

(2007) 05 GAU CK 0030
In the Gauhati High Court

Dharamraj Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-05-2007

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 11, 12, 16, 9
Constitution of India, 1950 — Article 14, 19, 21, 311
Industrial Disputes Act, 1947 — Section 11A

Citation : (2007) 3 GLT 579

Hon'ble Judges : U.B. Saha, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

U.B. Saha, J.—This appeal arises from the judgment and order dated 03.06.05 passed by the learned single Judge of this Court in W.P. (C) No. 3533 of 2002 whereby and whereunder the learned single Judge dismissed the writ petition upholding the order dated 20.9.01 issued by the Commandant, 27th Bn. CRPF, Joynagar (Sibsagar), imposing penalty of dismissal from service w.e.f. the date the writ petitioner was convicted and sentenced by the C.J.M. cum-Commandant, 27th Bn. CRPF u/s 16(2) of the C.R.P.F. Act, 1949 (hereinafter refers to as the Act).

2. We have heard Mr. M.U. Mahmud, learned Counsel for the appellant and Mrs. G Singh, learned C.G.S.C. on behalf of the respondents.

3. The factual background necessary for the purpose of understanding the legal issues involved in this appeal are as under:

The writ petitioner/appellant was a constable (General duty) of the 27th Bn. CRPF. On 5.9.01 a complaint was lodged by the Officer Commanding of the said Battalion, R.J. Parpatti, alleging commission of offence u/s 10(n) of CRPF Act, as the writ petitioner/appellant, while functioning as Constable, committed an act of misconduct/negligence of duty by using abusive language to one, Shri Dinesh

Singh on 4.9.2009 at about 1830 hours after consuming liquor and on the same day at about 2300 hours the appellant was brought to the Bn. HQs, Sibsagar for taking to the civil hospital for medical examination, the writ petitioner/appellant again used abusive language and misbehaved with his platoon Commander, Shri R.J. Ranpatil. On the basis of the said complaint, lodged by the officer commanding, the Commandant 27th Bn. CRPF on whom power of judicial Magistrate was conferred by the Govt. of India, Ministry of Human Affairs u/s 16(2) of the CRPF Act, tried the offence on the following charges:

Charge-I.

That the said No. 920810318 CT (GD) Dharam Raj Singh of A/27 Coy CRPF while functioning as CT/CD committed an act of force u/s 10(n) of CRPF Act 1949, in that he abused No. 931152042 Ct. Dinesh Singh on 4.9.2001 at about 1830 hours which is prejudicial to good order and discipline of the Force. Shri Rati Ram Yadav, 21/C was also present at the location on the request of Shri R.J. Ranpatil, Asstt. Commandant OCA/27.

Charge-II.

That the said No. 920810818 CT (GD) Dhararn Raj Singh of A/27 Coy CRPF while functioning as CT (GD) and posted at Central Market Platform post of that Coy at Sibsagar (Assam) committed an offence in his capacity as a member of the Force u/s 10(n) of CRPF Act 1949 in that on 4.9.01 at about 1830 hours after consuming liquor used abusive language and misbehaved with his platoon Commander No. 65013277 SI Gardayal Singh and No. 931152042 Ct. Dinesh Singh of that Coy which is prejudicial to good order and discipline of the Force.

Charge-III:

That the said No. 920810318 CT (GD) Dhararn Raj Singh of A/27 Coy CRPF while functioning as CT (GD) committed an offence in his capacity as a member of the Force u/s 10(n) of CRPF Act, 1949 in that on 4.9.01 at about 2330 hours when he was brought to Bn. HQs. Joynagar (Sibsagar) Assam by Shri R.R. Yadav 21/C from Central Market post of A/27 Coy due to his uncontrollable behaviour and ordered to be sent to Civil Hospital, Joyanagar for medical examination he again misbehaved and abused Shri R.J. Ranpatil, Asstt. Commandant Officer commanding A/27 Coy. CRPF and challenged Shri R.R. Yadav 21/C to dismiss him from service and threatened the 21/C stating that he will shoot him if he was dismissed which is prejudicial to good order and discipline of the Force.

4. Thereafter, upon completion of the trial, the writ petitioner/appellant was convicted and sentenced to undergo simple imprisonment for 3 (three) days w.e.f. 20.9.2001 to 22.9.01 in the Quarter-guard of the said Bn. vide order dated 20.9.2001 passed by the Learned C.J.M.-cum-Commandant, the writ petitioner/appellant was dismissed by the disciplinary/administrative authority vide order dated 20.09.2001 (Annexure-3 to the writ appeal) from service w.e.f. 20.9.01, i.e., the date when he was convicted and sentenced by the Commandant, 27th

Bn. CRPF and by treating the period of judicial custody as dies-non and all medals and decorations earned by him were forfeited. Aggrieved by the aforesaid order of the authority, the petitioner-appellant preferred appeal to the DIGP, CRPF, the appellate authority who upheld the order of disciplinary authority and again aggrieved by the aforesaid order, he preferred a writ petition and the same was heard by the learned single Judge. Having heard the learned Counsel of the respective parties and taking note of the relevant contentions made in the writ petition, affidavits, as well as the order impugned before it, the learned single Judge dismissed the writ petition upholding the order dated 20.9.2001 passed by the Commandant, by which the appellant was dismissed from service. Being aggrieved by the aforesaid order of the learned single Judge, the present appeal has been preferred by the Constable, writ petitioner/appellant.

5. In this appeal, the appellant assails the impugned judgment on the following grounds; that:

(i) The learned Single Judge misconstrued the effect of the provisions of Section 10(n) of the CRPF Act, which is less heinous offence and dismissal for such an offence is severe in nature and it shocks the human conscience as the appellant-petitioner rendered unblemished service w.e.f. 4.9.92 to 29.9.01 in force.

