



2025:DHC:8651-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 09.09.2025

Judgment pronounced on: 26.09.2025

+ W.P.(C) 7635/2022

EX CONST AMIT KUMAR

.....Petitioner

Through: Mr. S.N. Sharma and Mr. A. Pal
Yadav, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Niraj Kumar, Sr. Central
Govt. Counsel with Mr. Rishav Dubey, (G.P)
& Mr. Chaitanya Kumar, Advs.

Mr. Arshdeep Singh Randhawa-Legal
Officer, RAF.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

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JUDGMENT

26.09.2025

OM PRAKASH SHUKLA, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India *vide* which the petitioner seeks to quash/set aside (i) the impugned order dated 18.09.2015, whereby he was dismissed from service pursuant to a departmental enquiry and (ii) order dated 22.05.2019, whereby the said dismissal order was upheld by the appellate authority. The petitioner further seeks reinstatement in services with all consequential benefits.



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2. The facts leading to the present petition are that on 01.02.2015, cross-FIRs were lodged at PS Jaffarpur Kalan, Delhi. They arise from the same incident wherein the petitioner, serving as a Constable in the Central Reserve Police Force¹, was detailed at police station, Jafarpur Kalan, during the Delhi Assembly Elections 2015, along with CT/GD Vishnu Kumar Tiwari and CT/GD Suvankar Mandal. During his deployment, a scuffle broke out between petitioner and some local village people on the said date i.e. 01.02.2015. It was alleged that the petitioner had consumed alcohol, quarrelled with one Ravi and another civilian, and discharged two rounds from his service rifle; two live rounds were found missing, and one round was reported to have struck Ravi on his right hand. Following the scuffle and firing, a crowd of approximately 30-50 persons carrying lathis allegedly assaulted the petitioner, causing serious injuries. CRPF officials evacuated him to a government hospital, and he was discharged on 04.02.2015.

3. FIR No. 25/15, was filed under section 307 of the Indian Penal Code, 1860² by complainant/victim, namely Ravi, alleging that petitioner, under intoxication, accosted the complainant without provocation, brandished his service rifle, and fired one round into the air; when complainant attempted to push the weapon away in self-defence, the petitioner allegedly discharged two additional rounds, one

¹ "CRPF", hereinafter

² "IPC", hereinafter



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of which caused a injury to the complainant. It was further alleged that petitioner fired with the intention to kill. Thereafter, civilians assaulted petitioner, and complainant was taken to RTRM Hospital.

4. On the other hand, FIR No. 26/15 was lodged by one CRPF personnel, Vishnu Tiwari, who was on duty along with the petitioner on the relevant date. The FIR was lodged on account of an assault on the petitioner by a mob. It is alleged in the FIR that petitioner was sitting at the MCD toll booth with two friends/ two other acquaintances, who brought him food. It is mentioned that the said three persons had been drinking alcohol. After dinner, the complainant heard gunshots and saw petitioner holding his service rifle while arguing with 5-6 local boys. The complainant and another personnel approached from behind and snatched the rifle from petitioner. A crowd of about 40-50 villagers then gathered and, along with the 5-6 boys, collectively assaulted petitioner despite the CRPF personnel attempting to intervene. Petitioner was taken to RTRM/AIIMS Trauma Centre by a PCR van. The complainant alleges the villagers attacked petitioner with a common intention to kill.

5. In view of the aforesaid incident, a Court of Inquiry³ was directed by the Commandant-114 Bn, to inquire into the above-mentioned incident *vide* Office Order dated 23.02.2015 against the petitioner. The COI recorded that brother of petitioner brought food in a polythene bag and ate at the place of the incident with petitioner; a

³ "COI", hereinafter



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friend of petitioner also joined, and alcohol was consumed. Thereafter, five village boys asked them to vacate the spot to play cards, verbal exchange of words escalated into a scuffle, during which petitioner allegedly fired one round in the air from his service rifle and then again fired two rounds, one of which hit the complainant in FIR No. 25/15.

