
(2014) 07 MAN CK 0019
In the Manipur High Court
Case No : WP(C) No. 498 of 2013

Panger Bangei Kumba

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 10, 10(a), 11(1), 9
Penal Code, 1860 (IPC) — Section 85

Citation : (2014) 07 MAN CK 0019

Hon'ble Judges : N. Kotiswar Singh, J; Laxmi Kanta Mohapatra, J

Bench : Division Bench

Advocate : Babloo, Advocate for the Appellant; C. Kamal, CGSC, Advocate for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. Babloo, learned counsel for the petitioner as well as Mr. C. Kamal, learned CGSC for the respondents.

2. By this writ petition, the petitioner who was serving as a Constable in the Central Reserved Police Force (CRPF for short) and dismissed from service on the grounds of being under the influence of liquor while on duty and substituting duty without prior permission and also cocking his rifle towards the patrolling party has challenged his dismissal order. The articles of charges under which he was dismissed from service are reproduced hereunder.

"ARTICLE-I

No. 005150589 Ct/GD Panger Kumba of 26 Bn CRPF while functioning as CT/GD committed an act of misconduct and indiscipline in his capacity as a member of the Force U/s. 11(1) of the CRPF Act, 1949, in that on 18.11.2011 at about 1915 hours he was found with Field Insas Butt No. 09, Body No. 4194 and 03 magazines with 60 rounds, issued to No. 03510924 CT/GD N.G. Siranau of 44 Bn CRPF, at North O.P. Post performing the duties in place of No. 035150924 CT/GD

N.G. Siranau of 44 Bn CRPF under the influence of liquor without any information or permission of the competent authority. Thus the said No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF has committed a serious misconducts and indiscipline U/s. 11(1) of CRPF Act 1949 which is prejudicial to the good order and discipline of the Force and punishable U/s. 11(1) of CRPF Act, 1949 read with Rule 27 of the CRPF Rules, 1955."

ARTICLE-II

No. 005150589 Ct/GD Panger Kumba of 26 Bn CRPF while functioning as CT/GD committed an act of misconduct and indiscipline in his capacity as a member of the Force U/s. 11(1) of CRPF Act, 1949, in that he cocked the Rifle Insas Butt No. 09, Body No. 4194 towards area patrolling party under the influence of liquor at about 1915 hours, when called by the patrolling party commander. Thus, the said No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF has committed an act of serious misconducts and indiscipline U/s. 11(1) of CRPF Act, 1949 which is prejudicial to the good order and discipline of the Force and punishable U/s. 11(1) of CRPF Act, 1949, read with Rule 27 of the CRPF Rules, 1955."

3. A departmental proceeding was initiated against him and on conclusion of the inquiry, the Inquiry Officer submitted his report holding that the charges against the petitioner have been proved. Relevant portion of the Enquiry Report containing the findings is reproduced herein below.

" FINDING OPINION AND CONCLUSION:

After the careful examination of the statement, supported documents as exhibits, it is established that No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF, while functioning as member of the Force committed an act of misconduct in his capacity by performing the duties in place of No. 035150924 CT/GD N.G. Siranau of 44 Bn CRPF under the influence of liquor without any information or permission of the competent authority, Patrolling party while passing through North O.P. Post found that no sentry was available for duty at North O.P. Post. Patrolling party moved to Guard Room situated near to North O.P. Post to ascertain the non-availability of duty personnel at North O.P. Post. On reaching Guard near guard room call was raised by the area patrolling party commander at about 1915 hours, at that time No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF moving forward towards patrolling party with his Insas Rifle loaded with magazine cocked the Rifle Insas Butt No. 09, Body No. 4194 (though barrel of the rifle was towards the sky) is prejudicial to the good orders and discipline of the Force. Hence in view of the above, Article of charges I and II levelled against No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF, stands "Proved".

Thereafter, on the basis of such finding, the Disciplinary Authority issued the final order of penalty on 12.7.2012 awarding the petitioner with the punishment of dismissal from service with effect from the date of issue of the order. The appeal preferred by the petitioner before the appellate authority was rejected by the

Appellate Authority vide order dated 6.9.2012. The dismissal order passed by the Disciplinary Authority as well as the Appellate Authorities order are under challenge in this writ petition.

