

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment Reserved on : March 18, 2014*
Judgment Pronounced on : April 01, 2014
+ **W.P.(C) 4003/1998**

EX.HAV.SARBJIT SINGHPetitioner
Represented by: Mr.Bahar U.Barqi, Advocate
versus

UOI & ORS.Respondents
Represented by: Ms.Saroj Bidawat, Advocate with
Ms.Ritu Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Pithily stated, the factual matrix of the above captioned writ petition is that in the year 1983 the petitioner was appointed to the post of Constable (Driver) in Central Industrial Security Force and earned promotion to the post of Head Constable (Driver) in due course of time.

2. In the year 1987 the petitioner was posted to the CISF Unit at Paradip Port Trust, Paradip, Cuttack, Orissa. It is the case of the respondents that complaints were received against the petitioner o having committed various acts of indiscipline on December 03, 1987, in that, he remained absent from evening roll call and unit lines (CISF complex) without obtaining prior permission from the competent authority; consumed alcohol at a public place; instigated Ct.A.K.Sharma to assault Ct.Md.I.Ansari; disrupted services of PPT bus and annoying passengers of said bus by hurling abuses at Ct.Md.I.Ansari and having abused several senior officials of CISF.

3. Inspector V.Srinivasan was directed to conduct a preliminary enquiry who submitted a report and taking cognizance thereof the Disciplinary Authority of the petitioner issued a charge sheet to the petitioner under Rule 14 of the CCS (CCA) Rules, 1965 as under:-

“Article-I

No.8317898 Head Constable (Driver) Sarbjit Singh of Hqrs Coy, CISF Unit, PPT, Paradip, is charged with gross indisciplined conduct in that he was found absent from the evening roll call as well as the Unit lines, (CISF Complex), on 3.12.87, without any ‘out pass’ or prior permission from the competent authority.

Article-II

No.8317898 Head Constable (Driver) Sarbjit Singh of Hqrs Coy, CISF Unit, PPT, Paradip, is charged with gross indisciplined conduct in that he consumed alcohol at a public place on 3.12.87 along with No.8246176 Constable A.K. Sharma. He and Constable A.K. Sharma boarded the PPT bus on 3.12.87 near the PPT, Petrol pump at about 08 p.m. While under intoxication, he instigated assault on No.7116119 Ct.Md.I.Ansari of ‘A’ Coy, CISF Unit, PPT, Paradip, who had also boarded the same bus, inside the PPT bus near the Petrol pump of the Paradip Port Trust on the aforementioned date.

Article-III

No.8317898 Head Constable (Driver) Sarbjit Singh of Hqrs Coy, CISF Unit, PPT, Paradip, is charged with gross indisciplined conduct in that he caused disruption of normal bus services of the PPT Bus near the ‘Atharbanki petrol pump’ and annoyed the public under influence of liquor. While under intoxication, he forcibly get inside the PPT Bus at ‘Atharbanki’ for searching for Ct.Md.I.Ansari, uttering abuses such as ‘MADARCHOUD KAHA GAYA’. He also abused senior officers of CISF, i.e. ex-DG, CISF; Commandant, CISF Unit, PPT, Paradip; Asstt.Commandant, (Port); and other officials stationed at CISF Unit, PPT, Paradip in filthy language.”

4. An Inquiry Officer was appointed to record evidence and submit a report. At the enquiry, the department examined thirteen witnesses.

5. HC R.S.Pandey PW-1, deposed that on December 03, 1987 the petitioner and Ct.A.K.Sharma were absent at the evening roll-call parade. An entry to said effect was made in the GD register. At about 08.55 P.M. he received a telephonic message from ACP N.C.Samal asking him to send four constables and duty officer to Atharbanki chowk. Accordingly, duty officer SI L.D.Suman and four constables viz. Pradeep Kumar, Rajinder Pratap, M.Mohan Rao and Govind Raj left for Atharbanki chowk. At about 09.35 P.M. several senior officers including Inspector Bhatt and Inspector Nihal Singh, aforesaid four constables, petitioner and Ct.A.K.Sharma arrived at the complex. At that time the petitioner and Ct.A.K.Sharma were using filthy language and seemed to be under the influence of alcohol.

