



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 30, 2024

+ W.P.(C) 5832/2022

VIVEK KUMAR SINGH & ANR.

..... Petitioners

Through: Mr. P. Sureshan, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Garima Sachdeva, Sr. Panel
Counsel for UOI with SI Prahlad
Devendra and AC Anil Kumar,
CISF.
Mr. Ravinder Agarwal, Adv. for
UPSC.

AND

+ W.P.(C) 6287/2022

RITESH

..... Petitioner

Through: Mr. P. Sureshan, Adv.

versus

DIRECTOR GENERAL CENTRAL INDUSTRIAL SECURITY
FORCE & ORS.

..... Respondent

Through: Mr. Ajay Jain, SPC with
Mr. Krishan Sharma, Ms. Bijay
Lakshmi, Mr. M.N. Mishra and
Mr. Akshat Jain, Adv. with SI
Prahlad Devendra and SI Shiv
Kumar, CISF



Mr. Ravinder Agarwal, Adv. for
UPSC

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

V. KAMESWAR RAO, J

1. At the outset we may state here that as these petitions *inter alia* involve one common issue, both the petitions shall be dealt with this common judgment. However, for the sake of clarity, the facts of both the petitions have been narrated separately:

FACTS IN W.P.(C) 5832/2022

2. This petition has been filed by the petitioner with the following prayers:

“It is therefore most respectfully prayed that this Hon’ble Court may be pleased to:-

a) To issue a writ of mandamus declaring that, insisting mandatory condition of ‘should have clean record of service’ for the candidate appearing for the post of Asst commandant in CISF through LDCE is ultra vires to the fundamental rights guaranteed by article 14 and 16 of the Constitution of India.

b) Quash and set aside the stipulation of “should have clean record of service till issue of offer of appointment “contained in contained in clause 3 of the Rules for a Limited Departmental Competitive Examination to be held by the Union Public Service Commission in 2021 for the purpose of filling vacancies of Assistant Commandants (Executive) in Central Industrial Security Force (CISF) for the vacancy year 2021” issued by the Ministry of Home,



the respondent No.1

c) Quash and set aside the letters dated 27.1.2022 and 4.3.2022 issued by the respondent whereby the petitioners had been debarred from attending the LDCE examination for the post of Asst. Commandant in CISF on account of minor penalty.

Or in the alternative

d) Read down and clarify that, Stipulation of “should have clean record of service till issue of offer of appointment “contained in contained in clause 3 of the Rules for a Limited Departmental Competitive Examination to be held by the Union Public Service Commission in 2021 for the purpose of filling vacancies of Assistant Commandants (Executive) in Central Industrial Security Force (CISF) for the vacancy year 2021” issued by the Ministry of Home, the respondent No.1 must not be apply for the minor penalty awarded prior to the date of submitting application by following the observation made by the division bench of this court in W.P.(C) No.7563/2015 dated 11.8.2015 Ct/GD Girish Kumar Vs UOI & ors.

e) Pass a consequential order directing the respondents to permit the petitioners to appear for the future LDCE examination to be held by the respondent CISF for filling up of the post of Asst. Commandant by ignoring the minor penalty awarded to them.

f) Direct the respondents to pay cost of this litigation to the petitioner.

g) Any other further order/relief which is Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the petitioner and as against the respondent.”

3. The facts which can be noted from the petition are that the petitioner No.1 joined National Industrial Security Academy ('NISA', for short), Hyderabad Unit of Central Industrial Security Force ('CISF',



for short) / respondents' Force as SI / EXE on October 3, 2015. Whereas, the petitioner No.2, also joined the CISF in the same post as of petitioner No.1, in the year 2015.

4. On September 29, 2017, the petitioner No.1 was awarded the minor penalty of withholding of one increment for a period of one year without cumulative effect by the Commandant, CISF Unit, RMP, Mysore, vide final Order No. 4490. On the other hand, on January 29, 2018, the petitioner No.2, was also awarded the minor penalty of withholding of one increment for a period of one year without cumulative effect for 69 days, by CISF Unit, ASG, Dehradun vide Final Order No. 371.

5. Thereafter, on March 7, 2018, the appeal filed by the petitioner No.2 against the order dated January 29, 2018 was rejected by the respondents. Subsequently, on April 17, 2018, the petitioner No.2 was again awarded with the minor penalty of withholding one increment for a period of one year without cumulative effect for 56 days vide Order No. 1704. Also, the appeal filed against the order dated April 17, 2018 was again rejected by the respondents on August 17, 2019.

6. On September 15, 2019, the petitioner No.1 after availing all the departmental avenues filed a writ petition being W.P.(C) 11112/2019 before this Court challenging the Final Order dated September 29, 2017. In the same writ petition, the petitioner No.1 had also sought an interim prayer to appear in the ('Limited Departmental Competitive Examination ('LDCE', for short) for the post of Assistant Commandant in the respondents' Force.

7. Thereafter, on December 17, 2019, this Court had permitted the



petitioner No.1 to take part in the LDCE with the condition that the result of the said examination shall be kept in a sealed cover. On August 5, 2020, this Court opened the sealed cover and it was found that the petitioner was not able to clear the said examination. As such, the writ petition being W.P.(C) 11112/2019, was dismissed on August 13, 2020.

8. It is on January 27, 2022 that the application filed by the petitioner No.2 seeking permission to appear in the LDCE-2021, was rejected by the respondents. Whereas, on March 4, 2022, the application filed by the petitioner No.1, also came to be rejected by the respondents.

9. In effect, it is the case of the petitioners and so contended by Mr. P. Sureshan, learned counsel appearing for the petitioners that the impugned Recruitment Rule of the respondents which stipulates that a candidate must have a 'clean record' to appear in the LDCE examination is arbitrary and as such the petitioners should be allowed to appear in the said examination.

10. It is the submission of Mr. Sureshan that by way of present petitions, the petitioners are challenging the rules for LDCE, 2021 held by the UPSC for the purpose of filling vacancies of Assistant Commandants (Executive) ['ACs (E)', for short] in the respondents' Force for the vacancy year 2021.

11. He submitted that as per Clause 3 of the LDCE, 2021 notification, a candidate must have completed four years of regular service as on January 1, 2021, in the rank of Sub-Inspector (GD) / Inspector GD, including the period of basic training and should have a



‘clean record’ of service till the issue of offer of appointment. As the petitioners herein had been punished with minor penalties, the respondents rejected the applications of the petitioners to appear in the LDCE, 2021.

12. He further submitted that the petitioners are aggrieved by the arbitrary and unfair condition of ‘clean record’ contained in the rules of LDCE, 2021 as the same is in violation of the fundamental rights guaranteed by Articles 14 and 16 of the Constitution of India. It is a settled law that though right to promotion is not considered to be a fundamental right but consideration for promotion has now been evolved as a fundamental right (*Ref. Director, Lift Irrigation Corporation Limited and Ors. v. Pravati Kiran Mohanty and Ors, (1991) 2 SCC 295* and *Ajit Singh v. State of Punjab, (1999) 7 SCC 209*).

