



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1149/2013

EX. CT/ GD RUPAM KUMAR DAS
FORCE NO.060067985 S/O BHUBANESWAR DAS, VILL. PACHIM
KALITAKUCHI, P.O. BHALUKADABA, DIST- BARPETA, ASSAM, PIN-781317

VERSUS

THE UNION OF INDIA and 5 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW
DELHI

2:THE DIRECTORATE GENERAL CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX NEW DELHI

3:THE DIRECTOR GENERAL OF POLICE CENTRAL RESERVE POLICEFORCE
RANGA HEAD OFFICE GREATER NOIDA UTTAR PRADESH

4:THE DY. INSPECTOR GENERAL OF POLICE GROUP CENTRE
CENTRAL RESERVE POLICE FORCE GREATER NOIDA UTTAR PRADESH

5:THE DY. INSPECTOR GENERAL OF POLICE GROUP CENTRE
CENTRAL RESERVE POLICE FORCE AMERIGOG
GUWAHATI KAMRUP ASSAM

6:THE COMMANDANT -168 BATTALION
CENTRAL RESERVE POLICE FORCE AT LOCATIO

Advocate for the Petitioner : MR.R MAJUMDAR

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : WP(C)/1163/2013

EX. CT/GD BIMAL CHANDRA NATH
FORCE NO. 041687349 S/O MILAN CHANDRA NATH VILL- NO. 2 PATKA
P.O. MONAKOCHA DIST. BONGAIGAON ASSAM PIN- 733391.

VERSUS

THE UNION OF INDIA and 5 ORS
REP.B Y THE SECRETARY
MINISTRY OF HOME AFFAIRS
NEW DELHI PIN-

2:THE DIRECTORATE GENERALCENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX NEW DELHI PIN-

3:THE DIRECTOR GENERAL OF POLICE CENTRAL RESERVE POLICE FORCE
RANGA HEAD OFFICE GREATER NOIDA UTTAR PRADESH PIN-

4:THE DEPUTY INSPECTOR GENERAL OF POLICE GROUP CENTRE
CENTRAL RESERVE POLICE FORCE GREATER NOIDA
UTTAR PRADESH.

5:THE DEPUTY INSPECTOR GENERAL OF POLICE GROUP CENTRE
CENTRAL RESERVE POLICE FORCE AMERIGOG
GUWAHATI KAMRUP ASSAM.

6:THE COMMANDANT 168 BATTALION
CENTRAL RESERVE POLICE FORCE AT LOCATION

Advocate for : MR.R MAZUMDAR

Advocate for : MR.R SHARMA appearing for THE UNION OF INDIA and 5 ORS

Linked Case : WP(C)/1164/2013

EX. CT/GD DHANESWAR RAY
FORCE NO. 041686299 S/O SRI BHOGDHAR RAY VILL- NO. PUBLARU GAON
P.O. SILIKHAGURI BIJNI DIST. CHIRANG ASSAM PIN- 783390

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS NEW DELHI
PIN-

2:THE DIRECTOR GENERAL CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICE COMPLEX NEW DELHI PIN-

3:THE DIRECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE RANGA
HEAD OFFICE GREATER NOIDA UTTAR PRADESH PIN-

4:THE DEPUTY INSPECTOR GENERAL OF POLICEGROUP CENTRE
CENTRAL RESERVE POLICE FORCE GREATER NOIDA UTTAR PRADESH.

5:THE DEPUTY INSPECTOR GENERAL OF POLICE GROUP CENTRE
CENTRAL RESERVE POLICE FORCE AMERIGOG
GUWAHATI KAMRUP ASSAM.

6:THE COMMANDANT- 168 BATTALION
CENTRAL RESERVE POLICE FORCE AT LOCATION.

Advocate for : MR.A KUMAR
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA and 5 ORS

Linked Case : WP(C)/1105/2013

EX.CT/GD NABAJIT TALUKDAR
FORCE NO. 041686985 S/O UPENDRA TALUKDAR VILL- SONAKULI
P.O. PATACHARKUCHI DIST. BARPETA ASSAM. PIN- 781318.

