dismissal or proposed dismissal in view of discretion under s. 12 and in absence of the mantra of the words "conduct which led to the conviction" employed therein as in Article 311 of the Constitution on which Tulsiram Patel case Is founded and Chellapan case overruled on point of hearing. That opportunity was not given and the principles of natural justice were breached. Rule 27 is a rule of natural justice. Section 12(1) is an enabling provision. Therefore, the limitation on exercise of power of the Commandant while acting as the disciplinary authority in relation to a constable in CRPF stands circumscribed by r. 27. The dismissal order has undoubtedly been passed under s. 12(1) of the Act which does not contain the words exactly as are found in Article 311(2)(a) of the Constitution. Therefore, none can be imported into s. 12 which is special law for CRPF personnel traceable to what is now Article 33 of the Constitution of India. History has it that the CRPF was a successor to the The Crown Representative's Police Force raised in British India under an enactment called The Crown Representative's Police Force Law, 1939, which was made under the Foreign (Jurisdiction) Order, 1937 to provide for the constitution and regulation of the Force, which automatically ceased to have effect from the August 15, 1947. However, the Government of India Act, 1935 continued to operate till it was transformed into the Constitution of India. The CRPF Act, 1949 was legislated by the Dominion from Paragraph 1 of List 1 of the

Seventh Schedule to the Government of India Act, 1935 falling in the category of "any other armed Forces raised or maintained by the Dominion' which is now replaced by the Union of India administered through the Central Government.

97. Section 12(1) of the Act enables the punishing authority to choose one of the minor punishments specified in s. 11 for one or more of the heinous offences specified in s. 9 or for less heinous offences enumerated in s. 10. I find no cogent or good enough reason not to read Serial No. 1 of the Table under r. 27 as part of the substantive mandatory procedure required to be followed, though falling in rules with no power drawn from the provisions of the Act directly or impliedly. A reading of r. 27 appears not to leave any discretion in the Commandant when not only the proposed choice of punishment is dismissal or removal from the Force, but for any reason whatsoever, for any of the misconducts specified in Ss. 9 and 10 of the Act except to visit after a regular departmental enquiry is held and in no other manner even after sentencing for an offence under s 10(i) (c) of the Act. It is well settled that if a thing is required to be done in a particular manner, it should be done in that manner or not at all. Otherwise, the action would be open to criticism as one being arbitrary and unreasonable. I would repeat the famous words of Justice Felix Frankfurter of the United States Supreme Court in McNabb v. United States, 318 U.S. 332 that the "history of liberty has largely been the history of the observance of procedural safeguards". Rule 27 Is an absolute procedural safeguard while S. 12(1) is enabling and directory in nature, It enables but does not command the Commandant to do what he wishes and as he likes. When the disciplinary authority/Commandant forms opinion under s. 12(1) as to what has to be done after awarding sentence, then the word 'may' used in s. 12 comes into play and would goad and guide him to resort to fair procedure of domestic enquiry recognized by r. 27 of the CRPF Rules, 1955 to arrive at the truth or the most probable truth, when law does not and is not intended to deal with absolutes while reconstructing today of events in

the past based on the limitations of admissible evidence, principles of hearsay etc. and lack of direct facts proved in a trial.

98. There appears to be yet another fundamental reason which persuades me to hold that due procedure was not followed in ordering dismissal without enquiry. That reason lies in sub section (2) of s.12 of the Act. The sub s. lays down that: "Every such person shall, if he is so dismissed, be imprisoned in the prescribed prison,...". A priori Imprisonment follows dismissal. It is not the other way round. Dismissal is an inherent right of the employer reflected in the General Clauses Act, 1897. Provisions of s. 12 do not speak of 'conviction' but speak of 'sentencing' a 'person' 'to imprisonment'. It is axiomatic in criminal law that sentence follows conviction. Thus, conviction on a criminal charge has to be read into s. 12 of the CRPF Act, 1949 even if the word is not found in the statutory enactment and onlysentenced'. But an order of dismissal based on sentence passed on a proven criminal charge is to be visited with imprisonment in view of the word 'shall' used in s. 12(2). This part is apparently mandatory leaving no elbow room or discretion in the trial judge, the Commandant, CRPF to act to the contrary. However, if dismissal is not selected as penalty following sentence then the "Court or the Commandant" can order confinement in quarter-guard. I think that dismissal cases cannot go to quarter-guard. The 'place of Imprisonment' under s.12(2) is the 'prescribed prison". The expression 'prescribed prison' is not defined in the Act nor was required as it is procedural and penal result of criminal consequences. It is r. 36(2) which tell us that it is the place which is the nearest jall. This means where a sentence of imprisonment shall be served. Court is not a jail but can be a place of imprisonment and a person sentenced can be imprisoned in a court room for the working day. Section 389, Cr.P.C. does not speak of jail sentence but of imprisonment. The ordinary meaning of the word 'sentence' is 'punishment given by a law court'. A direction by the court that a person shall be confined in court premises till the court rises constitutes imprisonment within the