6. Ct.Banka Ram PW-2, deposed that on December 03, 1987 at about 07.15 P.M. he boarded the PPT bus for going to the CISF complex. After a while Ct.Md.I.Ansari also boarded the said bus. He and Ct.Md.I.Ansari sat on the conductor's seat. Ct.Md.I.Ansari purchased tickets for both of them. By this time the petitioner and Ct.A.K.Sharma came near the bus. Ct.A.K.Sharma asked him the name of the place to which he belongs, to which he replied Himachal Pradesh. Thereafter the petitioner and Ct.A.K.Sharma left the place. Ct.Md.I.Ansari also left from there stating that he would return after taking a cup of tea. He waited for Ct.Md.I.Ansari for about ten minutes but he did not turn up. Thereafter he got down from the bus and boarded CISF dumper for going to the complex. Being relevant, we note following portion of the cross-examination of the witness by the petitioner:-

“Q: Did you see me talking to or assaulting Const.Md.I.Ansari?”

Ans No. I did not see you.”

7. Ct.Md.I.Ansari PW-3, deposed that in the evening of December 03, 1987 he boarded a PPT bus for going to the CISF complex. When he entered the bus he saw Ct.Banka Ram sitting on the conductor’s seat. He occupied the seat next to Ct.Banka Ram and purchased tickets for both of them. After few minutes the petitioner and Ct.A.K.Sharma boarded the said bus. On seeing him sitting in the bus the petitioner told Ct.A.K.Sharma that his enemy is sitting in the bus. When Ct.A.K.Sharma enquired from him who the enemy was, the petitioner pointed towards him. Ct.A.K.Sharma then approached him and Ct.Banka Ram and asked Ct.Banka Ram about the name of the state to which he belongs. Ct.Banka Ram answered that he belongs to Himachal Pradesh after which Ct.A.K.Sharma turned towards him. He informed Ct.A.K.Sharma that he is from Bihar. Thereafter Ct.A.K.Sharma asked him to get down from the bus but he refused to do so. After few minutes Ct.A.K.Sharma caught hold of his shirt and sweater and tore the same. Ct.A.K.Sharma slapped him on his chest and the petitioner pulled him. In order to save himself he jumped from the bus. Ct.A.K.Sharma and petitioner ran behind him and were hurling abuses at him. He managed to reach CISF Control Room where he reported the entire incident to SI Abdul Jabbar. Thereafter he reported the incident to several senior officials including Assistant Commandant N.C.Samal. Being relevant, we note following portion of the cross-examination of the witness by the petitioner:-

“Q. Can you tell whether Ct.Banka Ram was present with you at the time when you are assaulted inside the bus as per your statement?”

A. *Yes Ct.Banka Ram was present with me at that time.*”

8. SI Abdul Jabbar PW-4, deposed that on December 03, 1987 at about 08.05 P.M. Ct.Md.I.Ansari came to the control room. The shirt and sweater of Ct.Md.I.Ansari were torn at that time. Ct.Md.I.Ansari informed him that he was assaulted by the petitioner and another person in the PPT bus. He transmitted the aforesaid information to Inspector Nihal Singh and duty officer SI L.D.Suman. Being relevant, we note following portion of the cross-examination of the witness by the petitioner:-

“Q. Did Ct.Md.I.Ansari gave the name of any witness who has seen me beating to Ct.Md.I.Ansari?”

Ans. No. He did not mention the name of anyone.”

9. Inspector Rajinder Singh PW-5, deposed that on December 03, 1987 at about 08.40 P.M. he received message from Assistant Commandant N.C.Samal to come near Atharbanki petrol pump as some CISF personnel who are under the influence of liquor are quarrelling with public persons. On reaching the spot he saw apart from several CISF officers fifty-sixty public persons were gathered there. The petitioner and Ct.A.K.Sharma were shouting loudly. The petitioner and Ct.A.K.Sharma did not pay any heed to repeated orders given by the senior officers to keep quiet and board the CISF jeep. The petitioner and Ct.A.K.Sharma were accusing the public of assaulting them. Thereafter the petitioner and Ct.A.K.Sharma were taken to PPT Hospital where they were medically examined. Being relevant, we note following portion of the cross-examination of the witness by the petitioner:-

“Q. Sir. Did not you detail me to make nut bolts for volleyball pole from Thakur Engineering Works, Badpadiya?”