VERSUS

THE UNION OF INDIA and 5 ORS REP.BY THE SECRETARY
MINISTRY OF HOME AFFAIRS NEW DELHI PIN-

2:THE DIRECTOR GENERAL CENTRAL RESERVE POLICE FORCE
CENTRAL GOVT. OFFICER COMPLEX
NEW DELHI PIN

3:THE DIRECTOR GENERAL OF POLICE CENTRAL RESERVE POLICE FORCE
RANGA HEAD OFFICE GREATER NOIDA UTTAR PRADESH PIN

4:THE DEPUTY INSPECTOR GENERAL OF POLICE GROUP CENTRE
CENTRAL RESERVE POLICE FORCE GREATER NOIDA UTTAR PRADESH.

5:THE DEPUTY INSPECTOR GENERAL OF POLICE GROUP CENTRE
CENTRAL RESERVE POLICE FORCE AMERIGOG
GUWAHATI KAMRUP ASSAM.

6:THE COMMANDANT -168 BATALLION
CENTRAL RESERVE POLICE FORCE AT LOCATION.

Advocate for : MR.H BEZBARUAH
Advocate for : appearing for THE UNION OF INDIA and 5 ORS

Linked Case : WP(C)/1108/2013

EX.CT/GD JAYDEV CHANDRA RAY
FORCE NO. 041686869 S/O SRI BHUPEN CHANDRA RAY VILL- KAKAIJANA
P.O. ABHAYAPURI DIST. BONGAIGAON
ASSAM PIN- 783383.

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECRETARY
MINISTRY OF HOME AFFAIRS
NEW DELHI PIN-

2:THE DIRECTORATE GENERAL CENTRAL RESERVE POLICE FORCE
CENTRAL GOVERNMENT OFFICER COMPLEX NEW DELHI PIN

3:THE DIRECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE RANGA
HEAD OFFICE GREATER NOIDA UTTAR PRADESH PIN-

4:THE DEPUTY INSPECTOR GENERAL OF POLICEGROUP CENTRE
CENTRAL RESERVE POLICE FORCE GREATER NOIDA UTTAR PRADESH.

5:THE DEPUTY INSPECTOR GENERAL OF POLICEGROUP CENTRE
CENTRAL RESERVE POLICE FORCE AMERIGOG
GUWAHATI KAMRUP ASSAM.

6:THE COMMANDANT -168 BATTALION
CENTRAL RESERVE POLICE FORCE AT LOCATION

Advocate for : MR.H BEZBARUAH
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA and 5 ORS

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 18.01.2024

Date of Judgment: 18.01.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. Rajesh Mazumdar, learned counsel, appearing on behalf of all the petitioners. Also heard Mr. S. S. Roy, learned CGC, appearing on behalf of all the respondents.

2. These 5(five) writ petitions being WP(c)1105/2013, WP(c)1108/2013, WP(c)1149/2013, WP(c)1163/2013, and WP(c)1164/2013, were instituted by the petitioners assailing a joint inquiry as instituted against them by the disciplinary authority basing on a joint memorandum of charge and have accordingly challenged the order of penalty, dated 28.07.2012, passed by the Commandant 168 Battalion, Central Reserve Police Force, dismissing all the petitioners from their services.

3. Since the subject-matter of all these 5(five) writ petitions are one and the same, hence, these writ petitions are heard together and are being disposed of by this common order.

4. The petitioner in WP(c)1149/2013 had joined his services as Constable(General Duty) in the Central Reserve Police Force in the year 2006, while the other 4(four) petitioners in WP(c)1105/2013, WP(c)1108/2013 , WP(c)1163/2013, and WP(c)1164/2013, had joined their services as Constable (General Duty) in the Central Reserve Police Force in the year 2004.

5. For the sake of brevity, the facts as depicted in WP(c)1149/2013, are referred by this Court and the same would also cover the facts as involved in the other 4(four) writ petitions.