13. He submitted that the rejection of the petitioners’ candidature for LDCE, 2021 only on the ground of being inflicted with minor punishment is arbitrary. There is no object which is sought to be achieved by the respondents by preventing the petitioners from appearing in the LDCE, 2021 as their final selection will be based upon the result of written, physical and medical examinations. In other words, if the petitioners could score higher marks than their counterparts, preventing them in appearing the examination would be arbitrary and discriminatory inasmuch as it would result in restricting the meritorious candidates from getting the promotional posts.

14. It is his submission that once the petitioners had been punished for their minor mistake by way of disciplinary proceedings, preventing



them from appearing in the LDCE-2021, will be like imposing the second punishment and as such the same is in violation of the principle of double jeopardy.

15. He has relied upon Rule 11 of CCS (CCA) Rules, 1965 ('Rules of 1965', for short) to contend that penalties are bifurcated into two heads, viz., 'minor penalties' and 'major penalties'. Withholding of promotion as well as withholding of increments are two distinct penalties which fall under the head of 'minor penalties'. It is a well settled law that more than one penalty cannot be imposed simultaneously. If penalty of withholding of increment is allowed to operate as affecting promotion, it would tantamount to inflicting another penalty of withholding of promotion, which is clearly impermissible in law. Therefore, instigating 'clean records' for appearing in LDCE, 2021 is illegal and contrary to the relevant rules.

16. He has also relied upon DOP&T OM dated April 15, 2004 to state that it has been clarified in that OM that a government servant on whom a minor penalty of withholding of increment etc. has been imposed, should be considered for promotion by the DPC.

17. Reliance has also been placed on the order of this Court dated August 11, 2015 passed in *W.P.(C) 7563/2015* titled as *Girish Kumar v. Union of India and Ors.*, wherein it has been held that the CRPF's stand that the infliction of censure bars the candidate for entitlement for being considered for appointment in LDCE quota but on the other hand, does not affect his entitlement for normal promotion is not only irrational but illogical.

18. So, it is his submission that the petitioner No.1 who has already



appeared in the written examination should be allowed to complete further recruitment process and in the event he gets selected successfully, then, he should be given all the consequential benefits as applicable to the other candidates appointed through the same selection process in view of the interim order passed by this Court on July 24, 2020.

19. To further his case, reliance has been placed on the following judgments:

- i. Man Singh v. Union of India and Ors., W.P.(C) 2887/2012* decided on December 21, 2012;
- ii. Ajay Pandey v. Union of India, W.P.(C) 1938/2011* decided on July 28, 2014;
- iii. L/Ct. N. Rekha v. Union of India and Ors., W.P.(C) 19344/2011* decided on February 6, 2020;
- iv. Amresh Shukla v. DG, CISF and Ors., W.P.(C) 979/2012* decided on September 13, 2022.

20. On the other hand, it is the submission of Ms. Garima Sachdeva, learned Sr. Panel Counsel appearing on behalf of the respondents that CISF is a disciplined force which is formed for the protection and security of industrial undertakings owned by the Central Government and other industrial undertakings. As such, the Recruitment Rules, which are legislative in nature cannot be struck down unless shown to be completely arbitrary which the petitioner has failed to show.

21. She submitted that it is an admitted fact that the petitioner No.1 who had filed the writ petition being W.P.(C) 11112/2019 before this Court by way of an interim direction vide order dated December 07,



2019 was given permission to appear in the LDCE, 2020. However, he could not clear the same. The petitioner No.1, again applied for the post of ACs in the LDCE, 2021. However, as he did not have a 'clean record' of service, he was not allowed to appear in the said examination as per the instructions issued by the Government of India.

22. She further submitted that Government of India (Ministry of Home Affairs) had intimated vide their order dated August 21, 2000, about the decision to introduce a system of LDCE for promotion to the rank of ACs / EXE to the extent of 17% of the vacancies for GD Cadre in the CAPFs. It has also been directed that necessary action may be taken for getting the Recruitment Rules amended in order to incorporate the provision of promotion through LDCE. In the said order, the following criteria has been laid down:

“ELIGIBILITY CONDITIONS:

Both Sub-Inspector (Exe) and Inspector (Exe) will be eligible to appear in the said LDCE.

(a)	<i>Service eligibility</i>	<i>They should have completed four years of service including training.</i>
(b)	<i>Upper age & Educational Qualifications</i>	<i>The upper age limit for appearing in the LDCE will be thirty five (35) years. The Educational qualification will be Graduation which is also the eligibility for DR Assistant Commandants.</i>
(c)	<i>Clean Record</i>	
(d)	<i>Physical Standards</i>	<i>As applicable to Assistant Commandant (DE) candidate's standards.</i>

”

23. Accordingly, the MHA vide order dated November 23, 2005



had issued an SOP for selection of ACs / EXEs through LDCE for all the Forces by rotation by each force beginning with BSF (2005/2006) followed by CRPF (2006-2007), ITBP (2008-2009) and SSB (2009-2010) and so on. In the said SOP, the eligibility conditions are as under:

“(a) Service:-

*The candidates should have completed four years of regular service as on 1st January of vacancy year in the rank of Sub-Inspector (GD) / Inspector (GD) including period of training and **have clean record of service as prescribed by respective CPMFs.**”*

24. She submitted that since 2009, a separate examination, i.e., CISF AC-LDC examination is being conducted by UPSC every year in accordance with the Recruitment Rules for the post of ACs/EXEs and also the examination rules are also being published by MHA every year.

25. According to her, as per the directions issued by MHA, the Recruitment Rules for the post of ACs/EXEs were modified and issued vide gazette notification dated February 17, 2009, incorporating the provision of LDCE in CISF.

26. It is her submission that for LDCE-2023, the examination rules were published on May 24, 2023, wherein the following eligibility criteria is mentioned:

*“The candidates should have completed 04 years of regular service as on 01st January, 2023 in the rank of Sub-Inspector (GD) & Inspector (GD) including the period of basic training and **should have clean record of service till issue of offer of appointment.**”*



27. She submitted that since 2009, other sister organizations, i.e., BSF, CRPF, ITBP and SSB are also conducting separate combined examination for the post of ACs / EXEs through LDCE by rotation. In this regard, an SOP detailing the schemes / modalities for selection of ACs (GD) through LDCE for BSF, CRPF, SSB and ITBP (except CISF) was issued vide MHA ID No. 45013/01/2009/PERS. dated July 1, 2014. In the said SOP, the eligibility conditions are as under:

Both Sub-Inspector and Inspector will be eligible to appear in LDCE for Assistant Commandant (GD) as per Recruitment Rules of respective Forces. Other eligibility conditions are given below:-

(a) Service:-

*The candidates should have completed four years of regular service as on 1st January of vacancy year in the rank of Sub-Inspector / Inspector including period of training and **have clean record of service as prescribed by respective CPMFs***

28. She submitted that accordingly a separate notice / notification was issued by the Nodal Force for the examination of other CAPFs (except CISF). As per the advertisement dated May 28, 2021, issued by SSB, for AC-LDCE-2018, 2019, 2020, 2021 and 2022, wherein the following conditions are mentioned:

“The eligibility for AC(GD) through this LDCE will be as per the RRs of the respective Forces. It will be the responsibility of respective CAPFs to scrutinize the application accordingly before forwarding it to SSB.

Candidates should have clean record of service as per RRs/ prescribed by concerned forces.