6. Based on the COI findings, a departmental enquiry was initiated under Section 11(1) of the CRPF Act, 1949⁴ read with Rule 27 of the CRPF Rules, 1955⁵, and three charges were framed against the petitioner, and the two other constables, namely CT/GD Vishnu Kumar & CT/GD Suvankar Mandal, *vide* memorandum dated 05.03.2015. These charges being;

- First, that on 01.02.2015, while on duty, petitioner consumed alcohol and engaged in a fight with civilians, namely Ravi (complainant), and others, thereby exhibiting too much apathy, negligence and indiscipline.
- Second, that in the same occurrence, the petitioner discharged three rounds from his service rifle during the incident, with the allegation that one civilian sustained an injury on his right hand and two live rounds were found missing; and
- Third, that the petitioner was alleged to have consuming alcohol while on duty and fighting with civilian and failed to inform his seniors about the said incident.

⁴ “CRPF Act”, hereinafter

⁵ “CRPF Rules”, hereinafter



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7. It is alleged that, after initiation of the joint Departmental Enquiry⁶, the petitioner attended the preliminary hearing on 16.06.2015 and thereafter, left 114 Bn for duty to Srinagar. However, while enroute, he deserted the convoy and thus a letter was issued directing him to report back and participate in the enquiry. It is further alleged that he did not comply, hence, the enquiry proceeded *ex parte* against him.

8. During DE proceedings, two eye witnesses, namely Vishnu Tiwari and Suvankar Mandal were examined. Witness Vishnu Tiwari deposed that he became aware of the alleged consumption of alcohol only when he attempted to disarm the petitioner and smelled the same from his breath. Witness Suvankar Mandal stated that he had assumed his senior, Vishnu Tiwari, would inform their superiors about the incident and he was not aware that no such intimation had, in fact, been given.

9. Thereafter, on 18.09.2015, based on the DE, the competent authority, by exercising its powers under Rule 27 of the CRPF Rules read with Section 11(1) of the CRPF Act, held that the suspension period of the petitioner from 01.02.2015 to 17.06.2015 (137 days) would be treated as Non-Duty under Fundamental Rules 54(5)⁷ i.e.,

⁶ “DE”, hereinafter

⁷ Rule 54 (5)- In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or



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the said period would not count as duty, during which no salary or allowances would be payable, and; that his absence from 18.06.2015 to 04.09.2015 (79 days) was declared as absconding and marked as *Dies Non*; and that his absence from 05.09.2015 to 18.09.2015 (14 days) was also treated as Non-Duty under the Fundamental Rule 54(5). Consequently, the joint DE dismissed the petitioner from service, however the punishment of 'stoppage of Annual Increment for two years without cumulative effect' was only imposed against the other two constables in the said enquiry.

10. After the aforesaid dismissal, the petitioner was arrested by the police on charges under Section 307 of IPC in connection with FIR No. 25/2015 and Sessions Case No. 440432/2016 was instituted against him. The petitioner was sent to judicial custody on 06.10.2015. While in jail, the petitioner preferred an appeal on 16.10.2015 before Deputy Inspector General of Police, CRPF, Sonipat range, against his ex-parte dismissal order through courier from Tihar Jail. During the pendency of the Appeal, the petitioner was granted bail in FIR No. 25/2015 on 19.02.2016, after which he approached Respondent No. 2 to inquire about the status of his appeal. The petitioner was informed that his appeal would be considered only after the conclusion of the criminal case pending against him.

compulsory retirement as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

NOTE—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of— (a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant.



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11. Thereafter, the petitioner was acquitted of the charges under section 307 IPC in FIR No. 25/2015 by the learned Additional Sessions Judge-05, South West District, Dwarka Courts, New Delhi, on 18.11.2017. The Court examined ten material witnesses, including injured PW-5 Ravi (Complainant), PW-6 Bijender, and PW-7 Baljit. During cross-examination, PW-5 Ravi stated he received a firearm injury on his left armpit but did not identify petitioner as the person who caused it. PW-5 specifically denied that petitioner had taken up his rifle and put the barrel over his chest, or that he ran away because petitioner had fired twice in the air. Similarly, PW-6 and PW-7 denied the suggestion that petitioner fired at PW-5(Ravi), stating that all of a sudden there was a firing round, and they ran away due to fear, not knowing what happened. PW-8 Ct. Suvankar Mandal stated he did not see anyone firing or receiving bullet injuries but saw some persons trying to snatch petitioner's rifle. PW-10 Ct. Vishnu Tiwari also stated he heard bullet firing but did not see who fired the bullet, and when he reached the spot, nobody was injured; he only saw two persons trying to snatch petitioner's rifle. In view of the evidence brought on record, the Court concluded that the prosecution failed to prove the case against the petitioner under Section 307 IPC citing that the material witnesses had neither supported the prosecution's case nor deposed any facts incriminating the petitioner. The petitioner was held not guilty and acquitted of the offence charged.