A. *Yes I had detailed you for making nut bolts at 09.00 hrs from Thakur Engineering Works on 3.12.87.*

Q. *Sir. Did I not inform you at lunch time that the work will be delayed and I may be late?*

A. *Yes, you had informed me.”*

10. Officers; Inspector Nihal Singh PW-6, Inspector V.P.Bhatt PW-7, Assistant Commandant N.C.Samal PW-8 and Assistant Commandant (Administration) V.P.Prabhu PW-9, deposed that on December 03, 1987 at about 08.30 P.M.-08.45 P.M. they reached Atharbanki petrol pump where they saw that around 70-80 public persons had gathered around a PPT bus parked there. The petitioner and Ct.A.K.Sharma were abusing the public in filthiest language for having assaulted them. When they tried to pacify the petitioner and Ct.A.K.Sharma started abusing them i.e. the officers. The petitioner and Ct.A.K.Sharma were intoxicated at that time.

11. Ratnakar Biswal, PW-10, deposed that on December 03, 1987 he was detailed to drive PPT bus No.OSU-5796 from 01.30 P.M. to 10.30 P.M. At about 08.25 P.M. he reached Atharbanki petrol pump where he heard some persons shouting from a bus. The passengers inside said bus were saying that it was CISF personnel who were talking in loud voices but he did not see any CISF personnel. After sometime he drove the bus to its next destination. Being relevant, we note the following portion of the cross-examination of the witness by the petitioner:-

“Q. Did you see me at PPT petrol pump or at Athar Banki petrol pump inside the bus on the above said date on your bus?

A. *No, I did not see you.”*

12. Barachi Das PW-11, deposed that on December 03, 1987 he was detailed to work as conductor of PPT bus No.OSU-5796. At about 07.45

P.M. two CISF personnel who were sitting on the conductor's seat purchased tickets from him. While he was selling tickets at the rear side of the bus he heard noise coming from the front side of the bus. It appeared to him that some persons were shouting. He went to the front side of the bus and asked the personnel who were shouting to desist from shouting as the bus was overcrowded. He instructed the personnel who were shouting to get down from the bus from the door at the driver's seat. The personnel sitting on the conductor's seat also got down from the bus from the door at the driver's seat. At about 08.10 P.M. the bus left from PPT petrol pump to go to Sector 21. At about 08.25 P.M. the bus reached Atharbanki petrol pump. While the passengers were getting down from the bus two persons came to him and made enquiries about a person. He gave signal to the driver to drive the bus but the driver informed him some persons were standing in front of the bus due to which reason he is not started the bus. After sometime several senior CISF officials came there and sorted out the problem upon which the driver drove the bus to its next destination. Being relevant, we note following portion of the cross-examination of the witness by the petitioner:-

“Q. Did you see me at the place inside the bus where shouting was going on?”

A. I can identify the persons who were sitting on conductor seat and I did not see you there.

Q. At the Atharbanki petrol pump whether I was the one among the two persons who asked to you ‘where is our man’?”

A. No you were not that person.”

13. Srikant Dulai PW-15, deposed that on December 03, 1987 at about 08.30 P.M. he boarded a PPT bus from Atharbanki petrol pump. A rickshaw in which two CISF personnel were sitting arrived at the bus

stop. The personnel who were sitting on the rickshaw appeared to be drunk. The said personnel got down from the rickshaw and boarded the bus. There was some dispute between said personnel and rickshaw puller regarding fare of rickshaw. After sometime Assistant Commandant N.C.Samuel came there and started talking with said two personnel in front of the bus. Many passengers got down from the bus to see what was happening. Since the bus was getting delayed he gave a telephonic call to the Commandant and informed him about the aforesaid incident. Being relevant, we note following portion of the cross-examination of the witness by the petitioner:-

“Q. Did you see me inside the bus at Athar Banki petrol pump on the above said date?”