29. It is her submission that since 2009, CISF, AC-LDCE, is being



conducted by UPSC and examination rules / gazette notification are being issued by MHA every year, while, a separate combined recruitment for LDCE is being conducted for BSF, CRPF, SSB and ITBP, wherein, it is mentioned in the SOP for LDCE that the eligibility for AC (GD) for LDCE will be as per the Recruitment Rules of the respective Force. It is the responsibility of respective CAPFs to scrutinize the application accordingly. Further, the candidates should have clean record of service as per the Recruitment Rules prescribed by the concerned Forces.

30. She submitted that in the latest Recruitment Rules of CRPF issued by MHA vide gazette notification dated November 18, 2010, for the post of AC (GD), the following criteria has been laid down:

“(a) “Sub-Inspector/ Inspector having completed four years of service including training will be eligible.

(b) The upper age limit for appearing in the Limited Departmental Competitive Examination will be thirty five years. The required educational qualification will be graduation which is also eligible direct recruitment of Assistant Commandant.

*(c) **Clean Record of Service.***

(d) Physical standards will be same as applicable to Assistant Commandant (Direct Recruitment).”

31. She also submitted that in the latest Recruitment Rules of SSB issued by MHA vide gazette notification dated August 25, 2010, the following criteria has been laid down:

“Both Inspector (General Duty) and Sub-Inspector (General Duty) with four years regular service shall be eligible to appear if they possess prescribed physical and medical standard and educational qualification as prescribed for direct



recruits mentioned in column 8.”

32. She has also relied upon the latest Recruitment Rules of ITBP issued by MHA vide gazette notification dated July 17, 2018, wherein the following criteria has been laid down:

“Inspectors and Sub-Inspectors of General Duty of Indo-Tibetan Border Police Force who have completed four years of service including period of training and being in Medical category SHAPE-I shall be eligible to appear in the Limited Departmental Competitive Examination.

Note: The maximum age limit for appearing the LDCE shall be thirty-five years. The relaxation of SC or ST or OBC candidate shall be admissible as per Government Rules. The required educational qualification shall be graduation. The crucial date shall be the 1st day of January of the year in which the Examination is conducted.”

33. It is her submission that the DOP&T vide OM dated April 28, 2014, has issued guidelines on effect of penalties on promotion i.e., the ‘Role of Departmental Promotion Committee’, wherein, in paragraph 7 (d) and (g), it has been held as under:-

“Para.7 : The matter has been examined in consultation with the Department of Legal Affairs. It is a settled position that the DPC, within its power to make its own assessment, has to assess every proposal for promotion, on case to case basis. In assessing the suitability, the DPC is to take into account the circumstances leading to the imposition of the penalty and decide, whether in the light of general service record of the officer and the effect of Imposition of penalty, he/she should be considered suitable for promotion and therefore, down gradation of APARS by one level in all such cases may not be legally sustainable. Following broad guidelines are laid down in respect of DPC:



d) If the official under consideration is covered under any of the three condition mentioned in para 2 of O.M. dated 14.09.1992, the DPC will assess the suitability of Government servant along with other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC including 'unfit for promotion' and the 8 grading awarded are kept in a sealed cover. (Para 2.1 of DoPT OM dated 14.9.92).

g) In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over (para 13 of DOPT OM dated 10.4.89)."

34. It is her submission that if this rule position is changed, the Recruitment Rules notified by the MHA will have to be amended. This will not only affect the entire recruitment process but shall open the flood gates for the candidates who were not allowed to appear in the previous LDCE, to approach the Courts for grant of same benefit. Moreover, the flood gates of all the earlier candidates, who have been denied to appear in LDCE due to the condition of 'clean service' record, shall also open and as such, the same would burden the Ministry and the Department with new promotions and also have a major impact on several seniorities.

35. She submitted that since petitioner No.1 has been awarded



punishment under Rule 37 of CISF Rules i.e. withholding of one increment for a period of one year without cumulative effect, he was not eligible to appear in the LDCE, as per Recruitment Rules and examination rules published by MHA vide Gazette Notification dated May 24, 2023 for CISF, AC-LDCE-2023. However, the application of the petitioner No.1 for LDCE-2023 was forwarded to UPSC with a request to allow him to appear in the examination in compliance of this Court's interim direction passed on May 30, 2023. Accordingly, he appeared in the written examination held on October 01, 2023. Further, UPSC vide letter dated November 30, 2023 has published the result of written examination and it informed that the result of the petitioner No.1 has been kept in a sealed cover.

36. In support of her submissions, she has relied upon the following judgments:-

1. **CT/GD Ghanshyam Swamy v. Union of India (2017:DHC:4359-DB);**
2. **A.M. Pathan v. Union of India (2015:DHC:7780-DB).**

FACTS IN W.P.(C) 6287/2022

37. This petition has been filed by the petitioner with the following prayers:

“It is therefore most respectfully prayed that this Hon’ble Court may be pleased to:-

- a) *To quash and set aside the final order final order No. 5142 dated 06.08.2020 passed by the Asst. Commandant CISF Unit SECL, Bilaspur, Appellate Order No.6261 dated 29.9.2020 passed by the Deputy Commandant CISF Unit, SECL, Bilaspur and the final revisional order No.*



6275 dated 25.06.2021 passed by the Commandant CISF Unit, SECL, Bilaspur wherein the petitioner had been finally punished with a penalty of "Censure"..

b) Pass an order by exonerating the petitioner from all charges issued to him vide memorandum of charge dated 20.07.2020

c) Declare that punishment of 'censure' will not affect the right of the petitioner to appear in LDCE examination to be conducted for the post of ASI/exe in CISF.

d) Direct the respondents to grant consequential benefits.

e) Direct the respondents to pay cost of this litigation to the petitioner.

f) Any other further order/relief which is Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be passed in favour of the petitioner and as against the respondent."

38. It is the case of the petitioner and so contended by Mr. Sureshan, learned counsel appearing for the petitioner that in effect the petitioner is challenging the final order being No. 5142 dated August 6, 2020 passed by the Assistant Commandant, CISF Unit, SECL, Bilaspur, Appellate Order No. 6261 dated September 29, 2020 passed by the Deputy Commandant CISF Unit, SECL, Bilaspur and final Revisional Order No.6275 dated June 25, 2021 passed by the Commandant, CISF Unit, SECL, Bilaspur, whereby the petitioner has been finally punished with a penalty of Censure.

39. It is his case that the final order passed by the respondents affects the service career of the petitioner as the respondents do not permit a person who is punished with a minor penalty to appear in the LDCE for the post of ASI.

40. It is his case, that the petitioner was issued with the charge



memorandum dated July 20, 2020, wherein the following allegations were made:-

“Force No.170125770 Ct/GD Ritesh who was posted at CISF Unit SECL sent for additional security duty to Red Line-2 DMRC, Delhi and while performing that duty he was given bed rest for three days from 9.3.2020 to 11.3.2020 by the Doctor at East Delhi Municipal Corporation Swami Dayanand Hosptial, that after utilizing bed rest period on 13.3.2020 he had given his medical documents at Company Office personal HC/GD Manoj Kumar, Company Writer. That, in respect of his physical illness the writer had directed him to get the Medical from No 4 and in respect of his fitness Form No5 got signed form his doctor along with the medical documents and the same was directed to be submitted at the company office. That in respect of this issue the above named force member behaving in indecent manner with Company Writer and Office Incharge ASI/Exe Samay Singh thrown the document over company writer and went away from the office. This kind of act from the part of the above force member is a display of serious indiscipline and misconduct. Thus the allegation.”