4. It has been contended by the petitioner that the petitioner had performed sentry duty on the fateful day in place of his colleague at his request, who had to leave for his home suddenly and urgently as his wife was seriously ill and was hospitalised. Thus, the petitioner performed duty of his colleague by helping him who had to leave the post urgently to attend to his ailing wife in the hospital and as such there was no deliberate act of disobedience or indiscipline. He also denied having under the influence of liquor and having cocked his rifle to the patrol party as charged.

5. As regards the aforesaid charges, from the finding and conclusion arrived at by the Inquiry Officer, as quoted above, there are findings that the petitioner was under influence of liquor while he was on sentry duty in place of another person without information or permission from the competent authority and that he cocked his rifle, though the barrel of the rifle was towards the sky. As regards cocking of rifle the petitioner had contended that though he had cocked the rifle, it was not aimed towards the patrol party but kept the barrel in the safe direction and he was in the process of clearing his rifle.

6. The petitioner has raised certain issues about the procedure adopted in the departmental proceeding, contending, inter alia, that he was not given reasonable opportunity to present his case and that the material witness namely, N.G. Siranau, on whose behalf and place he was on duty on the fateful day was never examined and no Presenting Officer was appointed. He also has stated that the inquiry report was based on no evidence and the Inquiry Officer had assumed the role of the Presenting Officer and was biased in favour of the department. It was also urged that the penalty of dismissal from service is too harsh and disproportionate to the charges proved against him. It has been also submitted that the Constable, N.G. Siranau, on whose request and in whose place the petitioner performed sentry duty continues to remain in service, thus discriminating him.

7. On the other hand, it has been contended by the respondents that the charges levelled against the petitioner are proved and there is no deviation from the rules and the punishment meted out to the petitioner cannot be said to be disproportionate considering the nature of charges proved.

8. This Court after hearing the parties and examining the records observed that the petitioner did not seriously dispute the allegation of performing sentry duty in place of another Constable namely N.G. Siranau but he denied to be under the influence of liquor and also denied that he cocked his rifle towards the patrolling party.

While examining the inquiry report, what this Court has found is that the Inquiry Officer, while preparing the report had submitted a report which does not contain

any analysis and discussion of the evidence, apart from repeating the statement of articles of charges against the petitioner. The Enquiry Report contains an Introduction, the Statement of Articles of Charges and Statement of Imputation of Misconduct, followed by Analysis and Assessment of evidence, and a brief paragraph on participation of the charged official and case of the delinquent, concluded by the Finding, Opinion and Conclusion. On perusal of the paragraph containing the analysis and assessment of evidence, this Court does not find any analysis and assessment of evidence, the relevant paragraph of which is reproduced herein below.

"ANALYSIS AND ASSESSMENT OF EVIDENCE:

After going through the charges, oral and documentary evidence the following facts and circumstances have been ascertained by me as enquiry officer:

- 1) That No. 005150589 Ct/GD Panger Bangei Kumba is posted to 26 Bn and presently attached with GC Imphal CRPF.
- 2) That No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF shouted leave-leave and cocked the service rifle while on duty at north OP Post. (PW-1, 2, 3, 4, 5)
- 3) That No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF had consumed liquor while on duty. (PW-1 and evidence No. 1)
- 4) That No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF cocked the service rifle while on duty at north OP Post and was over powered by Patrolling Party.
- 5) That as per night guard duty register No. 005150589 Ct/GD Panger Bangei Kumba of 26 Bn CRPF was not detailed for duty as there is no entry of his name in the north OP post night guard duty register, as per the time he was performing the duty of No. 035150924 CT/GD N.G. Siranau of 44 Bn CRPF."