6. The petitioner in WP(c)1149/2013, after having discharged his duties for around 6(six) years, came to be served with a memorandum of charge, dated

14.03.2012, issued by the Commandant, 168 Battalion, Central Reserve Police Force, under Rule 27 of the Central Reserve Police Force Rules, 1955, on the ground that the educational certificates as submitted by him at the time of his recruitment to the force, were all found to be fake/forged during the verification conducted by the authorities. Accordingly, the petitioner was charged that he had committed an act of misconduct as provided for under Section 11(1) of the Central Reserve Police Force Act, 1949, exposing him to appropriate penalty thereunder.

7. It is to be noted that the memorandum of charge, dated 14.03.2012, was a joint memorandum of charge issued in respect of 5(five) personnel of the force i.e. the petitioners of the 5(five) writ petitions involved in this order including that of the petitioner in WP(c)1149/2013.

8. The petitioners on receipt of the joint memorandum of charge, submitted their respective replies. However, the same not being found to be satisfactory, the disciplinary authority proceeded to order an inquiry into the matter. The Inquiry Officer was appointed to inquire into the charge as levelled against the petitioner in WP(c)1149/2013 and 4(four) other petitioners vide memorandum of charge, dated 14.03.2012. The Inquiry Officer on completion of the inquiry, proceeded to submit his Inquiry Report, dated 07.07.2012, and therein, held that the charge levelled against the petitioner and 4 others involved in this order, to be proved in totality.

9. Basing on the Inquiry Report as submitted in the matter, the disciplinary

authority vide his order, dated 28.07.2012, proceeded to impose the penalty of dismissal from services upon the petitioner and the others involved personnel i.e. the 4(four) petitioners in the above-noted writ petitions.

10. The petitioner, thereafter, preferred an appeal in the matter and the said appeal was also rejected by the appellate authority. Being aggrieved, the present proceedings has been instituted by the petitioner in WP(c)1149/2013.

11. Mr. Mazumdar, learned counsel for the petitioners, submits that the allegations as levelled against the petitioners being of submission of fake/forged educational certificates for recruitment into the Central Reserve Police Force; the same would not come under the purview of Section 11(1) of the Central Reserve Police Force Act, 1949, in-as-much as the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949, would be applicable to a misconduct committed in discharge of his duties by a member of the Force.

12. Mr. Mazumdar, learned counsel for the petitioner, also submits that the allegations as levelled against the petitioner being of a period, before he had become a member of the force, the misconduct as alleged under Section 11(1) of the Central Reserve Police Force Act, 1949, would not be attracted and as such, a proceeding under Rule 27 of the Central Reserve Police Force Rules, 1955, would also not be permissible. Accordingly, Mr. Mazumdar, learned counsel, submits that the respondent authorities have adopted a wrong procedure in the matter and the proceedings as held in pursuance of the memorandum of charge, dated 14.03.2012, having been so held under wrong

provisions of law; the same including the order of penalty, dated 28.07.2012, imposed upon the petitioner, is of no consequence and requires to be interfered with by this Court.

13. Mr. Mazumdar, learned counsel, further submits that the petitioner having not been alleged to have conducted any misconduct after enlistment as a member in the force, the petitioner could not have been punished under the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949.

14. In support of his submissions, Mr. Mazumdar, learned counsel for the petitioner, relies upon the following decisions of this Court as rendered in the cases of :- (1). ***Thagen Das v. Union of India & ors.***, in WP(c)87/2007, dated 26.03.2007; (2). ***Union of India & ors., v. Md. Saraf Khan*** in WA No. 384/2008, dated 13.03.2009; and (3). ***Chandan Rai v. Union of India & ors.***, in WP(c)4245/2012, dated 12.09.2023.

15. In addition to the said ground urged by the petitioner in WP(c)1149/2013; Mr. Mazumdar, learned counsel for the petitioner, has also urged other grounds which for the time being is not being considered in-as-much as a decision on the said issue as to whether a proceeding under Rule 27 of the Central Reserve Police Force Rules, 1955, could be initiated against the petitioner for an allegation of having committed a misconduct under Section 11(1) of the Central Reserve Police Force Act, 1949, would require a consideration.