41. Thereafter, the petitioner had submitted his response to the charge memorandum by denying all the allegations contained therein. Specifically, the petitioner had denied the allegations in the following manner:-

“When he went to the company office neither company writer HC/GD Manoj Kumar nor n charge ASI/ Exe Samay Singh were present in the company office and thus he had submitted his medical documents to C company writer Ct/GD Roshan Kumar. That if the company Writer Manoj Kumar was available at the office then there was no question of submitting the documents to C-Company Writer. That it can be verified and proved that the documents were submitted to C-Company writer. Otherwise C-Company Writer could not have come into the picture at all.”



42. It is his submission that the Appellate Authority as well as the Revisional Authority have failed to consider the valid legal grounds raised by the petitioner and as such, the present petition is being filed.

43. He submitted that without considering the response / explanation given by the petitioner, the respondents conducted a preliminary inquiry in respect of allegations by not following the principles of natural justice. As such, on the basis of preliminary inquiry, a charge memorandum under Rule 37 of the CISF Rules, 2001 was issued to the petitioner on July 20, 2020.

44. He submitted that without considering the reply of the petitioner, on August 06, 2020, a final order No.5142, was passed by the respondents awarding a punishment of Censure upon the petitioner. Thereafter, on September 29, 2020, the Appellate Order No.6261 passed by the respondents upheld the final order dated August 06, 2020. Subsequently, vide a final revisional order No.6275, dated June 26, 2021, the punishment of Censure awarded to the petitioner was confirmed by the respondents.

45. It is his submission that the impugned orders passed by the respondents have disregarded the principles of natural justice and as such, these orders must be quashed and set aside.

46. He submitted that the petitioner has been punished with the penalty of Censure and the same will affect his service career as it is the rule position of the respondents that the candidates who have been punished with censure are not allowed to take part in LDCE.

47. He submitted that the presence of both the members of the Force against whom it has been alleged that the petitioner had behaved



indecently were not present at the time when the petitioner submitted his medical documents. The petitioner had submitted the documents to C-Company writer, HC/GD Manoj Kumar. This fact was not considered in the disciplinary order. But in the Appellate Order, it was clarified by mentioning that the documents were submitted to CT/GD Roshan and the petitioner was waiting outside. Thereafter, the company writer called the petitioner through phone. From the order passed by the Appellate Authority, it came to light that the documents were submitted to CT/GD Roshan and the same were not given to HC/GD Manoj Kumar Yadav. Therefore, it is impossible to believe that the petitioner had thrown the medical documents over to HC/GD Manoj Kumar Yadav. Once the documents have been submitted, they will remain with the office and would not be available with the petitioner to throw it over to the company writer. Insofar as allegation of indecent behavior is concerned, it is his submission that if the throwing of documents found to be false and wrong, the disciplinary authority should have elaborated the manner of behavior of the petitioner. There was no allegation that the petitioner had used any kind of abusive words. It is very difficult to believe the said allegation. The allegation is therefore proved to be farfetched and imaginary. The allegation of throwing documents over company writer is admittedly contradictory.

48. He submitted that the revisional authority has relied upon the written statement of the witnesses given during the course of preliminary inquiry. Such approach is illegal and unconstitutional as evidence which is not established through a process of trial could not be taken as valid evidence in departmental proceedings. In the present



case, the petitioner was not allowed to cross examine the witnesses and as such, their statements could not have been considered by the departmental authorities. Therefore, the punishment of censure is illegal and non maintainable.

49. It is his submission that the departmental authorities had relied upon the statement given by company writer while rejecting the submissions made by the petitioner. For relying on any such documents, the primary requirement was to supply the copy of the same. None of the documents relied in support of the allegations were supplied to the petitioner and thus, there is violation of principles of natural justice.

50. It is his submission for considering an incident which is alleged to be a misconduct, a primary requirement is to record the same as a GD entry which must be entered at the time and moment of the incident. In the present case, there is no GD entry in respect of the incident and as such there is no discussion about the same in the impugned orders. The petitioner had specifically stated that the two senior force members were not available when he submitted the medical documents. In view of this fact, it is important to verify and examine the GD entry and if it is made then the exact time of its entry. None of such documents were considered or discussed in the impugned orders. Thus, it is proven beyond any doubt that the allegation is totally baseless and false.

51. He submitted that on the previous occasion also, the petitioner had followed the same procedure and submitted the same kind of documents after the medical tests. When no such objections were ever



raised on previous occasions, the new objection to his medical documents on March 13, 2020, itself is unfounded and baseless. The petitioner had placed every facts and material on record and same was required to be examined on the basis of actual material. The disciplinary authority could have examined the available CCTV records to verify as to whether the company writer and ASI/Exe. Samya Singh were present, when the petitioner submitted his medical documents. As such, the impugned orders have been passed without conducting any proper inquiry and investigation.

52. It is his submission that the entire incident was recorded in the CCTV fixed at the premises but neither such visuals were ever called upon by the disciplinary authority nor examined in support of the allegations. The petitioner has also not been served with any details about the visuals by the concerned department.

53. Reliance has been placed upon the judgment of the Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank & Ors., (2009) 2 SCC 570**, to contend that the Apex Court in that case has held that in a departmental inquiry mere production of documents is not enough. The contents of documentary evidence have to be proved by examining witnesses.

54. He submitted that the revisional authority in its order referred preliminary inquiry report but no copy of the same was provided to the petitioner. It is a settled law that where the officer denies the charges, the inquiry has to be conducted in accordance with the rules. Whether the official opts for an oral inquiry or he is present at the inquiry, the prosecution should adduce adequate evidence to establish such charges.



If no evidence is adduced, the inquiry officer may not rely upon the evidence recorded in the preliminary inquiry to determine the guilt. (Ref. *State of Andhra Pradesh v. Karumuliah Khan*, *SLR 1971 (1) AP 834 and Reddy Venkatesh Godda v. Deputy Commissioner, 1972 MYS L.J. SN 75*).

55. He further submitted that the disciplinary authority has based its finding upon the version of the company incharge but no oral examination of this witness was done in accordance with law. The conduct of disciplinary proceedings and its findings are thus, not sustainable. It is a settled law that witnesses should be examined in the presence of delinquent official. The principles of natural justice require that the witnesses deposing against a government servant must be examined in his presence. (Ref. *A. M. Mandanna v. Director of Medical Services, 1966 (2) MYS L.J. 705, Phuibari Tea Estate v. Its Workmen, AIR 1959 SC 1111, Peer Saheb v. State of Mysore, SLR 1971 (1) MYS 36 and S. Nanjundeswar v. State of Mysore, 1960 MYS L.J. 79*).

56. Therefore, it is his submission that Censure awarded should not come in the way of the petitioner to appear in the LDCE as per relevant rules of Government of India.

57. Whereas, on the other hand, it is the submission of Mr. Ajay Jain, learned SPC appearing on behalf of the respondents that the petitioner has concealed the material facts from this Court and is thus, guilty of *suppresio veri suggesio falsi* and the present petition is liable to be dismissed on this ground alone.