(ii) The judgment of the learned Single Judge is liable to be set aside as because the learned Single Judge failed to consider the aspect that the power conferred to the disciplinary and/or administrative authority u/s 12(1) of the CRPF Act is discretionary in nature, not mandatory and improper exercise of such discretionary power by the authority is, itself a ground for setting aside the order of dismissal.

(iii) The learned Single Judge should have considered the proportionality of punishment keeping in mind the fact that the offence committed u/s 10(n) is less heinous offence than that of Section (9) of the Act and for such offence, severe punishment like the dismissal from the force is unwarranted.

(iv) The learned Single Judge should have come to conclusion that non issuance of notice before passing order of dismissal affecting the right of the petitioner itself is a ground for setting aside the order of dismissal.

(v) The learned Single Judge should have come to the conclusion that the order of dismissal passed u/s 12(1) of the CRPF Act by the disciplinary/administrative authority is hit by the doctrine of biasness, and the same being penal in nature, interpretation of such provisions requires strict consideration in favour of the subject and for non consideration of the aforesaid fact, the order of dismissal is liable to be dismissed.

6. The learned Counsel for the writ petitioner/appellant, Mr. Mahmud, in support of the grounds taken in the appeal contended that the disciplinary/administrative authority did not exercise its discretionary power vested on it u/s 12(1) of the CRPF Act at the time of issuing order of dismissal, they could have imposed

minor punishment u/s 11 in place of imposing punishment u/s 12(1) of the Act for conviction of the appellant/petitioner u/s 10(n) and for non exercise of such discretionary jurisdiction, the action of the administrative authority is unreasonable, unjust, unfair and violative of provisions of Article 14 of the Constitution, and this is a fit case for exercising the discretionary power of the disciplinary authority, and in support of his aforesaid contention he relied upon the decision of the Apex Court in Union of India (UOI) Vs. Kuldeep Singh, . Relying the decision of the Apex Court in the case of Dadu @ Tulsidas Vs. State of Maharashtra, he again contended that exercise of judicial discretion is the well known recognized principles to safeguard the right of an accused officer like the petitioner as protected by the procedural law. He also urged that in the instant case the order of dismissal is hit by the doctrine of biasness as because the Commandant, who passed the order of dismissal, has also passed the order of conviction and sentence as CJM-cum-Commandant, for which itself, according to him, the order of dismissal is liable to be set aside. He further urged that the charges for which the writ petitioner/appellant was tried, show that the appellant used abusive language due to the influence of liquor and not with any prior and definite intention to harm in any way to his superior and inmates and the offence committed u/s 10(n) of the Act is less heinous offence than the act of offence committed u/s 9 of the Act. Hence the punishment of dismissal being a major punishment and severe in nature requires to be set aside keeping in mind the prescription of the doctrine of proportionality of punishment. And, according to him, the learned Single Judge failed to consider the aforesaid aspects for which itself the impugned judgment as well as the order of dismissal are liable to be set aside. He again urged that however, the award of extreme punishment of dismissal of the writ petitioner/appellant from the force would not only be a disproportionate one but also disturb the conscience of the mind of the Court in view of his unblemished service since 4.9.92 to 29.9.01, as well as the gravity of misconduct, and in this situation the Court has the power to alter and mould the punishment exercising the principle of Doctrine of Proportionality. In support of his aforesaid contention he referred the following decisions of the Apex Court as well as this Court: (i) Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another, (ii) Smt. Kanta Devi Vs. Union of India (UOI) and Another, (iii) Sukhvinder Singh v. Union of India and Ors. 1999(3) GLT 551. He also raised his voice, inter alia, that the learned Single Judge also failed to consider the facts to the effect that the CJM-cum-Commandant, at the time of conducting the trial, did not follow the procedure laid down in CRPF Act and Rules, particularly, the Rule 36 of the CRPF Rules wherein it is specifically stated that all the appeals in relation to any one of the offence specified in Section 9 and 10 shall be held in accordance with the procedures laid down in the Code of Criminal Procedure but in the instant case the appellant/petitioner was not given any opportunity to cross-examine the witnesses though he was entitled and also the documents which was supplied to him were in English, which the petitioner/appellant could not follow as because he studied upto class-X in Hindi Medium School in Bihar and he had has no workable knowledge in English and for such wrong action of

the Trial Court, the order of conviction and sentence to the petitioner/appellant is illegal and on the basis of such illegal conviction the order of dismissal, as passed by the authority is also not tenable under law and liable to be dismissed. Finally, the learned Counsel of the appellant submits that this Court has the power to alter and/or mould the punishment awarded by the disciplinary authority to the petitioner/appellant on humanitarian grounds as well as on the ground of hardships, so that the petitioner/appellant can continue in service for maintaining his family members.