16. Mr. Roy, learned CGC, countering to the arguments as advanced by the learned counsel for the petitioner in connection with the sustainability of a proceeding under Section 11(1) of the Central Reserve Police Force Act, 1949, *read with* Rule 27 of the Central Reserve Police Force Rules, 1955, contends that the petitioner having been alleged to have got himself enlisted as a member in the force by producing fake/forged educational certificates, when he does not hold the required educational qualification for appointment to the post, such indiscipline could not be condoned in-as-much as it affects the image and discipline of the force.

17. Mr. Roy, learned CGC, further submits that the petitioner having been given all due opportunities to defend his case in the matter and admittedly, the allegation as levelled against the petitioner of having relied upon fake/forged educational certificates being established in the inquiry and the petitioner in the present proceedings, having not brought on any material to counter the findings as arrived at against him in the inquiry proceedings; this Court would not interfere with such proceedings on the ground as raised by the petitioner.

18. Mr. Roy, learned CGC, also submits that the charge having been established and the petitioner admittedly having been found to be not eligible/qualified in terms of the Recruitment Rules for initial recruitment to his services and his such recruitment being admittedly based on such fake/forged certificates; the penalty as imposed upon the petitioner is proportionate to the gravity of the offence as alleged against him and the same, therefore, does not call for any interference.

19. Given the initial contentions raised by the petitioner with regard to the maintainability of the proceedings as initiated against the petitioner; the following issue arises for consideration of this Court:

- (i). As to whether submission of fake/forged certificates for securing enlistment in the Central Reserve Police Force , would constitute a misconduct so as to entitle the respondent authorities to impose penalty upon the petitioners under Section 11(1) of the Central Reserve Police Force Act, 1949, *read with* Rule 27 of the Central Reserve Police Force Rules, 1955; and
- (ii). A further issue that would arise for consideration is as to whether the memorandum of charge, dated 14.03.2012, as issued under Rule 27 of the Central Reserve Police Force Rules, 1955, alleging commission of an offence of misconduct as described under Section 11(1) of the Central Reserve Police Force Act, 1949, would be sustainable, in the light of the allegations as levelled against each of the petitioners.

20. At the outset, the charge as levelled against the petitioner and 4(four) others; vide the memorandum of charge, dated 14.03.2012, is to be noticed. The Article of charge No. 1, as levelled against the petitioners in the present proceedings, is extracted hereinbelow:

"ARTICLE ONE"

That the below mentioned persons while serving as Constable/General Duty and in their capacity as members of the Force as described in Section 11(1) of the Central Reserve Police Force Act, 1949, have committed an act of misconduct, in that they, by hiding the truth, were recruited to the force on the basis of fake educational certificates. Their educational certificates were found false when the same were verified by the Group Center, Central Reserve Police Force, Greater Noida, with the Board of Secondary Education, Guwahati, (Assam)

- (i) Force no 041686299 Ct/GD Dhaneswar Ray (c/168 Bn)***
- (ii) Force no 041686869 Ct/GD Joydev Chandra Ray (F/168 Bn)***
- (iii) Force no 041686985 Ct/GD Nabajit Talukdar (A/168 Bn)***
- (iv) Force no 041687389 Ct/GD Bimal Chandra Nath (E/168 Bn)***
- (v) Force no 060067985 Ct/GD Rupam Kumar Das (D/168 Bn)"***

21. The personnel as mentioned in the Article of charge No. 1, are the petitioners in the writ petitions involved in the present proceedings.

22. The certificates as submitted by the petitioners at the time of their initial recruitment, were subjected to a process of verification by the respondent authorities and on such process of verification, the issuing authority of the certificates i.e. Board of Secondary Education, Assam, having made a verification of their records maintained, held that the certificates as submitted by the petitioners were not in tune with the records as maintained in the Board and accordingly, opined that the said certificates were all fake/forged documents. Basing on such information coming on record, the memorandum of charge was issued against the petitioners on 14.03.2012. Thereafter, in the inquiry that was held; the petitioners participated therein. However, what is noticeable in the present proceedings, is that the certificates were proved to fake/forged basing on the communications issued by the Board of Secondary

Education, Assam, however, no authority of the said Board came to be examined as a witness in the matter. It is also seen that the witnesses appearing in the matter, had only produced the documents before the Inquiry Officer, however, it is not clear as to the manner in which the contents of such documents wherein more particularly containing the verification of educational certificates submitted by the petitioners, were proved.