58. It is his submission that the petitioner was deputed on internal



security duty in red line-II of CISF Unit, SECL, Bilaspur and during the said deployment he was on medical rest from March 09, 2020 to March 11, 2020. On March 13, 2020, when the petitioner reported at company office, 'B' Company, neither company writer CT/GD Manoj Kumar nor office incharge ASI/Exe. Samay Singh were present in the company office and thus, he had submitted his medical documents to 'C' Company writer CT/GD Roshan Kumar. The 'C' Company writer duly received the medical documents from the petitioner and handed over the same to 'B' Company writer, CT/GD Manoj Kumar on his arrival.

59. He submitted that upon examining the medical papers, CT/GD, Manoj Kumar noticed some discrepancy/deficiency in the medical papers and thus, called the petitioner over telephone. On his arrival, he informed the petitioner to resubmit the medical documents after getting the signature of the doctor concerned on the unfit/fitness form (Form No.4 and 5). As the medical rest prescribed to the petitioner by the doctor of EDMC, Swami Dayanand Hospital was for three days i.e., from March 09, 2020 to March 11, 2020 and as per the rules, the petitioner was supposed to report to the duty along with his fitness certificate on March 12, 2020, however, the petitioner reported for duty on March 13, 2020, without making any entry of March 12, 2020, in his medical documents.

60. It is his submission that upon examining the medical papers CT/GD, Manoj Kumar noticed some discrepancy/deficiency in the medical papers and thus called the petitioner over telephone and on his arrival he informed him to re-submit the medical documents after getting the signature of the Doctor concerned on the unfit/fitness form



(Form No.04 & 05), as the medical rest prescribed to the petitioner by the Doctor of East Delhi Municipal Corporation, Swami Dayanand Hospital was for 03 days i.e., from March 09, 2020 to March 11, 2020 and as per rule the Petitioner was supposed to report for duty along with his fitness certificate on March 12, 2020, but the petitioner reported for duty on March 13, 2020, without making any entry of March 12, 2020 in his medical documents.

61. He submitted that ignoring the suggestions of the Company Writer, the petitioner misbehaved with him and threw all the medical documents over the Company Writer by stating that 'he can do whatever he wants to do and further stated that he has no other papers to submit'. At that time, Office Incharge, Assistant Sub Inspector/Exe. Samay Singh and Head Constable/GD Rameshwar Lal were also present in the Company Office and ASI/Exe Samay Singh tried to convince the petitioner but the latter by ignoring the Office Incharge and throwing the papers on Company Writer, left the office. The statements of ASI/Exe Samay Singh and Head Constable/GD Rameshwar Lal recorded during the course of Preliminary Enquiry are corroborating with the statement of Constable/GD Manoj Kumar. Such act on part of a disciplined member of Force like CISF is a gross misconduct which is not acceptable.

62. He further submitted that thereafter, an explanation was called for from the petitioner by the Deputy Commandant, CISF Unit, DMRC Delhi vide DMRC, Red Line-02, Shastri Park, New Delhi vide Letter No. 1093 dated March 16, 2020. Afterwards, the petitioner submitted his reply against the explanation vide his representation dated March



18, 2020, wherein he stated that the alleged incident of misbehaving with the Company Writer and throwing the medical documents over him never happened and the same was concocted and fabricated by the Company writer CT/GD Manoj Kumar Yadav under the order of ASI/Exe Samay Singh of CISF Unit DMRC Delhi.

63. It is his submission that the reply filed by the petitioner against the explanation was not found satisfactory by the Competent Authority and accordingly an order to conduct a Preliminary Enquiry was ordered to bring out the facts of the case vide Order No. 1171 dated March 21, 2020. After due analysis of the case, the PEO concluded that a prima-facie case of misconduct exists against the petitioner.

64. He submitted that on the basis of the preliminary inquiry report and other material of the case, a charge memorandum under Rule 37 of the CISF Rules- 2001, was issued against the petitioner by the Asstt. Commandant, CISF Unit SECL, Bilaspur on July 20, 2020. On July 26, 2020, the petitioner submitted his reply against the charge memorandum. Thereafter, the Disciplinary authority i.e. Assistant Commandant, CISF unit SECL Bilaspur after going through the record and reply submitted by the petitioner, found that charges levelled against him as fully proved and passed an order of punishment imposing "Censure" vide final Order No.5142 dated August 06, 2020.

65. He further submitted that the petitioner being aggrieved by the order of Disciplinary Authority submitted an appeal petition. The Appellate Authority i.e. Dy. Commandant, CISF Unit SECL Bilaspur after considering the memo of appeal carefully and record of the disciplinary proceedings found that the order of punishment is just and



proper and the same is well consonance with the gravity of misconduct therefore, rejected the appeal vide Appellate Order No.6261 dated September 29, 2020. Thereafter, the petitioner further filed a Revision Petition against the Appellate Order on December 21, 2022 and the Revisioning Authority i.e. the Commandant, CISF Unit SECL, Bilaspur, found that the petitioner has not put forth any new fact to mitigate the gravity of the proven charges and passed a reasoned and speaking order confirming the penalty passed by the Disciplinary Authority and agreed upon by the Appellate Authority vide Order No.6275 dated June 25, 2021.

66. He submitted that though the incident had happened while the petitioner was deployed on Internal Security Duty at CISF Unit, DMRC Delhi, and as the petitioner was under the administrative and disciplinary control of CISF Unit SECL, Bilaspur (his parent unit), the disciplinary action against the petitioner was initiated and finalized at his parent unit based on the report along-with findings of the preliminary enquiry report received from CISF Unit, DMRC Delhi. Hence, this Court does not have the territorial jurisdiction to entertain the present petition.

67. It is his submission that it is a well-established principle of law that indiscipline and disrespect cannot be tolerated or condoned when the matter pertains to any member of armed forces or central reserved forces.

68. He submitted that in the in the present case, the petitioner was absent from duty without prior permission or information, which was the very reason for which he was asked by the Company Writer to file



his proper medical reports in the prescribed manner and then the petitioner got agitated and misbehaved with the Company Writer and threw his medical reports on the Company Writer and talked to him in a very disrespectful manner. Hence, such an action on part of the petitioner is not liable to be condoned without any punishment.

69. Mr. Jain has thus relied upon the following judgments to justify the imposition of punishment upon the petitioner:-

- i. ***Prestige Lights Ltd. v. State Bank of India, (2007) 8 SCO 449;***
- ii. ***K.D. Sharma v. Steel Authority of India Ltd. and others, (2008) 12 SCC 481.***

70. He further submitted that petitioner is an enrolled member of the Force who is governed by the CISF Act, 1968 and CISF Rules, 2001 and not by Rules of 1965. The punishment of “Censure” is classified as ‘Minor Penalties’ under Rule 34 (vi) of CISF Rules, 2001. Further, under the Rules of 1965, an order of “Censure” is a formal and public act intending to convey that the person concerned has been guilty of some blameworthy act or omission for which it has been found necessary to award him a formal punishment. Further, as per the Recruitment Rules for the post of ASI/Exe (LDCE) in CISF, the applicant should be free from any minor/major punishment during his entire service. These directions are being circulated in every notifications issued by the department regarding the eligibility to appear in the LDCEs.