7. In opposition, Ms. G Singh, the learned CGSC appearing for the respondents urged that the impugned judgment and order is quite justified having regards to the facts and circumstances of the instant case, particularly when the order of dismissal is the consequence of his conviction and sentence in a criminal trial for committing an offence u/s 10(n) of the CRPF Act. She also contended that the doctrine of biasness would not be applicable in the instant case inasmuch as the punishment of order of dismissal is being the result of conviction of the petitioner/appellant in the criminal trial. She again urged that the same person can exercise different powers having different sources under law and for such action, the decision of the said authority cannot be vitiated applying the doctrine of biasness. She finally submits that the petitioner/appellant is not like an ordinary citizen or an ordinary employee but was a member of disciplinary force. However, she admitted that the offence committed by the writ petitioner/appellant u/s 10(n) of the Act is a less heinous offence and for such offence the learned trial court also took lenient view and sentenced him only for three days and order of dismissal was passed by the disciplinary authority being he is convicted and sentenced under the provisions of the said Act, which is a misconduct. In reply to the contention of learned Counsel for the petitioner/appellant to the effect that the appel-1 ant/petitioner was entitled prior notice before passing the order of dismissal from the Force, she, relying the decision of the Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, , submits that as per Rule 27(CC) of the CRPF Rules the petitioner/appellant was not entitled any prior notice since he was convicted in a criminal trial and the disciplinary authority had no option except to dismiss the petitioner/appellant in view of the provisions of the aforesaid Section 12(1) read with Rule 27(CC). Finally she submitted that the Apex Court in catena of decisions held that dismissal of an employee for committing misconduct by way of using abusive language to the superior officer and/or inmates of such an employee is not disproportionate and those cases are on misconduct committed by an officer in general administration, not on disciplinary force. The petitioner/appellant being member of disciplinary force, his responsibility to maintain discipline in the force is more than the member of general administration, hence the punishment imposed on him is just, proper, reasonable and not disproportionate. In support of her contention she also relied the following cases : State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, , The Commissioner of Police and Others Vs. Syed Hussain, , Mithilesh Singh Vs. Union of India (UOI) and Others, , Chairman and Managing

Director, United Commercial Bank and Others Vs. P.C. Kakkar, , State of Rajasthan and Another Vs. Mohammed Ayub Naz, to establish that the order of conviction and sentence as well as the order of dismissal are just and proper and the order of learned Single Judge is in accordance with law and requires no interference by this Court.

8. The points to be decided in this appeal are as follows:

(a) Whether the learned Single Judge misconstrued the provisions of Section 10(n) of the CRPF Act;

(b) Whether the order of dismissal is vitiated by the principles of biasness and whether the said order of dismissal is a disproportionate one and disturb the conscience of the Court and for such disproportionate punishment whether order of dismissal is required to be cancelled setting aside the judgment impugned.

(c) Whether the appellant/writ petitioner was entitled any notice prior to issue of dismissal order and whether the disciplinary authority exercised its discretionary power vested on it u/s 12(1) of the CRPF Act at the time of passing the said order of dismissal;

(d) Whether court can mould/alter the order of dismissal issued by way of punishment passed by the disciplinary authority upon the delinquent officer, on humanitarian and/or on the ground of hardship.

9. Learned Counsel for the appellant/writ petitioner, Mr. Mhamud, mainly centers his argument on Sections 10(n), 11 and 12 of the CRPF Act, 1949 and Rule 27(cc) of the CRPF Rules, 1955 and the doctrine of proportionality of the punishment. Hence, discussion of the aforesaid provisions is necessary and accordingly, the aforesaid provisions of the CRPF Act and Rules are reproduced hereunder:

10. Less heinous offences--Every member of the Force who--

(a) ** ** ** ** (n) Is guilty of any act or omission which,, though not specified in this Act, is prejudicial to good order and discipline; or

11. Minor punishments--

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

(a) Reduction in rank;

(b) Fine of any amount not exceeding one month's pay and allowances;

- (c) Confinement to quarters, lines or camp for a term not exceeding one month;
- (d) Confinement in the quarter-guard for not more than twenty-eight days; with or without punishment drill or extra guard, fatigue or other duty, and
- (e) Removal from any office of distinction or special emolument in the Force.

(2) Any punishment specified in Clause (c) or Clause (d) of Sub-section (1) may be awarded by any gazetted officer when in command of any detachment of the Force away from headquarters, provided he is specially authorised in this behalf by the Commandant.

(3) The assistant Commandant, a company officer or a subordinate officer, not being below the rank of subedar or inspector, commanding a separate detachment or an outpost or in temporary command at the headquarters of the Force, may, without a formal trial, award to any member of the Force who is for the time being subject to his authority any one or more of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to require prosecution before a Criminal Court, that is to say--

(a) Confinement for not more than seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;

(b) Punishment drill, or extra-guard, fatigue or other duty, for not more than thirty days, with or without confinement to quarters, lines or camp;

(c) Censure or severe censure : provided that this punishment may be awarded to a subordinate officer only by the Commandant.

(4) A jamadar or sub-inspector who is temporarily in command of a detachment or an outpost may, in like manner and for the commission of any like offence, award to any member of the Force for the time being subject to his authority any of the punishments specified in Clause (b) of Sub-section (3) for not more than fifteen days.

12. Place of imprisonment and liability to dismissal on imprisonment:

(i) Every person sentenced under this Act to imprisonment may be dismissed from the Force, and shall further be liable to forfeiture of pay, allowance and any other moneys due to him, as well as of any medals and decorations received by him.

(ii) Every such person shall, if he is so dismissed, be imprisoned in the prescribed prison, but if he is not also dismissed from the Force, he may, if the Court or the Commandant so directs, be confined in the quarter-guard or such other place as the Court or the Commandant may consider suitable.

27 (cc) Notwithstanding anything contained in this rule--

- (i) Where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) Where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules; or
- (iii) Where the Director-General is satisfied that in the interest of Security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.

10. Now, we have to see whether the plea of the petitioner/appellant regarding biasness is correct or not and what is the meaning of "bias". In para 10 of the case of Kumaon Maiulal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors. AIR 2001 SC 24 the Apex Court discussed regarding the word "bias", which is reproduced hereunder:

10. The word "Bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in common acceptation mean and imply "spite" or ill-will" (Stroud's Judicial Dictionary (5th Edn.) Volume 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in the fact there was existing a bias which resulted in the miscarriage of justice.