23. Given the issue arising for consideration in the present proceedings, the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949, is extracted hereinbelow, for ready reference:

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

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

24. A bare reading of the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949, brings to the forefront that the said Section is applicable when a member of the force is considered by the authority 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.

25. The said Section 11(1) of the Central Reserve Police Force Act, 1949, accordingly, is applicable for a misconduct by a member of the force only.

26. The Section 11(1) of the Central Reserve Police Force Act, 1949, does not bring within its fold any misconduct that may have been committed by a member of the force before he had become a member of the force.

27. This Court, in the case of ***Thagen Das***(supra), was confronted with a similar issue and this Court upon examination of the matter, had concluded that on a *prima facie* examination of the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949, recourse to the said section could be taken *inter alia* for misconduct of a Central Reserve Police Force personnel in his capacity as a member of the force. In the said case, the misconduct as alleged having been in relation to production by the petitioner therein, of a fake/forged ST certificate, it was held that the misconduct alleged against the petitioner therein, was not for an act after he had joined his services but prior to his joining of services. This Court, by relying on the decision of the Hon'ble Supreme Court in the case of ***Ram Saran v. IG of Police***, reported in **(2006) 2 SCC 541**; proceeded to hold that in a case of securing appointment on the basis of false information or false certificate, the appropriate action against such person is to be initiated under the provisions of Rule 14 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965. Accordingly, it was held that the proceedings as initiated against the petitioner under Section 11(1) of the Central Reserve Police Force Act, 1949, was not appropriate and the writ petition came to be disposed of, directing the respondents to initiate appropriate

proceedings against the petitioner therein under the provisions of Rule 14 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965.

28. The said issue again arose before a Division Bench of this Court in the case of ***Union of India v. Md. Saraf Khan***(supra), and therein, also, the Division Bench upheld the conclusion reached by the learned single Judge that the petitioner not being a member of the force, at the time of filing the verification form; the action taken against him under Section 11(1) of the Central Reserve Police Force Act, 1949, was not justified. In the said case, the allegation against the respondent, therein, was that he had, at the time of the recruitment, furnished information by suppressing fact about pendency of a criminal case against him. The said fact coming to the notice of the authorities, proceedings were initiated against him and he was removed from his services. It was under those circumstances that the writ petition was filed and the above conclusion was reached by the learned single Judge and it was subsequently approved by the Division Bench of this Court.

29. The similar issue had arisen before this Court in the case of ***Chandan Rai***(supra) wherein allegations similar to the one levelled against the petitioners herein, was levelled against the petitioner therein; this Court upon considering the issue so arising and by following the decision of this Court in ***Thagen Das***(supra) and the decision of the Hon'ble Supreme Court in the case of ***Ram Saran***(supra); proceeded to draw the following conclusions:

“51. In the case in hand, the respondent authorities have taken recourse to the powers provided under section 11 (1) of the CRPF Act, 1949 and not under the applicable provisions of other Rules. Accordingly, as held in Thagen Das (supra), this Court is of the opinion that the recourse to the provision of

Section 11(1) CRPF Act was inappropriate in the facts of the present case. The appropriate action of such a person would be initiated under the other applicable provisions of Rules strictly.

52. With regard to the contention of the petitioner that Enquiry Officer conducted the disciplinary proceedings in the absence of the Presenting Officer and examined all the witnesses and produced documents, therefore the petitioner was prejudiced due to non-appointment of presenting Officer and accordingly the entire proceedings is vitiated, it is seen that the CRPF act and the Rules does not contemplate appointment of the Presenting Officer, However, in view of the conclusion that the recourse to Section 11(1) OF CRPF Act, 1949 was inappropriate, there is no requirement of elaborate discussion on the issue. It is to be only observed that if the Rules does not contemplate appointment of the Presenting Officer unless it is shown that the principle of natural justice has been violated and if no prejudice is shown, mere non appointment of Presenting Officer may not be said to be vitiated.