71. It is his submission that the conclusion of the preliminary enquiry was based on the documentary evidences and written



statements of the witnesses recorded during the course of enquiry. As the petitioner was given an opportunity to file his reply against the charge memorandum and he has filed his reply against the charge memorandum, his plea that the disciplinary proceedings were held in total disregard to the rules of natural justice has no merit.

72. He further submitted that though it is true that as per existing procedure, a GD entry for any incident is to be made in the GD register as per the directions of the Competent Authority but in the instant case the misbehavior of the petitioner came to the knowledge of the competent authority only after receipt of written complaint submitted by Const/GD Manoj Kumar Yadav, therefore, it was not feasible to record the same in the General Diary. Therefore, in the instant case an explanation was asked from the petitioner on receipt of written the complaint dated March 13, 2020 submitted by CT/GD Manoj Kumar Yadav, Company Writer of 'B' Company, Red Line-II, CISF Unit DMRC Delhi. The reply submitted by the petitioner was found to be unsatisfactory and hence, a preliminary enquiry was ordered in the case in which the prima-facie case of indiscipline by the petitioner was found by the Preliminary Enquiry Officer. Therefore, the petitioner cannot take the shelter of not recording an entry in the GD about his indiscipline acts.

73. He further submitted that if any CCTV was installed in the premises which had captured the entire incident, then the Petitioner would have demanded for the CCTV footage of the incident during the course of preliminary hearing, reply to the charge memorandum, however, he did not do so, during the preliminary inquiry and did not



mention anything about the same in his reply to the charge sheet. Thus, the plea of the petitioner is not sustainable.

74. It is his submission that departmental proceedings are quasi-judicial proceedings as such charge against any individual is found to be proven on the basis of the documentary evidences and written statements of the witnesses recorded during the inquiry. In the instant case, the petitioner was charge sheeted under Rule-37 of CISF Rules, 2001 i.e., under 'minor penalty rule', for his indiscipline acts, in which conduct of a full fledged departmental enquiry is not mandatory. Further, the petitioner was given sufficient opportunity by the Disciplinary Authority to defend his case by way of written reply. Therefore, it is his submission that in the facts and circumstances of the present case, as no substantial question of law has been disclosed in the present petition, the same is liable to be dismissed.

ANALYSIS

75. Having heard the learned counsel for the parties, at the outset, we may state that the petition being W.P.(C) 5832/2022 has been filed challenging a stipulation in the recruitment rules under consideration i.e., CISF-LDCE, Recruitment Rules for making promotion under the LDCE quota which stipulates that a candidate must have a clean record to be eligible to participate in the said examination. Whereas, the other petition being W.P.(C) 6287/2022, has been filed primarily against an order of Censure passed by the respondents against the petitioner, the subsequent appellate order as well as the revisional order, which were also decided against the petitioner. Additionally, in the said petition, consequential relief has also been sought that the punishment of



censure should not affect the right of petitioner to appear in the LDCE examination conducted for the post of ACs(E).

76. So in that view, both the petitions having one common issue with regard to stipulation of having clean record in the Recruitment Rules being arbitrary, the same have been heard and decided together.

77. Before we deal with the aforementioned common issue, at the outset, we intend to deal with the issue raised in W.P.(C) 6287/2022 i.e., whether the final order dated August 6, 2020, imposing the punishment of Censure upon the petitioner gets vitiated because of non-adherence to the principles of natural justice by the respondents.

78. Before we actually come to the sole charge framed against the petitioner in W.P.(C) 6287/2022, which states that the petitioner has thrown the medical documents over HC/GD Manoj Kumar, Company by stating that 'he can do whatever he can do and he does not have any other document with him', it is relevant to reproduce the conclusion drawn by the inquiry officer in the preliminary as under, which also records the statements of ASI (Ex.) Samay Singh, HC/GD Rameswar Lal, Constable/GD Manoj Kumar, Ct/GD Roshan Kumar and Ct/GD Ritesh Gurjar i.e, statements of all the witnesses, on the basis of which the final order of Censure was passed:-

“After examining and analyzing the statements and documentary evidences recorded during the Preliminary Enquiry, I, Enquiry officer, have come to the conclusion that No. 170125770 CT/GD Ritesh Gurjar, detailed on Internal Security duty from CISF Unit SECL Bilaspur to CISF Unit DMRC Red Line-II, was on medical rest for a total period of 3 days from 09.03.2020 to 11.03.2020. Thereafter, on 13.03.2020 when reported in the Coy.office for joining duty where CT/GD



Manoj Kumar, 'A' Coy. Writer checked his medical documents and informed him about the deficiencies that he has to submit Form No. 04 & Form No.-05. Office Incharge ASI/Exe Samay Singh and HC/GD Rameshwar Lal tried to understand him that he should submit Form No.04 & Form No 05 but he did not listen to them and threw his papers over the Coy.Writer and went away by saying that he does not have any other papers and let him do whatever he wants to do. The above act committed by CT/GD Ritesh Gurjar is a gross indiscipline. Hence, the prima facie case exists against the member of Force for his act of indiscipline.”

79. We may state here that the appeal filed by the petitioner challenging the Censure order was also rejected by the appellate authority on September 29, 2020, so also, the revision petition, which was rejected on June 25, 2021. The plea of the petitioner as canvassed by Mr. Sureshan is primarily that the disciplinary proceedings have been held in total disregard to the principles of natural justice. The same has been proved solely on the basis of written statements of the witnesses and thus, a finding arrived at, on the basis of such statements, is contrary to the settled legal proposition.

80. He has substantiated the said plea by submitting that neither the preliminary inquiry report nor the statements of witnesses were supplied to the petitioner during the disciplinary proceedings to enable him to cross-examine all those witnesses whose statements have been taken into consideration to pass the final order. He submitted that HC/GD Manoj Kumar, who has alleged that the petitioner had behaved indecently was not present when the petitioner submitted his medical documents. In fact, it is his case that he had submitted the medical



documents to one Ct/GD Roshan Kumar, when neither HC/GD Manoj Kumar nor ASI (Ex.) Samay Singh, who had deposed against the petitioner were present at the place of incident. As such, it is impossible to plead that the petitioner had thrown the medical documents over the HC/GD Manoj Kumar. He also stated that the disciplinary authority has not even examined the available CCTV records to verify as to whether HC/GD Manoj Kumar and ASI (Ex.) Samay Singh were indeed present when the petitioner had thrown the medical documents on HC/GD Manoj Kumar. According to Mr. Sureshan, the aspects related to violation of principles of natural justice though pleaded by the petitioner in the appeal as well as in the revision, the authorities/respondents have not dealt with the same, vitiating the proceedings as well as the Censure order.