According to us, mere exercise of two different power by the same authority cannot be considered to be hit by the doctrine of bias as because if the legislature and the superior administrative authority, considering the necessity, empowered the Commandant, or any other authority of CRPF to act as a Chief Judicial Magistrate for conducting criminal trial and being disciplinary authority to looked into the misconduct of the member of the force. In the instant case even if the contention of the learned Counsel for the petitioner/appellant to the effect that the same authority person had passed the order of conviction and order of dismissal, then also that cannot be hit by the principle of biasness, at best it can be said that the authority should have considered that the same person may not be allowed to discharge both the powers, i.e. judge of the criminal offence and judge of the misconduct, if any other officer is available, but while the same is vested on a person by law, he has no other alternative except to exercise such power which in this case, the Commandant did, as that was necessary for the situation to maintaining discipline in the force. Hence, the plea of biasness raised by the learned Counsel for the petitioner/appellant fails. More so, the learned Single Judge also considered the aforesaid aspect and observed that the petitioner did not raise the objection of biasness before the disciplinary/administrative authority who passed order of dismissal and therefore, the same cannot be raised before the writ court. We are also holding the same view.

11. Before considering the rival submissions of parties, in detail, we think it fit to

go for a proper analysis of the CRPF Act and Rules. On perusal of the same, it appears to us that Section 10(n) is prescribed for less heinous offences as urged by the learned Counsel for the writ petitioner/appellant and the legislature also thought it fit to empower the disciplinary authority with certain discretions at the time of exercising its powers u/s 12(1) of the Act for dismissing a member of the Force from service, who has been sentenced to imprisonment under the provisions of the said Act. But, in the instant case it was not the argument of learned Counsel for the appellant/writ petitioner that the punishment imposed by the CJM-cum-Commandant in criminal trial is excessive, rather his main thrust was-against the punishment" imposed by the disciplinary authority, i.e., order of dismissal, which is excessive, and disproportionate one, according to him. It is to be noted here that the vesting of magisterial power to the Commandant and the Assistant Commandant by the Central Government in exercise of its power u/s 16(2) of the CRPF Act, does not create any special court in force. The Magistrate-cum-commandant has to follow the procedures laid down for criminal trial and also has to act in accordance with the said procedure to do justice to the accused official. In the instant case, the CJM-cum-Commandant passed the order of conviction and sentenced for the offence committed by the appellant/writ petitioner u/s 10(n) after a full trial, but the order of dismissal is passed by the Disciplinary/Administrative authority under Sub-section (1) of Section 12 of the Act against the appellant/writ petitioner as because he was convicted and sentenced to imprisonment under the provisions of the CRPF Act. Therefore, the provisions of Section 10(n) and provisions of Sub-section (1) of Section 12 of the CRPF Act are totally different, one is for criminal trial by the Court and another is for the Disciplinary/Administrative action by the authority. The accused official has no right to blame the disciplinary authority for any order act of the criminal court in criminal case.

12. In the instant case, it appears from the judgment of the learned Single Judge that the appellant/writ petitioner did not challenge the order of conviction and sentence passed by the criminal court, i.e. the CJM-cum-Commandant in any form as prescribed by law. And for non-assailing of the aforesaid order, the same has attained its finality. But then also, the learned Counsel for the appellant/petitioner argued before this Court that the appellant/writ petitioner while facing trial did not get an opportunity to cross-examine the witnesses produced by the prosecution and he could not understand the contents in the documents, which were supplied to him at the time of trial as he had no workable knowledge in English. The aforesaid alleged action of the authority may be treated as denial of opportunity to the under trial. But that cannot be questioned here as the same became final and we also cannot examine the same while exercising writ jurisdiction and the said order of conviction and sentence was also not under challenge before the writ court.

13. For the foregoing reasons, we decline to accept the aforesaid submission of learned Counsel for the writ petitioner/appellant and also of the considered opinion that the learned Single Judge did not misconstrued the provisions of

Section 10(n) as contended by the learned Counsel for the writ petitioner/appellant. We are also not in a position to accept the contention of learned Counsel for the petitioner/appellant that the disciplinary authority could have imposed punishment u/s 11 of the Act in place of Section 12 of the Act. Even applying the power vested u/s 11 also the disciplinary/administrative authority can dismiss a person. From perusal of Section of the Act it is clear that the punishment for dismissal can be given to a delinquent in addition to the sentence of imprisonment awarded to him under law. If the disciplinary authority wants to proceed under the aforesaid Section 12 of the Act then no disciplinary proceeding is necessary and if we read Section with Rule 27(cc) then the delinquent officer is also not entitled to any notice prior to dismissal as the same is restricted by the law maker. Section 12 of the Act does not lay down that a person could not be liable to dismissal if he is not convicted or sentenced under the Act. Similarly with regard to Section 11, it can be said that the words "in lieu of or "in addition to suspension or dismissal" appearing in Sub-section (1) of Section 11 of the Act before Clauses (a) to (e) show that the authorities mentioned therein are empowered even to award punishment of dismissal or suspension to the member of the Force, who is found guilty and in addition to, or in lieu thereof.