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12. As far as the DE was concerned, since the appeal filed by the petitioner against the dismissal order dated 18.09.2015, before the competent authority remained unresolved, the petitioner approached this Court by way of W.P.(C) No. 9934/2018. By order dated 18.03.2019, although a dispute arose relating to the receipt of the said statutory appeal by the department, however, this Court disposed of the said writ petition with a direction to the respondents to treat the copy of the appeal filed as an annexure to the said writ petition itself as an appeal and to decide the same on merits.

13. Pursuant to the said direction, the appellate authority considered the petitioner's appeal and passed an order dated 22.05.2019 dismissing it on the ground that the petitioner had failed to submit any cogent reasons or mitigating facts in his defence and that the penalty of dismissal from service awarded to the petitioner was commensurate with the gravity of misconduct committed by him. It was further recorded that the DE had been conducted as per the applicable Rules, and sufficient opportunities were provided at every stage. The appeal was thus rejected as being devoid of merit.

14. Aggrieved thereby, the petitioner instituted another writ petition before this Court being W.P.(C) No. 1600/2019 challenging the order of the appellate authority dated 22.05.2019. However, subsequently, the petitioner chose to withdraw the said writ petition, and as such *vide* an order dated 29.03.2022, this Court permitting the



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petitioner to withdraw the said Writ petition, also granted him liberty to file a fresh petition.

15. It is in these circumstances that the petitioner has filed the present writ petition challenging both the dismissal order dated 18.09.2015 and the appellate order dated 22.05.2019.

16. Mr. S.N. Sharma, learned Counsel for the petitioner, submits that the dismissal order dated 18.09.2015 and the appellate order dated 22.05.2019 cannot be sustained. He submitted that the DE was conducted *ex parte* at a time when the petitioner was undergoing treatment for serious head injuries sustained in the incident of 01.02.2015.

17. The learned Counsel for the petitioner contends that the first charge of liquor consumption is wholly unfounded, as no medical test was conducted, no MLC was prepared, and no hospital records mentions intoxication.

18. With respect to the allegation of quarrelling and firing at civilians, the learned Counsel submits that the evidence is unreliable. The criminal trial, arising out of the same incident resulted in the petitioner's acquittal. Further, the Trial Court after examining, ten witnesses, held that no case under Section 307 IPC was made out. PW-5 Ravi, the injured and complainant of the FIR, specifically denied that the petitioner had fired at him or even aimed his rifle at



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him. PW-6 and PW-7 similarly deposed that they did not see the petitioner firing but only heard sounds of firing and ran out of fear. PW-8 Ct. Suvankar Mandal and PW-10 Ct. Vishnu Tiwari categorically stated that they had seen civilians trying to snatch the petitioner's rifle and did not see him firing at anyone. It is the submission of the learned Counsel for the petitioner, that the same set of witnesses, whose testimonies have resulted in the acquittal of the petitioner, had been wrongly relied on in the DE, showing a clear inconsistency, thereby rendering the findings absolutely unsustainable. According to the learned Counsel, the petitioner never misused his weapon nor committed any act of indiscipline under Section 11(1) of the CRPF Act.

19. Learned Counsel strongly relies on Rule 27(ccc) of the CRPF Rules, to submit that once the petitioner was acquitted on the same or similar charges, he could not have been punished departmentally on the basis of the same evidence without prior sanction of the Inspector General. No such sanction was obtained in the present case.

20. The learned Counsel also points out that there was a cross FIR against the petitioner arising from the same incident, and the respondents, while conducting the DE should have awaited the outcome of the criminal case. The Trial Court, by judgment dated 18.11.2017, acquitted the petitioner after examining all material witnesses, holding that the prosecution failed to prove its case under Section 307 IPC, although the department had proceeded to punish him on the same charges and on the same set of witnesses and



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documents. Reliance is placed on ***Maharana Pratap Singh v State of Bihar***⁸.