81. On the other hand, Mr. Jain would contest the case set up by Mr. Sureshan in the following manner:

“ii) That on 13.03.2020, when the Petitioner reported at the Company Office, 'B' Company, neither Company Writer CT/GD Manoj Kumar nor Office In-charge ASI/Exe Samay Singh were present in the Company Office and thus he had submitted his medical documents to 'C' Company Writer CT/GD Roshan Kumar. The 'C' Company Writer duly received the medical documents from the Petitioner handed over the same to 'B' Company Writer, CT/GD Manoj Kumar (Company Writer of the Company in which the Petitioner was deployed) on his arrival.

iii) That upon examining the medical papers CT/GD, Manoj Kumar noticed some discrepancy / deficiency in the medical papers and thus called the Petitioner over telephone and on his arrival he informed him to re-submit the medical documents after getting the signature of the Doctor concerned on the unfit/fitness form (Form No.04 & 05), as the medical



rest prescribed to the Petitioner by the Doctor of East Delhi Municipal Corporation, Swami Dayanand Hospital was for 03 days i.e., from 09.03.2020 to 11.03.2020 and as per rule the Petitioner was supposed to report for duty along with his fitness certificate on 12.03.2020, but the Petitioner reported for duty on 13.03.2020 without making any entry of 12.03.2020 in his medical documents.

iv) However, ignoring the suggestions of the Company Writer, the Petitioner misbehaved with him and threw all the medical documents over the Company Writer by stating that he can do whatever he wants to do and further stated that he has no other papers to submit. It is submitted that at that time Office Incharge, Assistant Sub Inspector/Exe. Samay Singh and Head Constable/GD Rameshwar Lal

were also present in the Company Office and ASI/Exe Samay Singh tried to convince the Petitioner but he by ignoring the Office Incharge and throwing the papers on Company Writer, left the office. The statements of ASI/Exe Samay Singh and Head Constable/GD Rameshwar Lal recorded during the course of Preliminary Enquiry are corroborating with the statement of Constable/GD Manoj Kumar. Such act on part of a disciplined member of Force like CISF is a gross misconduct which is not acceptable.

v) Thereafter, an explanation was called for from the Petitioner by the Deputy Commandant, CISF Unit, DMRC Delhi vide DMRC, Red Line-02, Shastri Park, New Delhi Letter No. (1093) dated 16.03.2020.

vi) Afterward, the Petitioner submitted his reply against the explanation vide his representation dated 18.03.2020 wherein he stated that the alleged incident of misbehaving with the Company Writer and throwing the medical documents over him never happened and the same was concocted and fabricated by Company writer CT/GD Manoj Kumar Yadav under the order of ASI/Exe Samay Singh of CISF Unit DMRC Delhi.

vii) That the reply filed by the Petitioner against the Explanation was not found satisfactory by the Competent Authority and accordingly an order to conduct a Preliminary



Enquiry was ordered to bring out the facts of the case vide Order No. (1171) dated 21.03.2020. After due analysis of the case, the PEO concluded that a prima-facie case of misconduct exists against the petitioner.

viii) That on the basis of the preliminary inquiry report and other material of the case, a charge memorandum under rule 37 of the CISF Rules - 2001 was issued against the Petitioner by the Asstt. Commandant, CISF Unit SECL Bilaspur to the Petitioner on 20.07.2020.

ix) That on 26.07.2020, the Petitioner submitted his reply against the charge memorandum.

x) That Disciplinary authority i.e. Assistant Commandant, CISF unit SECL Bilaspur after going through the record and reply submitted by the petitioner found that charges leveled against him are fully proved and passed an order of punishment imposing "Censure" vide final order No.(5142) dated 06.08.2020.

xi) The petitioner being aggrieved by the order of Disciplinary Authority submitted an appeal petition against the order dated 06.08.2020. The Appellate Authority i.e. Dy. Commandant, CISF Unit SECL Bilaspur after considering the memo of appeal carefully and record of the disciplinary proceedings found that the order of punishment is just and proper and the same is well consonance with the gravity of misconduct therefore, rejected the appeal vide Appellate Order No.(6261) dated 29.09.2020.

xii) That the Petitioner further filed a Revision Petition against the Appellate Order on 21.12.2022 and the Revisioning Authority i.e. the Commandant, CISF Unit SECL Bilaspur found, the petitioner has not put forth any new fact to mitigate the gravity of the proven charges, passed reasoned and speaking order confirming the penalty passed by the Disciplinary Authority and agreed upon by the Appellate Authority vide Order No.(6275) dated 25.06.2021."

82. In essence, it is the submission of Mr. Jain that there is enough compliance of principles of natural justice inasmuch as it is on the basis



of statements of the witnesses recorded by the Inquiry Officer during the preliminary inquiry that the punishment of Censure was imposed upon the petitioner.

83. He submitted that it is a well established principle of law that indiscipline and disrespect cannot be tolerated or condoned when the matter pertains to any member of any CAPFs. As against the submissions made by Mr. Sureshan on violation of principles of natural justice, Mr. Jain has taken the following stand in Para (e) of the counter-affidavit, which we reproduce as under:

“E. That the grounds as mentioned in paragraph E of paragraph 6 of the Writ Petition under reply are baseless and are devoid of merit as the statements of all the witnesses and the documentary evidences put forth during the course of preliminary enquiry including the statement of the Petitioner were examined by the preliminary enquiry officer and found prima-facie case of indiscipline act against the Petitioner i.e., misbehaving in an indecent manner with Company Writer at Red Line-II, DMRC Delhi and throwing all the medical documents of himself over the Company writer of Red Line-II, DMRC Delhi. While disciplinary action U/R-37 of CISF Rules, 2001 was taken against the Petitioner, he was given sufficient opportunity by the Disciplinary Authority to defend his case by way of written reply against the memorandum. However, the Petitioner could not come with a reasonable reply for his indiscipline actions. Hence, the Disciplinary Authority after analyzing the records held in the case and reply submitted by the Petitioner against the charge memorandum, found that the charge levelled against the Petitioner as proved and awarded the penalty of "Censure" vide final order No. (5142) dated 06.08.2020 upon the Petitioner for his proven act of indiscipline. Hence, the question of serious violation of the principle of natural justice as alleged by the petitioner does not arise at all.”



84. Suffice to state, on perusing the aforesaid ground taken by Mr. Jain, it can be seen that the statements of the witnesses/documents, so relied upon by the respondents to pass the final order were not given to the petitioner. It further appears that the action has been taken against the petitioner solely on the basis of the written statements of the witnesses recorded by the inquiry officer.

85. We are of the view, the statements of the witnesses on which reliance has been placed by the inquiry officer to prove the charges against the petitioner were ought to be given to the petitioner to cross-examine those witnesses as it was the case of the petitioner that HC/GD Manoj Kumar and ASI (Ex.) Samay Singh were not present when the petitioner handed over the medical documents to one Ct/GD Roshan Kumar.

86. In that sense, the right of access to those statements / documents and also the right to cross-examine the witnesses who gave the statements against the petitioner were denied to the petitioner. Hence, to that extent, the inquiry stands vitiated.

87. We see that even the petitioner had raised the plea in the appeal as well as in the revision petition that the principles of natural justice were not followed by the respondents, which we reproduce in following manner:

GROUND IN APPELLATE

“The Constable/GD Roshan Lal was called during the preliminary investigation, however, those said force members were not called in-front of the appellant. From this, it becomes clear that, for framing the appellant in false allegations, false



narrative has been prepared which is very far from the truth and the charges are liable to be quashed and he has prayed that, considering the present situation of the appellant, the appellant be exonerated from the Memorandum of Charge.”

GROUND IN REVISION

I That neither the PE report was submitted nor the details of the witnesses examined in PE was revealed in the impugned orders which proves beyond any doubt that the disciplinary order and appellate order is based upon no evidence.