A. No. I did not see you on that day inside the bus.”

14. Inspector V.Srinivasan PW-16, deposed that he had conducted a preliminary enquiry into the matter.

15. The petitioner made a statement before the Enquiry Officer stating therein that on December 03, 1987 he was detailed by Inspector Rajinder Singh to go to Thakur Engineering Works for fabrication of nut and bolts. The work of fabrication of nuts and bolts at Thakur Engineering Works got delayed due to which reason he could not attend evening roll-call parade. At about 07.30 P.M. he reached PPT petrol pump to board a bus to go to the complex. At PPT petrol pump he met Ct.A.K.Sharma and Ct.Banke Ram. He asked Ct.Banke Ram about the departure of the bus and he informed him that bus would depart in twenty minutes. Thereafter he and Ct.A.K.Sharma went towards the market and hired a rickshaw to go to the complex. He and Ct.A.K.Sharma consumed little quantity of alcohol at the market. As they reached near Atharbanki petrol pump they

saw a PPT bus standing there to go to the complex. They immediately got down from the rickshaw and boarded the bus. He paid three rupees to the rickshaw puller but the rickshaw puller was demanding ten rupees. An argument ensued between them and rickshaw puller regarding payment of fare. The public persons gathered around them. At that time Inspector Nihal Singh came there and made enquiries from them. He reported the entire incident to Inspector Nihal Singh upon which he i.e. Inspector Nihal Singh settled the matter and PPT bus left from Atharbanki petrol pump. In the meantime several senior officials came there and he informed them about the incident.

16. On April 27, 1988 the Inquiry Officer submitted a report exonerating the petitioner of the first article of charge. He held that the second and third articles of charge framed against the petitioner were partially proved. The relevant portion of the report of the Inquiry Officer reads as under:-

“The delinquent HC/Dvr Sarabjit Singh was found absent from the roll call on 3.12.87 is established by the statement of (PW-1) HC R.S.Pandey, statement of (PW-5) Insp. Rajinder Singh ‘A’ RI (PE-5) and defence statement of the delinquent who himself admitted that he was present at that time at Badpadia for fabricating nuts and bolts as order by RI. In the statement of (PW-5) Insp.Rajinder Singh (A) RI, admitted that he was informed by the delinquent at lunch time that he (delinquent) will be late in returning back to unit and permitted him.

The delinquent HC/Dvr Sarabjit Singh was absent from the evening roll call as well as the unit lines (CISF Complex) on 3.12.87 without any ‘out pass’ or prior permission from the competent authority is not established.

Hence I hold the Article of Charge No.1 ‘NOT PROVED’.

The delinquent and Ct.A.K.Sharma boarded the PPT, bus on 3.12.87 near PPT, petrol pump at about 0800 pm while under

intoxication he instigated assault on No.7116119 Const. Md. I. Ansari of 'A' Coy. of CISF Unit, PPT, Paradip who had also boarded inside the same bus near the petrol pump of PPT Paradip on the aforementioned date is not established. No prosecution witnesses has seen him or heard instigating to assault Ct.Md.I.Ansari. However delinquent (HC/Dvr Sarabjit Singh) consumed alcohol at a public place on 3.12.87 alongwith No.8246176 Const. A.K. Sharma is established by the defence statement of delinquent himself in which he admitted that he consumed alcohol after going back from the bus and from (PE-6).

Hence I hold that much portion of the Article of charge No.II 'Proved' i.e. the delinquent HC/Dvr Sarabjit Singh consumed alcohol at a public place on 3.12.87 alongwith No.8246176 Ct.A.K.Sharma and the rest of the Article of charge No.II is 'NOT PROVED'.

The delinquent HC/Dvr Sarabjit Singh caused disruption of normal bus services of the PPT bus near Atharbanki petrol pump and annoyed the public under the influence of liquor is established by the statement of (PW-11) Sri Biranchi Das, (PW-12) Sri Sukant Dalai, (PW-8) Asstt.Comdt (P) Sri N.C.Samal, (PW-7) Insp. V.P. Bhatt and (PW-6) Insp. Nihal Singh. The delinquent abused senior officers of CISF i.e. ex-DG, CISF, Commandant, CISF Unit, PPT, Paradip, Asstt. Comdt. (P), CISF and other official stationed at CISF Unit, PPT, Paradip in filthy language is established by the statement of (PW-8) Asstt.Comdt (P) Sri N.C.Samal, (PE-2), (PW-7) Insp.V.P.Bhatt, (PW-9) AC (Adm) Sri V.P.Prabhu, (PW-5) Insp.Rajinder Singh (A), (PE-4), (PW-12) Sri Sukant Dalai.