14. From Sections 9, 10 and 11 of the Act if also appears that a delinquent officer can be punished with dismissal, even not prosecuted and sentenced. More so. Section 12 read with Rule 27(cc) of the Rule empowered the disciplinary authority to impose punishment of dismissal for imprisonment and sentence due to conviction without any disciplinary proceeding. The learned Single Judge in its judgment rightly discussed that there are two parts in the provisions of Sub-section (1) of Section 12 of the Act, the first part deals with the power of dismissing a member of the force from service by the disciplinary authority who has been sentenced to imprisonment under the provisions of the said Act and the second part provides that apart from the disciplinary action taken under the first part, the disciplinary authority is also entitled to pass such order forfeiting pay and allowances and any such others due to the member of the force sentenced to imprisonment as well as any medals and decorations received by the said member of the force. The case of the appellant/writ petitioner falls within the first part of Sub-section (1) of Section 12, which gives certain discretion to the disciplinary authority to pass the order of punishment including the power of dismissal of a member of the force. In the instant case the disciplinary authority exercised its power vested on it u/s 12(1) of the Act. This leads us to see whether the disciplinary/administrative authority exercised the discretion vested on it properly or not and what is the meaning of discretion and how such discretion has to be exercised.

15. Lord Halsbury in *Sharp v. Wakefield* reported in (1891) AC 173 observed the word "Discretion" as follows:

Discretion means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the Rules

of reason & Justice, not according to private opinion according to law & not humour. It is to be not arbitrary, vague & fanciful, but legal & regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself.

The said decision is followed in Valsamma Thomas Vs. Additional District Magistrate, Alappuzha and Another,

If a certain latitude or liberty accorded by statute or rules to a Judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given. Such a discussion on discretion is available in Lee v. Budge Railway Co. 1871 6 CP 576 and in Morgan v. Morgan 1869 LR 644 in Bakshis "The Law Lexicon".

16. We have perused the decision in the case of Kuldeep Singh (supra) as referred to by learned Counsel for the appellant/petitioner and it appears from the said reported case that their lordships, relying the case of Sharp (supra), decided what is judicial discretion and how to apply the same in a case, considering the facts, where the said order passed by the authority in exercising its discretion, is unappealable. The relevant paragraphs from the aforesaid judgment are reproduced herein under for proper understanding about discretion.

19. Discretion is to know through law what is just. Where a judge has and exercises a judicial discretion his order is unappealable unless he did so under a mistake of law or fact or in disregard of principle, or after taking into account irrelevant matters. It will help to show this if it can be shown that there were no materials on which he could exercise his discretion in the way he did. Nor any one of the reasons attempted to be enumerated by the High Court in this case could in law be viewed as either relevant or reasonable reasons carrying even any resemblance of nexus in adjudging the quantum of punishment in respect of an offence punishable under the Act.

20. When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion and according to law. (See Tomlin's Law Dictionary.) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever

hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary).

21. Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (per Lord Halsbury, L.C. in *Shaip v. Wakefield* 1891 AC 173 : 1886 All ER 651 Also see *S.G. Jaisinghani Vs. Union of India (UOI) and Others*,).

22. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility. "The discretion of a judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper and passion. In the best it is often times caprice; in the worst it is very vice, folly, and passion to which human nature is liable: said Lord Camden, L.C.J., in *Hindson and Kersey* (1680) 8 St. Tr 57.

17. It is settled by this time that there are two types of discretion, judicial discretion and legal discretion. In the case of *Dadu* (supra) the Apex Court also discussed regarding the power of the legislature vis-a-vis the courts and held as exercise of judicial discretion on well recognized principles is the safest possible safeguards for the accused, the legislature cannot made laws to deprive the courts of their legitimate jurisdiction conferred by the procedure established by law.

18. In the instant case, the discretion vested on the disciplinary/administrative authority is the legal discretion not the judicial discretion as because the legislature authorized the disciplinary authority to dismiss the member of the force for his conviction and sentence under the CRPF Act and also shall however be liable to forfeit his pay, allowances and any other monies due to him etc i.e. disciplinary authority has the power to only dismiss without forfeiting the pay and allowances and any other monies or both. In the instant case, the disciplinary authority exercised its discretion awarding punishment to the appellant/writ petitioner but the question remain for decision is, whether the

punishment imposed exercising discretion is disproportionate one or not.

19. From the aforesaid facts, it can be easily said that the disciplinary/administrative authority exercised the discretion at the time of awarding punishment in accordance with the principles laid down by the Apex Court in Kuldeep Singh (supra) and Dadu @ Tulsidas (supra).

20. The case of Dev Singh (supra) relied by the learned Counsel for the appellant/petitioner, is decided by the Apex Court considering the case of a Senior Assistant of Punjab Development Corporation who had misplaced a file entrusted to him which, according to the aforesaid corporation is a misconduct. In the instant case, the fact involved is totally different one and the present petitioner/appellant is a member of disciplinary force. In other words, in that case the question of conviction and sentence imposed on delinquent officer is also absent and that case was relating to dismissal for misconduct simplicitor and the case in hand is relating to dismissal for conviction and sentence in a criminal case. Therefore, both cannot be equated on that ground also. Hence, the aforesaid case is not applicable in the present facts and circumstances.

21. In the case of Kanta Devi (supra) the Apex Court keeping in mind the fact of the case, inter alia, that the petitioner's husband, deceased employee, was dismissed from service in the disciplinary proceeding as he failed to keep proper watch over the other employees and past service records, and due Ltd. to non availability of full records of the proceedings the Apex Court opined that the ends of justice would be best served if, on the peculiar facts, Rs. 2.5 lakhs is paid as ex-gratia payment by the respondents to the appellant within two months from the day of passing of the judgment. Hence the principle of the said case neither covers nor would help the petitioner/appellant.

22. The case of Sukhvinder Singh (supra) is also not a case of dismissal leading to conviction and sentence in a criminal case and facts of that case is also different than the case in hand. Therefore, the case of the petitioner/appellant also cannot be considered for its reinstatement by setting aside the order of dismissal in the line of Sukhvinder Singh (supra).