L. The impugned orders are passed in violations of the relevant rules.

M. The petitioner did not get any opportunity to cross examine the witness in the inquiry proceedings and thus the finding against the petitioner is illegal and non sustainable.

N. That the impugned orders are bad and not sustainable as the same was not only perverse but even based on nil evidence.”

88. On perusal of the appellate order as well as the revisional order, we find that no finding has been given by the appellate / revisional authorities on the aspect of violation of principles of natural justice. If that be so, the impugned order of Censure being imposed on the petitioner also stands vitiated being in violation of the principles of natural justice. As such, the final order dated August 6, 2020, the appellate order September 29, 2020 and the final revisional order dated June 25, 2021, are set aside. The consequence thereof is, that the petitioner must be made eligible for participating in the LDCE as per the Recruitment Rules, in view of our conclusion drawn above.

89. In view of the fact that we have set aside the penalty of



Censure, it must be held that the petitioner in W.P. (C) 6287/ 2022, has a clean record and as such, he shall be eligible for participating in the selection process under the LDCE quota for promotion to the post of ACs (E) unless there is some other impediment under the Recruitment Rules.

90. Insofar as writ petition being W.P. (C) 5832/2022, is concerned, it may be stated here that both the petitioners have not challenged the penalties imposed on them before this Court. This Court shall proceed on the premise that the penalties stand proved against the petitioners as it is the case of the petitioners themselves that even though they have been imposed with the minor penalties, they must still be allowed to participate in the selection process for promotion under the LDCE quota.

91. The said plea needs to be tested on the anvil of the stipulation in the Recruitment Rules which provides that a personnel must have a clean record to participate in the selection process for promotion under the LDCE quota. Having said that, the Recruitment Rules, do not define clean record. It is not clear as to what shall be the scope of 'clean record'.

92. In any case, as we are concerned with only minor penalties having been imposed upon the petitioners, whether the same would be construed as not having a clean record.

93. Assuming it is, then it is necessary for us to highlight the position regarding regular promotion through seniority under 33% promotional quota under the Recruitment Rules, which contemplates the following:-



“PROMOTION

(i) Inspector(Executive) in the pay scale of PB-2 9300-34800+ GP 4600 with five years' regular service in the grade being in medical category SHAPE-1 and having passed the Matriculation Examination from a recognised Board or equivalent.

(ii) Should have successfully undergone pre-promotion course or training as prescribed by Director General, Central Industrial Security Force from time to time.

(iii) Should have rendered 2 years service as Inspector(Executive) in "Duty Battalion" as decided by the Central Government from time to time.

Note: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.

94. It can be seen from the above that there is no stipulation of having 'clean record'.

95. Whereas, the Recruitment Rules qua promotion through LDCE, stipulates the following, in which there is a clear stipulation of a personnel having a clean record as a pre-requisite in order to even participate in the selection process:-

*“LIMITED DEPARTMENTAL EXAMINATION
COMPETITIVE*

(i) Sub Inspector (Executive) (PB-2 9300-34800 + GP Rs. 4200) and Inspector (Executive) (PB-2 9300-34800+ GP 4600) of Central Industrial Security Force shall be eligible to appear



in the Limited Departmental Competitive Examination. They should have completed four years of regular service including training, clean record of service and being in medical category SHAPE-I.

(ii) The upper age limit for appearing in the Limited Departmental Competitive Examination will be thirty five years.

(iii) The required qualification will be Bachelor's degree of a recognised university or equivalent.

(iv) Only three chances will be given for appearing in the Limited Departmental Competitive Examination.

(v) The selected Assistant Commandants through the Limited Departmental Competitive Examination will undergo separate training of Assistant Commandants.

(vi) Selected candidates will undergo training at National Industrial Security Academy, Central Industrial Security Force, Hyderabad.

Note:- The plan of examination, etc. shall be such as may be provided by the Central Government from time to time in the rules of Limited Departmental Competitive Examination for Assistant Commandants in CISF.”

96. It is not understood as to why such a stipulation is imposed when promotion sought to be made under the LDCE quota and not under the 33% seniority quota, when the purpose under both the LDCE quota / the seniority quota is to grant promotion which entails higher status / responsibilities. So, it appears the same does not hold to logic.

97. Additionally, it may be stated here that instructions have been issued by the DOP&T, which stipulates that even if a personnel has been imposed with a minor penalty, the right of being considered for promotion cannot be taken away, which we reproduce as under:-

“The undersigned is directed to refer to DoPT OM No. 21/5/70-Estt (A) dated 15th May, 1971 (reiterated vide O.M. No. 22011/2/78-Estt (A) dated 16.2.1979) and to say that in



terms of the provisions of these office Memoranda, a Government servant, on whom a minor penalty of withholding of increment etc. has been imposed should be considered for promotion by the Departmental Promotion Committee which meets after the imposition of the said penalty and after due consideration of full facts leading to imposition of the penalty, if he is still considered fit for promotion, the promotion may be given effect after the expiry of the currency of the penalty. It has, however, been separately clarified vide Office Memorandum No. 22011/2/92-Estt (D) dated 30th November, 1995 that in such cases, the seniority would be fixed according to the position of the officer in the panel on the basis of which he is promoted on expiry of the period of currency of the penalty.

2. Doubts have been expressed regarding the pay fixation and date of commencement of the eligibility service in such cases. It is clarified that since the promotion is to take effect only from a date subsequent to the expiry of the currency of the penalty, the officer would be entitled to pay fixation in the promotional grade with effect from the date of actual promotion only. Even if a person junior to him in the panel is promoted earlier, it will have no bearing on the pay to be allowed on promotion to the officer on whom a penalty was imposed, and there shall be no stepping up of his pay.

3. Similarly, as the officer undergoing penalty is not to be promoted during the currency of the penalty, the eligibility service in the promotional grade for further promotion shall commence only from the date of actual promotion and in no case, it may be related, even notionally, to the date of promotion of the junior in the panel.”

98. If that be so, it is not understood why a minor penalty is considered as an impediment to participate in the selection process for promotion under the LDCE quota promotion

99. In these circumstances, we are of the view that the Ministry of Home Affairs must look into the aforesaid aspects and then take a call



whether such a stipulation needs to be continued / adhered to insofar as the LDCE quota is concerned. It must consider issuing guidelines, in what manner the stipulation needs to be given effect to, otherwise, it would be too harsh on a personnel to be denied promotion under the LDCE quota, which is an accelerated promotion to the next higher post, especially when under the 33% promotion quota, the chance of a personnel getting promotion is highly unlikely because of stagnation.

100. So we allow the writ petition being W.P. (C) 6287/2022 and dispose both the petitions including W.P.(C) 5832/2022, calling upon the Ministry of Home Affairs to undertake the exercise as stated by us in paragraph 99 above by either issuing guidelines / clarification for proper implementation of the Recruitment Rules which stipulates 'clean record' and thereafter implement the same. In the eventuality, the case of the petitioner(s) in W.P.(C) 5832/2022, is covered by the guidelines and clarification, then the sealed cover where the result of one candidate has been kept shall be opened and the result of the examination be declared and the above action be taken within 12 weeks. No costs.

V. KAMESWAR RAO, J

GIRISH KATHPALIA, J

MAY 30, 2024/aky/jg