The aforesaid paragraph shows that the contents thereof are only conclusions arrived at by the Inquiry Officer rather than the analysis of the evidence. There is no discussion of the oral and other documentary evidences linking the findings. Though an inquiry report in a disciplinary proceeding cannot be equated with a judgment rendered by a Court of law, nevertheless, in an enquiry report, there must be some indication of the evidence on record by referring to which the Inquiry Officer arrives at certain conclusions. Even though no elaborate discussion of the facts and evidence may be necessary in an enquiry report as, would be normally required in a judgment of a Court of law, in case of a departmental proceeding it may suffice if the relevant evidences are referred to and indicated, howsoever, brief these may be for the Inquiry officer to come to his conclusions. In the present case, it is not shown how the Inquiry Officer had come to the aforesaid conclusions, as quoted above, as there is no discussion of the evidence, either oral or documentary in the inquiry report to arrive at those conclusions except for mentioning that the facts have been ascertained by the

Inquiry Officer after going through the charges, oral and documentary evidence. Therefore, we are of the view that the aforesaid inquiry report suffers from a fatal lapse of being a non speaking report, making it unsustainable in law.

9. Even otherwise also, while examining the inquiry report, it has been noted that though the Inquiry Officer had come to a finding that the petitioner was under the influence of liquor, no finding has been made that the petitioner was in a state of intoxication which is a specific offence (a less heinous offence) as mentioned u/s 10(a) of the Central Reserve Police Force Act, 1949. In this regard one may refer to Section 10 of the Act, which reads as follows.

"10. Less heinous offences.-Every member of the force who-

(a) is in a state of intoxication when on, or after having been warned for, any duty or on parade or on the line of march; or

(b) strikes or attempts to force any sentry; or

(c) being in command of a guard, piquet or patrol, refuses to receive any prisoner or person or person duly committed to his charge or without proper authority releases any person or prisoner placed under his charge or negligently suffers any such prisoner or person to escape; or

(d) being under arrest or in confinement, leaves his arrest or confinement, before he is set at liberty by lawful authority; or

(e) is grossly in-subordinate or insolent to his superior officer in the execution of his office; or

(f) refuses to superintend or assist in the making of any fieldwork or other work of any description ordered to be made either in quarters or in the field; or

(g) strikes or otherwise ill-uses any member of the force subordinate to him in rank or position; or

(h) designedly or through neglect injures or loses or fraudulently disposes of his arms, clothes, tools, equipments, ammunition or accoutrement or any such articles entrusted to him or belonging to any other person; or

(i) malingers or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or

(j) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or

(k) does not, when called upon by his superior officer so to do or upon ceasing to be a member of the force forthwith deliver up, or duly account for, all or any arms,. Ammunition, stores, accoutrements or other property issued or supplied to him or in his custody or possession as such member; or

(l) knowingly furnishes a false return or report of the number or state of any

men under his command or charge or of any money, arms ammunition, clothing, equipments, stores or other property in his charge, whether belonging to such men or to the Government or to any member of or any

(m) person attached to the force or who through design or culpable neglect, omit, or refuses to make or send any return or report of the matters aforesaid; or

(n) absent himself without leave, or without sufficient cause overstays leave granted to him: or

(o) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline: or

(p) contravenes any provision of this Act for which no punishment is expressly provided: or who, while not on active duty:-

(q) commits any of the offences specified in clauses (e) to (l) (both inclusive) of section 9, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months pay, or with both."

Consumption of liquor while on duty is one thing and conclusive finding that because of consumption of liquor the petitioner was in a state of intoxication while on duty and the petitioner's normal capacity to act was inhibited and adversely affected and the nature of duty had been compromised putting the individual or the organisation at risk, is another thing. Consumption of liquor while on duty as per the CRPF Act is not, per se, an offence, unless one is "in a state of intoxication" while on duty. There is no finding to the effect that the petitioner was in a state of intoxication and exposed the organization to any kind of risk. The finding rendered as in sub-para (3) of the "Analysis and Assessment of Evidence" is that the petitioner had consumed liquor while on duty. There is no finding by the Inquiry Officer that because of consumption of liquor the petitioner had behaved in a manner which had seriously breached the safety and security of the organisation. There is neither any finding that the petitioner was found in a condition of drunkenness or inebriation and was incapable of performing his sentry duty.

10. It is to be noted that as per the article of charges, the petitioner, at the relevant time was alleged to be under influence of liquor. Therefore, it may be necessary to understand the meaning of the expression "under the influence of liquor" so as to appreciate the charge levelled against the petitioner and which have been held to be proved by the Inquiry Officer and the punishment imposed upon him based on that charge.