23. The Apex Court in the case of New Shorrock Mills Vs. Maheshbhai T. Rao, considering the case of a workman abusing his superior and threatening him held that "The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, the respondent's order of discharge was not by way of victimization and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court can come to the conclusion that the punishment awarded was shockingly disproportionate to the employee's conduct and his past record."

24. In the Case of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., the Apex Court again considered the misconduct committed by a delinquent officer for

using abusive language. In the said case of Mahindra & Mahindra Ltd. (supra) the Apex Court relying the decision in Orissa Cement Ltd. v. Adikanda Sahu (1960) 1 LLJ 518 and New Shorrock Mills (supra) held that "punishment for dismissal for using abusive language cannot be held to be disproportionate". Para 20 of Mahindra & Mahindra Ltd. (supra) is reproduced hereunder:

20. It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power u/s 11A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us, i.e. Orissa Cement Ltd., and New Shorrock Mills this Court held : "Punishment of dismissal for using of abusive language cannot be held to be disproportionate". In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.

25. In the aforesaid cases of New Shorrock Mills (supra) and Mahindra & Mahindra Ltd. (supra) their Lordships considered the case of employees of general administration but not relating to a member of disciplinary force. Though, they were dismissed by the disciplinary authority for using abusive language the Apex Court also affirmed the same and held that the punishment was not disproportionate. In the instant case, the delinquent officer is a member of the disciplinary force and the disciplinary force cannot be a home for the member/delinquent officer to do what ever he likes to do. It is an institution to maintain law and order and national security to develop the national life. It is the duty of the member of the disciplinary force to work for fulfilling the national aspirations. If the member of such disciplined force becomes undisciplined then the consequences will be nothing but nullification of the force, which is recognized by virtue of its discipline and the delinquent appellant/petitioner in fact tried to nullify the discipline in the force. This Court in the case of Sri Shafiquil Mazumder v. Union of India and Ors. (2006) 4 GLT 614 also observed that "discipline in the public administration is concerned, discipline is the sine

qua non for a public officer", and hence it becomes the utmost duty of every member of the disciplinary force to maintain the same for themselves as well as for others" interest. An indisciplined member cannot ask for notice prior to his dismissal leading to his conviction as the lawmaker restricts the same. According to us, punishment of dismissal for misconduct from service of an employee of general administration and member of disciplinary force cannot be equated and proportionality in two cases also cannot be at par.

26. As discussed in the foregoing paragraphs of this judgment, it is an admitted position that the conviction and sentence of the petitioner/appellant u/s 10(n) of the Act is not in dispute and the same was also not before the Writ Court for decision. Hence the disciplinary authority passed the impugned order of dismissal from service u/s 12(1) of the Act without providing notice as contended by the petitioner/appellant as issuance of such type of notice is exempted/restricted by Rule 27(cc) of the CRPF Rules read with 2nd Proviso to Article 311(2) of the Constitution of India and it has been held by the learned Single Judge that statutory notice before imposing any penalty by the disciplinary authority in a case leading to conviction is not necessary keeping in mind the decision of the Apex Court in the case of *Tulsiram Patel (supra)* wherein the Apex Court held that the Constitution (42nd amendment) Act, 1976 by deleting from Article 311(2), the requirement of a reasonable opportunity of making representation on the proposed penalty has not affected any change with regard to the exclusion of principles of natural justice under the second proviso of the aforesaid Article. In the aforesaid case of *Tulsiram Patel (supra)* the Apex Court also held that when disciplinary authority comes to know that a Government servant has been convicted in a criminal charge, it must consider whether his conduct, which led to his conviction, warrants the imposition of a penalty and, if so, what would be the penalty to be imposed. For that purpose, the judgment of the criminal Court is to be perused and to consider all the facts and circumstances of the case, which has to be done by it ex-parte. Once the disciplinary authority reached the conclusion that a government servant's conduct was such as to require dismissal or removal from service or reduction in rank, he must decide which one of these three penalties be imposed on him, which it has to do by itself and without hearing the government servant by reason of the exclusionary effect of the second proviso. In the instant case the disciplinary authority after taking into consideration the judgment passed by the criminal court has decided to impose punishment of dismissal from service in terms of the provisions of Section 12(1) of the CRPF Act after exercising its discretion and as there is no mistake of fact and law committed by the said disciplinary and appellate authority, the same is also not appealable. Hence the action of the disciplinary authority cannot be said to be illegal.

27. The proportionality in accordance with law, had also been discussed by the Apex Court in the case of *Om Kumar v. Union of India (2001) 2 SCC 386*, particularly in paragraphs 27, 28, 37, 39, 67, 69 and 71 of the said judgment, which is reproduced herein under:

27. The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of "proportionality" to legislative action since 1950, as stated in detail below.

28. By "proportionality", we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the administrative authority are however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.