While under intoxication he forcibly got inside the PPT bus at Atharbanki for searching for Ct.Md.I.Ansari uttering abuses as 'MADAR CHOUD KAHA GAYA' is not established as no prosecution witness has seen him doing such an act.

Hence I hold the Article of charge No.III 'PROVED' except that the delinquent HC/Dvr Sarabjit Singh forcibly got inside the PPT bus at Atharbanki for searching for Const. Md. I. Ansari uttering abuses." (Emphasis Supplied)

17. The findings of the Inquiry Officer were forwarded for consideration to the Disciplinary Authority of the petitioner. Vide order dated May 03, 1988 the Disciplinary Authority held as follows:-

“5. I have carefully perused the charges, the statements of allegations, the deposition of witnesses, the evidence on record and the findings submitted by the Enquiring Officer. After careful consideration of the evidence on record, it appears that most of the witnesses barring the following:-

- 1) *Shri N.C.Samal, Asstt.Commandant (Port)*
- 2) *Shri V.P.Prabhu, Asstt.Commandant (Adm)*
- 3) *Shri V.P.Bhatt, Inspector (Exe)*
- 4) *Shri Rajendersingh (A), Inspector (Exe)*
- 5) *Shri C.A.Jabbar, Sub-Inspector (Exe)*
- 6) *Shri Md.I.Ansari, Constable.*

have deviated from their original statements made during the preliminary enquiry into the incident. It is not understood as to why Enquiring Officer did not confront them with their statements during the preliminary enquiry. In spite of the aforesaid lacuna, there is overwhelming circumstantial evidence to indicate that the delinquent alongwith CISF No.8246176 Constable A.K.Sharma pursued and assaulted Constable Md.I.Ansari in the PPT bus, damaging his shirt and sweater. It is also established that the delinquent had consumed liquor and had obstructed the movement of the PPT bus, thereby inconveniencing the passengers. It is also established that he had abused CISF officers in filthy language (the latter points are substantiated by the aforementioned PWs who are CISF personnel).

6. In view of the above circumstances, I consider the delinquent unworthy of continuing as a member of the Armed Forces of the Union. Hence, it is felt that the punishment of ‘DISMISSAL FROM SERVICE’ only will suffice in this case. (Emphasis Supplied)

18. The petitioner filed appeal/revision before the Appellate/Revisional Authorities and the same were dismissed vide orders dated August 31, 1988 and September 15, 1989 respectively. Thereafter the petitioner submitted two representations styled as 'review petitions' before the Director General, CISF and the same were dismissed vide orders dated October 26, 1989 and November 29, 1991 as not being maintainable.

19. Nearly nine years after the rejection of his revision petition the petitioner filed the present petition under Article 226 of Constitution of India assailing the legality of the penalty of dismissal from service inflicted upon him.

20. Vide order dated July 27, 2011 the present petition was dismissed in default, which order reads as under:-

“1. Petitioner, a constable with CISF was served with a charge memo dated 18.12.1987. He responded thereto. Inquiry Officer was appointed. Report dated 27.4.1988 was submitted and after considering the response of the petitioner to the report, penalty of dismissal was inflicted on 3.5.1988. Statutory appeal filed was rejected on 31.8.1988. Revision petition was rejected on 29.11.1991.

2. Instant writ petition was filed in the year 1988 alleging that a counsel engaged by the name of Sh.A.S.Grewal had let down the petitioner.

3. It is obvious that at the forefront of the defence of the respondents is the bar of delay and for which it is stated that the Revision Petition was dismissed not on the date pleaded by the petitioner, but on 15.10.1989.

4. From a perusal of the writ petition we find the usual ground being urged in the pleadings drafted by Sh.V.P.Sharma, Advocate and would highlight that this is the 35th matter which we have noticed, filed by Sh.V.P.Sharma, Advocate in which repetitively same issues have been raised.