It may be noted that under the CRPF Act, 1949 "to be under influence of liquor" itself has not been specifically mentioned as an offence or misconduct. What has been prohibited and specified as an offence is to be "in a state of intoxication when on any duty" as mentioned in Section 10(a) of the Act. In other words, if the petitioner was charged of being "in a state of intoxication" when on duty, the department had to prove the same and could legitimately impose any penalty

upon the petitioner. However, the petitioner has been charged of being under the influence of liquor while on duty. As to the meaning of "state of intoxication", since it is not defined under the CRPF Act and Rules framed thereunder, one may refer to provisions of Indian Penal Code, get a clue of its meaning from Section 85 of the Indian Penal Code. Section 85 of the IPC reads as follows.

"S. 85. Act of a person incapable of judgment by reason of intoxication caused against his will.-Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will."

As per this section, if a person is incapable of knowing the nature of the act, or that he is incapable of knowing what he is doing is either wrong or contrary to law, he can be said to be in a state of intoxication.

"Intoxication" has been defined in Black's Law Dictionary, (6th Edn.) as follows:

"Intoxication" Term comprehends situation where, by reason of taking intoxicants, as individual does not have the normal use of his physical or mental faculties, thus rendering him incapable of acting in the manner in which an ordinarily prudent and cautious man, in full possession of his faculties, using reasonable care, would act under like conditions. *Hendy v. Geary*, 105 R.I. 419, 252 A. 2d 435, 441.

A disturbance of mental or physical capacities resulting from the introduction of substances into the body. Model Penal Code, 2.08.

By referring to Section 85 IPC, we are not importing the high degree of proof required in a criminal proceeding to the disciplinary proceeding but referring to the principle on which basis the issue of "under the influence of liquor" is to be understood and addressed.

Therefore, if to be "under influence of liquor" while on duty, is to be treated as an offence or an act of indiscipline, he must be attributed with such acts which he would commit while in the state of intoxication. In order to penalise a person of being under influence of liquor, he must be in a state of intoxication because of consumption of liquor so as to render him incapable of knowing the nature of his act or to understand what he is doing is wrong or prohibited by law.

In the present case, for the department to penalise the petitioner on the charge of being under the influence of liquor, it has to be shown that the petitioner was not capable of knowing what he was doing or that he was not aware that what he was doing is either wrong or contrary to law, under influence of liquor. It is to be noted that to be "under the influence of liquor" describes the state of mind or body which indicates that he was acting in a manner which a normal person would not otherwise behave except under the influence of intoxicating liquor. However, the inquiry report nowhere mentions or discusses any evidence or

finding to the effect that he was in a state of intoxication or that he was incapable of knowing what he was doing or was not aware that what he was doing is wrong or contrary to law or that he was behaving in a manner which would clearly indicate that he was in a state of drunkenness or inebriation, to be described as "under the influence of liquor." What has been recorded in the Inquiry Report and the "Analysis and Assessment of Evidence" is to the fact that the petitioner had consumed liquor while on duty. It may be also observed that the fact that the petitioner cocked the rifle, does not itself indicate that he was drunk or it was an act committed in a state of drunkenness. It also cannot be said that he was in a state of intoxication as he never aimed his rifle to the patrolling party. This Court is of the view that the fact that he cocked his rifle but pointed the barrel towards the sky does not in any case indicate in absence of any other evidence that he was in a state of drunkenness or intoxication so as to render such an act being perpetrated "under influence of liquor". Therefore, this Court holds that drawing of inference and conclusion by the Enquiry Officer that the petitioner had acted in an indisciplined manner under influence of liquor does not seem to be based on any cogent material. This Court has already held that there is no discussion of the material evidence produced in the course of inquiry which would be the foundation of the conclusion and finding arrived at by the Inquiry Officer. Therefore, this Court is not able to accept the finding of the Inquiry Officer that he was "under influence of liquor" so as to render him liable for any penal action.

11. The additional allegation against the petitioner as contained in the Article-I is that the petitioner was discharging his duty as sentry in place of another person without obtaining permission of the authority. In that regard, petitioner had contended that he did so because of the emergent situation at his request and there was no deliberate act or malafide act to indulge any indiscipline act. It was not a case of non performance or evasion or desertion of duty but performance of duty for another person without proper permission. The petitioner also had pointed out that the person in whose place he was on duty continues to remain in service.