(SCC pp. 399-400, paras 27-28)

* * * 37. The development of the principle of "strict scrutiny" or "proportionality" in administrative law in England is, however, recent. Administrative action was traditionally being tested on Wednesbury grounds. But in the last few years, administrative action affecting the freedom of expression or liberty has been declared invalid in several cases applying the principle of "strict scrutiny". In the case of these freedoms, Wednesbury principles are no longer applied. The courts in England could not expressly apply proportionality in the absence of the convention but tried to safeguard the rights zealously by treating the said rights as basic to the common law and the courts then applied the strict scrutiny test. In the *Spycatcher* case [*Attorney General v. Guardian Newspapers Ltd.* (No. 2)⁷ (AC at pp. "283-284)], Lord Goff stated that there was no inconsistency between the convention and the common law. In *Derbyshire County Council v. Times Newspapers Ltd.*⁸ Lord Keith treated freedom of expression as part of common law. Recently, in *R. v. Secy, of State for Home Deptt, ex. R Simms*⁹ the right of a prisoner to grant an interview to a journalist was upheld treating the right as part of the common law. Lord Hobhouse held that the policy of the administrator was disproportionate. The need for a more intense and anxious judicial scrutiny in administrative decisions which engage fundamental human rights was re-emphasised in *R. v. Lord Saville, ex p A*¹⁰ All ER (870, 872) CA. In all these cases, the English courts applied the "strict scrutiny" test rather than describe the test as one of "proportionality". But, in any event, in respect of these rights "Wednesbury" rule has ceased to apply.

38. However, the principle of "strict scrutiny" or "proportionality" and primary

review came to be explained in *R. v. Secy, of State for the Home Deptt., ex p. Blind* 11. That case related to directions given by the Home Secretary under the Broadcasting Act, 1981 requiring BBC and IBA to refrain from broadcasting certain matters through persons who represented organisations which were prescribed under legislation concerning the prevention of terrorism. The extent of prohibition was linked with the direct statement made by the members of the organisations. It did not however, for example, preclude the broadcasting by such persons through the medium of a film, provided to here was a "voice-over" account, paraphrasing what they said. The applicant's claim was based directly on the European Convention of Human Rights. Lord Bridge noticed that the convention rights were not still expressly engrafted into English law but stated that freedom of expression was basic to the common law and that, even in the absence of the Convention, English courts could go into the question (See pp. 748-49)

Whether the Secretary of State, in the exercise of his discretion, could reasonably impose the restriction he has imposed on the broadcasting organisations

and that the courts were "not perfectly entitled to start from the premise that any restriction of the right to freedom of expression requires to be justified and nothing less than an important public interest will be sufficient to justify it".

Lord Templeman also said in the above case that the Courts could go into the question whether a reasonable minister could reasonably have concluded that the interference with this freedom was justifiable. He said that "in terms of the Convention" any such interference must be both necessary and proportionate (ibid. pp. 750-51).

39. In a famous passage, the seeds of the principle of primary and secondary review by courts were planted in the administrative law by Lord Bridge in the *Brind* case 11. Where convention rights were in question the courts could exercise a right of primary review. However, the courts would exercise a right of secondary review based only on *Wednesbury* principles in cases not affecting the rights under the Convention. Adverting to cases where fundamental freedoms were not invoked and where administrative action was questioned, it was said that the courts were then confined only to a secondary review while the primary decision would be with the administrator. Lord Bridge explained the primary and secondary review as follows:

The primary judgment as to whether the particular competing public interest justifying the particular restriction imposed falls to be made by the Secretary of State to whom Parliament has entrusted the discretion. But, we are entitled to exercise a secondary judgment by asking whether a reasonable Secretary of State; on the material before him, could reasonably make the primary judgment.

(SCC pp. 402-04, paras 37-39)

67. But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of Royappa 12 (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the Wednesbury test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. [In *G. B. Mahajan v. Jalgaon Municipal Council* 13 SCC 111 Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the standpoint of Wednesbury rules. In *Tata Cellular v. Union of India* 14 SCC 679, *Indian Express Newspapers Bombay (P) Ltd. v. Union of India* 15 SCC 691, *Supreme Court Employees' Welfare Assn. v. Union of India* 16 SCC 241 and *U.P. Financial Corporation v. Gem Cap (India) (P) Ltd.* 17 SCC 307 while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a Wednesbury review always.

* * * 69. The principles explained in the last preceding paragraph in respect of Article 14 are now to be applied here where the question of "arbitrariness" of the order of punishment is questioned under Article 14.

(SCC p. 411, paras 67 & 69)

* * * 71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment. SCC 412 71

28. In the case of *V. Ramana Vs. A.P.S.R.T.C. and Others*, , the Apex Court considered the aforesaid paragraphs of the case of *Om Kumar v. Union of India* (2001) 2 SCC 386 and also considered the earlier decision in the case of *B.C. Chaturvedi Vs. Union of India and others*, and case of *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, ; and considering the aforesaid cases the Lordships discussed regarding the meaning of proportionality and how to

exercise them and how the doctrine of proportionality is to be applied. Para Nos. 9 and 10 of *V. Ramana* (supra) are quoted hereinunder:

9. In *B.C. Chaturvedi v. Union of India* 18 it was observed 762 SCC 18

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

10. In *Union of India v. G. Ganayutham* 19, this Court summed up the position relating to proportionality in paras 31 and 32, which read as follows: (SCC pp. 478-80)

31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the *Wednesbury* 4 test.

2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational--in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the *CCSU* 5 principles.

(3)(a) As per *Bugdaycay* 20, *Blind* 11 and *Smith* 21. as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the

principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedom as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on *Wednesbury* 4 and *CCSU* 5 principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4) (b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21, etc. are involved and not for Article 14.

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither *Wednesbury* nor *CCSU* tests are satisfied. We have still to explain "*Ranjit Thakur* 22.

In *The State of Rajasthan and Anr.* (supra) the Apex Court considered the cases of *V. Rammana* (supra), *Om Kumar* (supra) and *B.C. Chaturvedi* (supra) on quantum of punishment and held that interference by the High Court on reduction of punishment or removal from service is not called for, and accordingly, the judgment of the High Court was set aside and punishment imposed by the disciplinary authority was restored by the Apex Court.