21. It was also submitted that the charge sheet was issued under the minor penalty and the punishment that has been awarded to the petitioner is under the major penalty.

22. Lastly, it is submitted that respondents failed to consider that the two departmental prosecution witnesses, who were examined as eyewitnesses to the incident, later deposed in favour of the petitioner before the learned Sessions Court. It is submitted that the contradiction in their testimonies ought to have been duly examined. On this sole basis, the petitioner should have been discharged. It was further submitted that the said witnesses were compelled to depose against the petitioner during the departmental proceedings, which is *prima facie* evident from the record. In such circumstances, the enquiry stands vitiated and the case against the petitioner effectively becomes one of no evidence.

23. Per contra, Mr. Niraj Kumar, learned Counsel for the respondents submits that the petitioner was afforded sufficient opportunity at every stage of the enquiry, but he chose not to avail of the same. The respondents contend that principles of natural justice were not violated, as repeated communications were issued to him to participate, which he ignored.

⁸ 2025 INSC 554



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24. The learned Counsel submits that all the allegations qua drinking liquor have been proved during the COI against the petitioner.

25. It was strenuously argued that during the preliminary hearing by Enquiry Officer on 16.06.2015, petitioner's consent was taken for holding DE. Also, it was submitted that petitioner deserted on 18.06.2015 without permission of Competent Authority, while proceeding for government duty. It is further argued that all the allegations, including consumption of liquor, were duly proved during the course of the enquiry against the petitioner, and therefore the instant writ petition deserves to be dismissed as being devoid of merit.

26. We have heard learned Counsel for the parties and perused the record placed before us and have given our anxious thoughts to the entire gamut of facts & grounds pleaded by the parties.

27. This Court finds that the issue for determination in the present case is whether the dismissal of the petitioner from service is justified in the light of circumstances of the present case, particularly when the charges in the departmental proceedings and in the criminal trial were substantially identical but the statements of the same witnesses in the two proceedings were found to be contradictory.



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28. Notwithstanding the sterling evidence, which has come on record in the criminal trial, resulting in the acquittal of the petitioner, this Court finds that in the DE, since no opportunity of cross-examination was afforded to the petitioner and the enquiry was proceeded *ex parte*, the quality and sanctity of evidence which has come on record in the departmental proceedings is in stark contradiction to the evidence, which has come on record of the criminal trial.

29. Further, this Court finds that the *ex parte* proceedings of the DE against the petitioner has had a chain reaction, as not only was the petitioner deprived of his right of cross-examination, but the petitioner could not even lead his defence evidence. Both the right of cross-examination and right to lead defence evidence are inalienable facets of the principle of natural justice, which this Court finds had been seriously breached in the DE. The Constitution Bench of the Supreme Court in ***Union of India v T.R. Verma***⁹, held that right to cross-examination even in service jurisprudence and in a disciplinary proceeding is a fundamental constitutional right of a Government servant, which cannot be defeated by any rule or instruction.

30. Although, the respondents have contended that ample opportunity was granted to the petitioner to participate in the departmental proceedings, this Court finds that the story put forth by the petitioner that on 18.06.2015, while on convoy duty, he developed a severe headache owing to his earlier head injuries sustained in the

⁹AIR 1957 SC 882



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incident of 01.02.2015, which rendered him unable to focus and continue in high-altitude convoy movement, seems to be plausible. The possible excuse of the petitioner that he could not participate in the departmental proceedings as owing to his treatment at multiple government hospitals including AIIMS, RTRM, and later at Jaffarpur Kalan, which were facilitated by the respondents themselves and his condition made it impossible for him to continue in high-altitude convoy movement, merely adds to the story of its possibilities. The defence of the petitioner that the Company Commander, was aware of these facts and had permitted him to leave the convoy for treatment, observing that continuing in the convoy could have proven fatal, and that his leave could not officially be sanctioned during convoy movement, although seems not to be eschewed, however, this Court cannot be oblivious of the fact that this Court is not examining the veracity of the said incident but merely is testing the ground of the absence of the petitioner in the DE on the anvil of “sufficient cause”. This Court considering all the materials on records and the contention of the petitioner that there existed no proof of service of the letters dated 19.06.2015 and 14.07.2015, allegedly directing him to rejoin duty, this Court is of the view that the respondent ought to have provided further opportunity to the petitioner for cross-examination and to lead his evidence in defence. This Court also records that since the criminal trial in the Session Courts were pending and the witnesses cited in both the cases were almost identical, the teary hurry to conclude the departmental proceedings *ex parte* should be deprecated. Thus, the right of the petitioner was prejudiced and as such this Court