meaning of the Penal Code and the Code of Criminal Procedure as it is a confinement and curtailment of civil liberty Imposed by authority of law. But the CRPF Act is a special statute and is differently worded in r. 36(b) which leaves no discretion except to confine a person sentenced under the Act in the nearest jail depending on feasibility of transport and escort either to the nearest jail or Quarter -Guard. This was not done to Zuber Ahmed. The provision reads: "36. Judicial Trials
(a) All trials in relation to any one of the offences specified in s. 9 or' s. 10 shall be held in accordance with the procedure laid down in the Code of Criminal Procedure, 1898. (1973)
(b) All persons sentenced to imprisonment under the Act shall be confined in the nearest jail. Provided that if the sentence of imprisonment is for one month or less, or where the Commandant is satisfied that due to the difficulty of transport and escort of the person sentenced to imprisonment, to the nearest jail, it is so desirable, such persons shall be confined in the Quarter Guard of the Force."

18. Similarly, in **Vijay Singh Bhadauria (Supra)**, the Hon’ble Supreme Court has reiterated that imposition of a major penalty without conducting a proper enquiry and without affording reasonable opportunity of hearing violates the principles of natural justice. The Court emphasized that the satisfaction regarding “not reasonably practicable” to hold an enquiry must be based on objective material and cannot be sustained in the absence of compelling circumstances. An order passed in breach of such mandatory procedural safeguards is liable to be set aside. The relevant paragraphs are quoted hereinbelow:-

"9. After consideration of the arguments advanced by the counsels for the parties, we are of the considered view that the charges leveled against the petitioner were duly proved in the Departmental Enquiry by examining relevant witnesses. The defence put up by the petitioner was duly considered by the Inquiry Officer in his enquiry report. Shri Suresh Singh, Railway Magistrate, Bhopal categorically stated before the Inquiry Officer that High Court Judge of Allahabad could not reach to Railway Station on time as the petitioner came late at VIP Guest House and was in drunken state. In the cross examination, he clarified that petitioner was not in the normal condition when he met to the petitioner at Railway Station. Another witness Santosh Singh Mess, APO narrated the entire incident in detail and stated that petitioner was directed to reach VIP Guest House at 1.30 AM on 19.11.2006 but when he did not reach on time, Judge of Allahabad High Court called him at 2.45 AM and asked him to reach at Railway Station, where he handed. over a written complaint to APO. This witness proved the complaint, which was written and signed by the Judge of Allahabad High Court in his presence. Department examined another witness Smt. Chunamma Nath, Accountant of District Court, Bhopal, who stated that earlier also when the petitioner was posted in Family Court, Bhopal the complaint was received and he was reverted.

10. The petitioner himself has accepted in his examination that he was directed to reach VIP Guest House on 19.11.2006 at 1.30 AM, however, he denied the allegation that he was in drunken state. He submitted the explanation that between his home and Shyamla Hills, where the vehicle was parked, tyre of his bicycle was punctured therefore, he could not reach on time. He examined Sunil Kumar, Home Guard Sainik, who was performing night security guard duty in the Judges Enclave of Shyamla Hills Bhopal where the vehicle was parkedand supported the contention of petitioner that his bicycle was punctured.

11. The Inquiry Officer considered the entire material and thereafter submitted his enquiry

report dated 15.01.2007. After consideration of the evidence in detail, the Inquiry Officer found proved the charge. against the petitioner. After issuance of show cause notice to the petitioner as to why enquiry report be not accepted, the Impugned order was passed by the District & Sessions Judge, Bhopal.

12. So far as the findings of Inquiry Officer are concerned, the same has been recorded on the basis of material available on record and Inadequacy of evidence cannot be subject matter of judicial review and the High Court can interfere with the order of punishment only in case of violation of the provisions of rules or principles of natural justice are proved. This court cannot exercise its jurisdiction in a petition under Article 226 of the Constitution of India as appellate authority. This court can interfere only if statutory rules or regulations are found to be violated. When the law permits the competent authority to take action against the delinquent person for his misconduct, no interference in the finding is called for. Consequently, so far as the finding of misconduct is concerned, we are in agreement with the Disciplinary Authority.

13. However, looking to the charge of misconduct, the punishment of dismissal appears to be disproportionate. The allegation against the petitioner was that he failed to reach at VIP Guest House on time and therefore, the Judge of Allahabad High Court could not board the train as scheduled. In our considered opinion allegation is not sufficient for dismissal of the delinquent from the service.

14. The punishment of removal from the service is in outrages. defines of logic and is shocking and if the punishment imposes by the Disciplinary Authority shocks the conscious of the Court, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty Imposed and to impose appropriate punishment with cogent reasons in support thereof.

15. For the aforesaid reasons, though we uphold the findings of misconduct but set aside the quantum of punishment and remit the matter to the disciplinary authority to reconsider the

quantum of punishment in the light of allegation of misconduct proved against the petitioner. Said exercise be completed within a period of three months from the date of receipt of certified copy of this order. Petitioner will be reinstated with immediate effect, however, he will not be entitled for back wages applying the principle of "no work no pay".”