53. It also transpires that the Disciplinary Authority has passed the impugned order of dismissal dated 29.04.2010 primarily based on the communication dated 25.03.2010 without conducting any further proceedings which resultant in deprivation of petitioner an opportunity to defend himself and rebut the said document. The Disciplinary Authority appears to have not brought to the notice of the petitioner about the letter dated 25.03.2010. It is also to be noted that when the Disciplinary Authority disagreed with the findings of the Enquiry Officer, it required recording its reasons for disagreement and communicate the same to the delinquent. Though there was a finding for re-verification but the report of the Enquiry Officer contains a conclusion that the charges against the petitioner were not proved. In such circumstances when the Disciplinary Authority decided for re-verification, the reasons for disagreement on not proving the charges could have been communicated. The letter dated 25.03.2010, the basis on which the impugned order of dismissal was passed ought to have been put to notice to the petitioner to have his say on such letter by allowing the petitioner to rebut the same.

Reference may be made to the case of Union of India v. Ram Lakhan Sharma (*supra*) wherein the Hon'ble Supreme Court has observed as under:

"23. A perusal of the aforesaid Rule does not indicate that Rule contemplates appointment of Presenting Officer. Service conditions including punishment and appeal procedure of an employee are governed by statutory rules. The CRPF Act, 1949 has been enacted by Parliament for the constitution and regulation of an armed Central Reserve Police Force. Section 18 of the Act empowers the Central Government to make rules for carrying out the purposes of this Act.

25. Rules of natural justice have been recognised and developed as principles

of administrative law. Natural justice has many facets. All its facets are steps to ensure justice and fair play. This Court in *Suresh Koshy George v. University of Kerala* [Suresh Koshy George v. University of Kerala, 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 para 7 this 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 the Tribunal and the rules under which it functions. The following was held in paras 7 and 8:(AIR p. 201)

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 *Russell v. Duke of Norfolk* [Russell v. Duke of Norfolk, (1949)1 All ER 109 (CA)], Tucker, L.J. observed: (All ER p. 118 D-F)

'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.'

28. When the statutory rule does not contemplate appointment of Presenting Officer whether non-appointment of Presenting Officer ipso facto vitiates the inquiry? We have noticed the statutory provision of Rule 27 which does not indicate that there is any statutory requirement of appointment of Presenting Officer in the disciplinary inquiry. It is thus clear that statutory provision does not mandate appointment of Presenting Officer. When the statutory provision does not require appointment of Presenting Officer whether there can be any circumstances where principles of natural justice can be held to be violated is the broad question which needs to be answered in this case. We have noticed above that the High Court found breach of principles of natural justice in Enquiry Officer acting as the prosecutor against the respondents. The Enquiry Officer who has to be independent and not representative of the disciplinary authority if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into place.

34. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability

of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice. In this context, reference is made of a case of this Court in *Punjab National Bank v. Kunj Behari Misra* [Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84: 1998 SCC (L&S) 1783]. In the above case, this Court had occasion to consider the provisions of the Punjab National Bank Officer Employees & (Discipline and Appeal) Regulations, 1977. Regulation 7 provides for action on the enquiry report. Regulation 7 as extracted in para 10 of the judgment is as follows: (SCC p. 90)

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

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

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

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

54. The contention of the respondent that the petitioner has not availed the alternative remedy under Rule 29 of the CRPF Rules, 1955, therefore the petition is not maintainable is considered to be rejected in as much as it would be a mere formality or it would amount to an appeal from Caesar to Caesar's wife. It is all the moreso when the respondent authorities have recourse to provisions not applicable in the attending facts of the matter with procedural irregularity.

55. It is well settled position of law that unless there is a procedural irregularity in conducting the disciplinary proceedings and/or the punishment imposed is shockingly disproportionate to the proved misconduct Court should not interfere with the order of punishment imposed by the disciplinary authority.

56. The Hon'ble Supreme Court in the case of *Indian Oil Corporation Ltd -versus- Rajendra D. Harmalkar* reported in 2022 SCC Online SC 486, while considering the case of submission of fake/forged/fabricated SSL certificate as admitted by the petitioner/delinquent has observed that producing the false/fake certificate is a grave misconduct. The question is one of a trust.