29. In *Commissioner of Police and Ors.* (supra) their Lordships observed that:

It is one thing to say that order passed by the statutory authority is wholly arbitrary and thus violative of Article 14 of the Constitution and thus liable to be set aside, but it is another thing to say that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior court while exercising its power of judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists.

In those judgments their Lordships also stated that the doctrine of proportionality is to be applied in appropriate case as the depth of judicial review

will depend on the facts and circumstances of each case and as in that case the respondent/petitioner was a constable and his nature of duty was to uphold the rule of law and to aid the prosecution in getting the guilty punished and was not the duty of him to aid or abet the accused in freeing from justice.

30. The Apex Court set aside the order of dismissal setting aside the judgment passed by the High Court of Andhra Pradesh and came to the opinion that punishment or removal from service would be too harsh and in that view the matter committed the case to the appellate authority for setting aside the punishment of removal for any other punishment except dismissal, removal or compulsory retirement.

In the said judgment their Lordships keeping in mind the nature of duties that a protector or law is required to perform, opined that disciplinary authority cannot be said to have committed an error in imposing punishment of removal from service upon the respondent, particularly when on earlier two occasions also he had been found guilty of misconduct and punishment thereof the High Court committed a manifest error in arriving at a finding that respondent had unblemished record for 28 years. In the instant case also the learned Counsel for the appellant/writ petitioner submitted that because of the conviction by the criminal court, the appellant/petitioner was dismissed though the service rendered by him since the date of his appointment till the date of the alleged misconduct was unblemished and considering the said fact the punishment imposed by the disciplinary authority can be modified, even by this Court. According to us, the said argument cannot be accepted considering the law laid down by the Apex Court in the cases referred by us in the foregoing paragraphs of the judgment, as the punishment is not being a shocking one as required for altering the punishment imposed by the authority.

31. In the disciplinary proceeding if the delinquent officer wants to get the benefit of the doctrine of proportionality of punishment then he has to explain the reasons how and why the said punishment is being shocking and disproportionate unless such reasons are given, it is not possible to accept the plea of disproportionate punishment, and the court is also bound to give the reasons before altering the punishment, why and how the punishment imposed by the disciplinary authority is being shocking one and disproportionate keeping in mind the nature of the job entrusted to the delinquent officer and the alleged misconduct committed by him.

32. In the State of U.P. v. Sheo Shanker (supra) the Apex Court also held that "the principles of natural justice can be excluded by the statute. They can also be waived. In a case where the doctrine of necessity is applicable the compliance with the principles of natural justice would be excluded". There is no quarrel with the aforesaid proposition laid down by the Apex Court. In the instant case the principles of doctrine of necessity and exclusion of natural justice were applied by the disciplinary authority.

33. The Apex Court in the case of Maharashtra State Seeds Corpn. Ltd Vs. Haridas and Another, held that "when the High Court intends to interfere with the quantum of punishment on the ground that same is shockingly disproportionate, it must record reasons for coming to such conclusion. In the instant case the appellant/writ petitioner being a constable in the disciplinary force, admittedly convicted in a criminal case after proper trial and follow up action of conviction dismissed by the disciplinary/administrative authority in accordance with Section 12(1) of the Act read with Rule 27 of the Rules, as intended by legislature an indiscipline officer of the disciplinary force has no right to be remained in the force after being conviction in a criminal case for using abusive language towards his superior or inmates and the disciplinary authority very rightly exercised its discretion keeping in mind the nature and duties of the appellant in the disciplinary force. After proper reading of Section 12(1) of the Act and Rule 27 (cc) of the Rules, it can be easily presumed that the legislature imposed certain restriction in law for not providing any notice to the accused officer at the time of dismissal, being leading to his conviction on a criminal charge as discussed above and the punishment imposed by the authority keeping in mind the discipline of the force does not shocks the mind of the Court and the same is also not disproportionate.

34. It is also by this time settled that the judicial review of an order passed by the disciplinary authority is a limited one and court can interfere only when it is evident that there is some procedural defect committed by such authority and if the punishment imposed appears to be shockingly disproportionate then only the court can interfere. Now again question remains as to whether the court can mould/alter the order of dismissal issued by way of punishment by the disciplinary authority upon the delinquent officer on humanitarian and/or on other ground of hardship as contended by the learned Counsel of the petitioner/appellant, therefore, submission of learned Counsel for moulding the punishment on humanitarian ground and hardship cannot be accepted by this Court, as it is the duty of the court to decide the matter in accordance with law and not on sympathy contrary to law and also court cannot convert itself as an employer, who can pass such an order as asked for, as the employer is the master to take decision, for the welfare of his employees State of Tamil Nadu and Others Vs. St. Joseph Teachers Training Institute and Another, : Union of India and Others Vs. Rakesh Kumar etc.,

35. We have no hesitation to opine that the disciplinary and appellate authority of the petitioner/appellant did not commit any wrong dismissing him from the Force by way of awarding punishment for his conviction and sentence in a criminal case, hence, according to us, the order of dismissal is valid as because the duty of the disciplinary authority is, obviously to see the interest of the accused officer, as well as to the interest of other members of the Force as a whole and discipline of Force and the interest of the society at large.

36. As we have already held that discipline in the force is the sine qua non and if

the member of such disciplinary force becomes indisciplined like the delinquent, petitioner/appellant then the consequence will be nothing but nullification of the force which is recognized by virtue of its discipline and for the aforesaid reasons, we are in complete agreement with the view taken by the learned Single Judge in arriving at the conclusion to dismiss the writ petition.

We find no merit in this appeal and accordingly, the same stands dismissed. No order as to costs.