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is of the view that the enquiry seems to be vitiated and as such the punishment order passed on the basis of the said defective DE cannot be sustainable in the eyes of law.

31. Further, this Court finds force in the contention of the learned Counsel for the petitioner that the department, by showing the petitioner as absent, deprived the petitioner of the opportunity to defend himself, or to cross-examine witnesses, or to produce material in his favour, thereby depriving him of his fundamental right to defend himself. In any case, it is apparent from the records that there exists no specific order of the DE for proceeding *ex parte* and the order relied upon by the respondent merely states that the petitioner should report back to duty immediately, failing which disciplinary action would be taken.

32. There is another aspect of the matter, wherein the learned Counsel for the petitioner has strenuously sought to rely on Rule 27(ccc) to contend that the benefit of the petitioner's acquittal ought to have been given in the departmental proceeding. This Court finds that a plain reading of the provision makes it clear that once a member of the Force has been tried and acquitted by a competent Criminal Court, no departmental punishment can be imposed on the same or similar charge, based on the same evidence, unless prior sanction of the Inspector General is obtained. No doubt, the object of this rule is to safeguard and to prevent inconsistent findings, so as to ensure that a member of the Force is not subjected to departmental punishment twice on the same set of facts when he has already been acquitted in



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judicial proceedings, however this Court finds that the petitioner was dismissed from his service on 18.09.2015 by virtue of an *ex parte* departmental proceedings and his acquittal from the criminal trial only came subsequently on 18.11.2017. Thus, the benefit of Rule 27 (ccc) could not had been given to the petitioner in the departmental proceedings, as on the date of punishment in the departmental enquiry, the acquittal order did not even exist. Thus, there cannot be any applicability of Rule 27(ccc) at this stage.

33. In these circumstances, this Court has no hesitation in quashing and setting aside both the impugned orders by holding that the principle of natural justice has not been followed in the departmental enquiry and the same stands vitiated. However, as to the relief, which can be granted to the petitioner at this stage, this Court finds that as per the settled proposition of law, in a case where it is found that the enquiry is vitiated and/or the same is in violation of the principles of natural justice, in that case, this Court should set-aside the order and remand the matter to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after curing the said violation. The Supreme Court in the case of ***Chairman, Life Insurance Corporation of India and Ors. v A. Masilamani***¹⁰, observed at paragraph 16 as herein under :-

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to

¹⁰(2013) 6 SCC 530



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conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]).”

34. Further, the Supreme Court, in view of the settled law in **A. Masilamani’s** case (supra), observed in **State of Uttar Pradesh v Rajit Singh**¹¹ as under :-

“..... Applying the law laid down in the case of A. Masilamani (supra) to the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the Disciplinary Authority to conduct the enquiry from the stage it stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated, i.e., after the issuance of the charge sheet, is unsustainable”.

35. As a sequel to the above discussion and for the reasons stated above, the instant writ petition is allowed. The impugned order dated 18.09.2015, and appellate order dated 22.05.2019 is hereby quashed and set-aside. However, as the enquiry is found to be vitiated and is found to be in violation of the principles of natural justice inasmuch as it is alleged that during the course of enquiry, no right of cross-examination was afforded to the petitioner as well as he was not given opportunity to lead defence evidence. This Court without going into the merits of the case remand the matter to the Disciplinary Authority to conduct a fresh enquiry from the stage it stood vitiated and to proceed with the enquiry in accordance with law, after following due principles of natural justice.

¹¹2022 SCC OnLine SC 341



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36. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order, keeping in view the age of the petitioner and that the issue is of the year 2015 and substantial time has already been lost in the courts.

37. In the facts of the present case, there shall be no order as to cost.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

SEPTEMBER 26, 2025/gunn/rjd