How can an employee who has produced a fake and forged marksheets/certificate, that too, at the initial stage of appointment be trusted by employer. Whether such certificate is material or not and/or had any bearing on the employment or not is immaterial. The question is of not having an intention or mensrea. The question is producing the fake/forged certificate.

57. Reverting back to the issues, in the facts and circumstances of the matter and in view of the above discussion, in my considered opinion, the submission of false/fake educational certificate for securing appointment in CRPF would not constitute a misconduct so as to entitle the respondent authority to impose punishment section 11(1) of CRPF Act, 1949 after holding disciplinary proceedings under Rule 27 of the CRPF Rules, 1955. Moreso, there is a procedural irregularity in conducting the Disciplinary proceedings on the part of the respondent authorities as the document/verification dated 25.03.2010 relied on by the disciplinary authority was not put to notice on petitioner. Undoubtedly submission of false/fake certificate for securing appointment is a grave misconduct. It is made clear that above conclusion of this Court, under any circumstances, is not to be construed that a person who had secured an appointment in service on the basis of false/fake certificate should be allowed to continue in the service at all. It is just that, in the opinion of this Court the respondent authorities have recourse to the provisions of inapplicable Acts and Rules and on procedural irregularity in the Departmental proceedings in the present case.”

30. This Court is in respectful agreement with the decision rendered by the coordinate Bench of this Court in the case of ***Chandan Rai***(supra) and the ratio thereof, squarely applies to the issues arising in the present proceedings.

31. Applying the ratio as available in the case of ***Chandan Rai***(supra) to the issue arising in the present proceedings, it is held that the allegations as levelled against the petitioners being of a period before they had become members of the force, would not constitute a misconduct under the provisions of Section 11(1) of the Central Reserve Police Force Act, 1949, and accordingly, the proceedings as initiated against the petitioners, herein, under Rule 27 of the Central Reserve Police Force Rules, 1955, is to be held to be not maintainable.

32. There being a procedural irregularity in conducting the disciplinary proceedings on the part of the respondents, the memorandum of charge, dated 14.03.2012, as issued to the petitioners herein, and the follow-up proceedings thereof, including the Inquiry Report, dated 07.07.2012; the order of penalty, dated 28.07.2012; would not be sustainable and accordingly, would stand interfered with.

33. However, the materials as brought on record having disclosed the commission of a misconduct by the petitioners, they cannot be exonerated from the allegations so levelled against them and the present proceedings having been only interfered with by this Court on a procedural irregularity existing in the proceedings; liberty is granted to the respondents to initiate appropriate proceedings under the provisions of the CCS(CCA) Rules, 1965, against all the petitioners involved herein for the allegations as contained in the memorandum of charge, dated 14.03.2012.

34. The interference with the penalty as imposed upon the petitioner would have resulted in issuance of an order for reinstatement of the petitioners in their respective services, however, given the nature of the allegations as levelled against them; this Court refrains from issuing any directions to the respondents for reinstatement of the petitioners in their respective services. The petitioners, however, would be deemed to be in service for conduct of the proceedings as now required to be conducted by the respondents under the provisions of the Central Civil Services(Classification, Control & Appeal) Rules, 1965.

35. It is expected that such proceedings would be expeditiously initiated and concluded by the respondents and it is only for the said purpose that the petitioners, herein, are deemed to be in their services. However, in the event, on conclusion of the fresh proceedings as required now to be initiated against the petitioners; the petitioners are exonerated from the allegations as levelled against them, they would be entitled to reinstatement in their services from the date of their dismissal from service that is w.e.f. 28.07.2012 with all consequential benefits as may be ordered in the matter by the respondent authorities on conclusion of such proceedings as initiated against them.

36. In view of the above discussions and conclusions as arrived hereinabove; this Court is of the opinion that the other grounds as raised by the parties to the proceedings as well as to the case laws relied upon by the parties in this connection, need not be alluded to.

37. With the above observations and directions, all these 5(five) writ petitions stand disposed of.

JUDGE

Comparing Assistant