5. To highlight, in each and every petition learned counsel has questioned the charge-sheet being vague and in each and every case we find the plea to be by way of reciting a nursery rhyme.

6. A perusal of the impugned charge-sheet would reveal that the petitioner was alleged to have committed 3 wrongs for which Article 1, 2 and 3 were framed.

7. Article-I was of being found absent at the evening roll call at the unit lines on 3.12.1987. Article 2 of the charge was of instigating an assault on Const.Mohd.I.Ansari, under the influence of alcohol, on 3.12.1987 when the latter was boarding the PPT Bus. Article 3 of the charge was of disruption of normal bus service of PPT bus near Atharbanki petrol pump and abusing Const.Mohd.I.Ansari by swearing in the name of his mother.

8. We wonder what could be said to be vague about the charge-sheet keeping in view the statement of imputation brings out the time when the incident took place and gives a graphic detail of what was alleged against the petitioner.

9. We would further highlight that the next question raised in the petition is whether the petitioner was supplied the list of documents and the statements of listed witnesses, a plea which we find being mechanically raised by the counsel concerned ignoring the fact that the petitioner has admitted having received the charge memorandum dated 18.12.1987 which clearly refers to the that Article of Charge are being enclosed as Annexure-1, statement of imputation is enclosed as Annexure-2, list of documents and list of witnesses by which the charge was proposed to be sustained are annexed as Annexure-3 and Annexure-4.

10. It is not the case of petitioner that he did not receive the annexures. We find that witnesses deposed before the Inquiry Officer.

11. We do not find any averment in the writ petition that the petitioner, had on any particular date, filed an application before the Inquiry Officer requiring production of any documents before his defence.

12. *No law requires the department to supply the relied upon documents. The right which the petitioner had was to move an application before the Inquiry Officer praying that he be permitted an inspection of the relied upon documents and be permitted to take extracts there-from.*

13. *With reference to the report of the inquiry officer and the evidence led we find that there is prima-facie sufficient evidence to sustain the indictment against the petitioner.*

14. *But noting the fact that none appears for the petitioner at the hearing today we refrain from opining conclusively and dismiss the writ petition in default.*

15. *No costs.”*

21. Vide order dated May 20, 2013 the order dated July 27, 2011 dismissing the writ in default was recalled and the writ petition was restored for hearing on merits.

22. On July 27, 2011, instant petition was the thirty-fifth which we had noted in which Shri V.P.Sharma, Advocate had mechanically raised grounds of challenge. In each and every writ petition, including the instant one, in para 2, the substantial questions of law stately arising were typed in the same language, only dates of the charge sheets and impugned orders being changed. In the instant petition, in para 2, the important questions of law which are stated to arise have been penned as under:-

“a) Whether, the impugned Charge Sheet dated 18.12.1987 (Annexure-P8) is vague, uncertain and does not constitute any misconduct?

b) Whether, the impugned Charge Sheet is vague, certain and does not disclose its the particulars of the alleged misconduct?

c) Whether, the petitioner was supplied with the copies of the listed documents and the statement of the listed witnesses alongwith he impugned charge sheet dated 18.12.1987? If so,

whether, non-supplying of the copies of the relied documents to the petitioner amounts a denial of reasonable opportunity to the petitioner in the charge sheet/inquiry and the whole proceedings are liable to be quashed?

d) Whether, the petitioner was not given the opportunity of engaging his defence assistance in the Department Proceedings? If so, then the action of authority amounts to denial of mandatory provisions of law and the principles of natural justice?

e) Whether, the impugned report of the Enquiry Officer is illegal against facts and does not sustainable in the eyes of law and the same is liable to be quashed?

f) Whether, the inquiry officer as acted himself as a prosecutor in the situation that the Enquiry Officer has cross-examined the witnesses only to fill up gaps in the inquiry and therefore the action of Enquiry Officer is not only against the mandatory provisions of law but also against the principles of natural justice?

g) Whether, the appellate authority is duty bound to give a personal hearing to the petitioner at the time of deciding the appeal of the petitioner in the light of law laid down in the case of Ram Chander Versus Union of India reported in 1986 (2) S.L.R. 608 and thus the whole proceedings are liable to be set-aside on this sole ground?

h) Whether, the impugned punishment is not commensurate to the alleged misconduct and therefore the impugned order of dismissal is liable to be set-aside?"