19. Further, this Court in the matter of ***Nansai (Supra)*** has held as under:-

“6. This Court has considered the nature of dispute in WPS No. 3302/2011 in which it has been held as under:-
"As a consequence, the petitioner would be entitled for reinstatement in service. However, applying the principles of "No Work No Pay" and also taking the long duration of time that has lapsed from the date of termination till now, the petitioner would not be entitled for any wages. However, he would be entitled for all other benefits of continuity of service. This Court having quashed the impugned order only on the ground of not conducting an inquiry, the right of the respondents stands reserved for conducting an inquiry and on being satisfied that the petitioner has fraudulently obtained employment, the respondents-Management would be free to take appropriate decision in accordance with the Service Rules or the standing order as the case may be governing the field."
7. Having considered the facts and circumstances of the present case in their entirety, and also taking into account the order passed in WPS No. 3302/2011, this Court finds that the impugned order of removal is unsustainable as without issuing any notice and without holding any enquiry order regarding removal from service has passed, that too without affording any opportunity of hearing which is illegal and is accordingly quashed. However, it is made clear that the delay in filing the present petition, as well as the period during which the

petitioner did not render any service, shall be duly taken into account while reinstating the petitioner. Consequently, the petitioner shall not be entitled to claim any monetary or service-related benefits for the said period.
8. Accordingly, the writ petition is allowed.
9. Furthermore, it is made clear that the concerned respondent authorities shall be at liberty to initiate appropriate proceedings, ifso advised, in accordance with law and the applicable Service Rules, for taking action against the petitioner, including his removal from service, after following due process."

20. Also, in the matter of ***Dwarka Prasad Kashyap vs. State of M.P. and others 2010 (3) M.P.H.T. 180***, the Madhya Pradesh High Court has held that any administrative or quasi-judicial order entailing civil consequences cannot be sustained if passed without affording reasonable opportunity of hearing. The Court further observed that even where the statutory provisions are silent, the principles of natural justice are required to be read into the procedure, and any action taken in violation of *audi alteram partem* is liable to be set aside.

21. In view of the aforesaid settled legal position, this Court has no hesitation in holding that the impugned action of the respondents, having been taken without conducting a regular departmental enquiry and without affording adequate opportunity of hearing to the petitioners, cannot be sustained in the eyes of law. The material available on record clearly demonstrates that the mandatory procedural safeguards contemplated under the relevant

statutory provisions were not adhered to. The satisfaction recorded by the disciplinary authority that holding a regular enquiry was not reasonably practicable is not supported by any cogent or compelling material. The mere assertion that witnesses were unwilling to depose cannot, by itself, justify dispensing with a full-fledged enquiry, particularly when the punishment imposed is that of removal from service, which carries grave civil consequences.

22. This Court has also considered the nature of the dispute which led to initiation of both the criminal case and the departmental action. The incident in question arose out of a petty altercation and, significantly, the conviction recorded by the trial court under Section 323 IPC was subsequently set aside in appeal, granting benefit of doubt to the petitioners. Although departmental proceedings and criminal proceedings operate independently, once the criminal conviction itself does not survive and the departmental enquiry has not been conducted in accordance with law, the foundation of the impugned action becomes unsustainable.

23. It is further noteworthy that similarly placed co-delinquents, who were acquitted in the criminal proceedings, were reinstated in service. Denial of similar treatment to the present petitioners, particularly when their conviction has also been set aside in appeal, results in manifest arbitrariness and discriminatory

treatment. The cumulative effect of non-compliance with mandatory procedure, absence of proper enquiry, lack of adequate opportunity of hearing, and the mitigating circumstances of the case clearly establishes that the impugned orders suffer from serious legal infirmity.

24. Considering the law laid down by the Hon'ble Supreme Court and various High Courts, as well as the peculiar facts and circumstances of the present case, this Court is of the considered view that the punishment order of removal from service passed by the disciplinary authority, as affirmed by the appellate and revisional authorities, is liable to be interfered with and set aside.

25. Accordingly, the order of removal from service passed against the petitioners is hereby quashed. Consequently, the orders passed by the appellate and revisional authorities affirming the said punishment are also quashed.

26. In consequence thereof, the petitioners shall be entitled to reinstatement in service. However, having regard to the facts and circumstances of the case, including the period during which they remained out of service, this Court deems it appropriate to deny back wages. The period from the date of removal till reinstatement shall be treated for all other service benefits, including continuity of service and retiral benefits, but without monetary back wages.

27. The writ petition is accordingly ***allowed*** in the aforesaid terms.

28. No order as to costs.

sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha

HEAD-NOTE

“A major penalty cannot be imposed without proper enquiry and opportunity of hearing. Dispensing with enquiry must be supported by valid reasons; otherwise, the order is liable to be set aside.”