23. Indeed, learned Counsel for the Petitioner conceded to the irrelevance of the so-called important questions stated to be arising in the present case and urged that he would be raising the plea predicated upon the disciplinary authority disagreeing with some of the findings returned by the Inquiry Officer in favour of the petitioner.

24. From the facts noted above it is apparent that three articles of charge were framed against the petitioner. The second article of charge framed against the petitioner had following two parts:-

(i) On December 03, 1987 the petitioner along with Ct.A.K.Sharma consumed alcohol at a public place.

(ii) On the same date i.e. December 03, 1987 the petitioner along with Ct.A.K.Sharma boarded a PPT bus and instigated Ct.A.K.Sharma to assault Ct.Md.I.Ansari present inside the bus.

25. The third article of charge framed against the petitioner had following two parts:-

(i) On December 03, 1987 the petitioner disrupted the services of PPT bus by forcibly getting inside said bus to look for Ct.Mohd.I.Ansari and annoyed the passengers present inside said bus by hurling abuses at Ct.Mohd.I.Ansari under the influence of liquor.

(ii) On the same date i.e. December 03, 1987 the petitioner abused several senior officers stationed at CISF Unit, PPT, Paradip in filthy language.

26. Vide his report dated April 27, 1988 the Inquiry Officer held that the first and second parts of second and third articles of charge respectively framed against the petitioner were proved and the second and first parts of second and third articles of charge respectively were not proved. The Inquiry Officer had exonerated the petitioner of the first article of charge framed against him. Without serving any note of disagreement, the disciplinary authority, disagreeing with the finding recorded by the Inquiry Officer by holding that second and third articles

of charge framed against the petitioner were “fully” proved, vide order dated May 03, 1988 ordered petitioner be removed from service.

27. In the decision reported as (1998) 7 SCC 84 Punjab National Bank & Ors. Vs. Kunj Behari Mishra, a facet of principles of natural justice brought out by the Supreme Court was that if the disciplinary authority does not agree with the findings of not guilty returned by the Inquiry Officer it must pen down a note of disagreement containing tentative reasons as to why the disciplinary authority was opining to the contrary. Thereafter, the said note of disagreement had to be served upon the delinquent for his response. Considering the response the decision had to be taken.

28. The aforesaid view was reiterated by the Supreme Court in a subsequent decision reported as (1999) 7 SCC 739 Yoginath D. Bagde vs. State of Maharashtra & Anr.

29. We again highlight that the Inquiry Officer held that the second and first parts of second and third articles of charge respectively framed against the petitioner were not proved. Without penning a note of disagreement and much less furnishing the same to the petitioner for his response the disciplinary authority disagreeing with the view taken by the Inquiry Officer passed the penalty of dismissal from service.

30. Ordinarily, we would have remanded the matter requiring the Disciplinary Authority to pen the note of disagreement and permit the petitioner to furnish his response thereto, but we decline relief to the petitioner for the reason delay and laches would hit any claim predicated by the petitioner.

31. The penalty of dismissal from service was levied on May 03, 1988. Appeal preferred by the petitioner was rejected vide appellate order dated August 31, 1988 and revision was rejected vide order dated September 15, 1989.

32. Nearly nine years after the rejection of his revision the petitioner rose from his slumber like Rip-Van-Winkle and filed the instant petition in the year 1998. It is apparent that if the petitioner were to file a civil suit challenging the penalty imposed upon him the same would have been dismissed as barred by limitation.

33. It is settled law that a good measure to determine whether a writ petition is hit by delay and laches is to see the period for limitation for filing a suit if the challenge was by way of suit and if the suit was barred by limitation, the same would be a measure to hold that the writ petition suffers from delay and laches.

34. The cause sought to be resuscitated by the petitioner by filing the instant writ petition nearly nine years after the rejection of his revision is incapable of being brought to life, more so when the plea relating to issuance of note of disagreement by the Disciplinary Authority does not find a reflection in the pleadings made in the instant petition, and thus the writ petition is dismissed.

35. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

APRIL 01, 2014/manta