From the record, it has been ascertained that the said person N.G. Siranau was awarded the punishment of withholding of annual increment of two years for his act of absence from duty and asking the petitioner to do his sentry duty without permission from the competent authority (vide Annexure X/8 to the affidavit-in-opposition filed by the respondents) The relevant portion of the said order of penalty imposed upon N.G. Siranau, is reproduced herein below.

"7. Considering the above facts, I am of the view that the delinquent deserves a very harsh punishment. Such act of indiscipline in Force like CRPF is a serious one and needs to be curbed in the nip of the bud. However, taking into consideration of his acute pecuniary family condition on humanitarian grounds his long unblemished service and his first act of misconduct in 09 years of service, I inclined to take a lenient view to meet the ends of justice. After having

applied my mind judiciously and considering the welfare of his dependents and the fact that he has put his more than 09 years of service, I feel that the punishment of "WITHHOLDING OF ANNUAL INCREMENT FOR TWO YEARS" will meet ends of justice. Therefore, in exercise of the powers vested in me u/s 11(1) of CRPF act, 1949 read with Rule 27 of the CRPF Rules, 1955, I hereby imposed the penalty of "WITHHOLDING OF ANNUAL INCREMENT FOR TWO YEARS" on No. 035150924 CT/GD N.G. Siranau of 44 Bn CRPF, which takes effect from the date of increment accruing to the above CT/GD after issue of this order. He is hereby revoked from suspension with effect from the date of issue of this order and his suspension period w.e.f. 25.11.2011 to 11.5.2012 will be treated "as such" for all purposes and he will be paid anything more than whatever he drawn earlier as subsistence allowance during suspension."

12. Coming to the finding as regards the more serious charge against the petitioner, i.e. cocking of rifle towards the patrolling party, the Inquiry Officer has given a categorical finding that though the petitioner had cocked his rifle, the barrel of the rifle was towards the sky. The petitioner also had claimed that he had merely acted by cocking his rifle but never aimed towards the patrolling party and shouted them to leave as he could not identify them as the patrol party of the CRPF.

In other words, there is no finding by the Inquiry Officer that the petitioner under the influence of liquor cocked his rifle pointing it towards the patrolling party as charged and if there were such a finding, this of course, would be of a very serious nature inviting extreme penalty. But the finding is, otherwise, as mentioned above. Though the petitioner cocked his rifle, the barrel of the rifle was towards the sky, thus there was no threat or danger to any person. Cocking of rifle, without aiming to any person, in our view, cannot itself constitute a grave offence as to invite the extreme penalty of dismissal.

13 There is another aspect which is troubling this Court. We have also noted that the Memorandum of charges dated 13.12.2011 (Annexure-A/1) prepared against the petitioner was issued by Shri Vimal Kumar Bisht, Dy. Inspector General, Group Centre, CRPF, Imphal, who is not the disciplinary authority, but the appellate authority. The disciplinary authority is the Commandant, who issued the dismissal order on 12.7.2012 (Annexure-A/4). Against the said dismissal order, the petitioner had preferred an appeal before the appellate authority which was disposed of by the same officer, namely, Sri Vimal Kumar Bisht, who had issued the Memorandum of Charges. We find force in the contention of the petitioner that in such an act, bias can be imputed.

True, one cannot impute bias only because of the fact that framing of charges was by a higher authority. But in the present case, the same higher authority namely, Sri Vimal Kumar Bisht who had framed the charges against the petitioner also decided the appeal against the dismissal order. When memorandum of charges is prepared, it is done so after application of mind on the facts and materials available before the inquiry, and on prima facie

satisfaction by the disciplinary authority that certain offences had been committed by the charged personnel warranting disciplinary action. Therefore, the contention of the petitioner that the same officer who issued the memorandum of charges could be biased while acting as an appellate authority, cannot be brushed aside completely as unreasonable as the opinion formed by him at the time of framing of charge regarding the culpability of the petitioner could not be completely wiped out at the time of consideration of the appeal. It is to be remembered that the test of bias is not mere apprehension of bias but the real danger of bias under the surrounding circumstances. In the present case, the fact that the same officer who framed the charges against the petitioner based on certain materials as existed prior to the inquiry decides the merit of the case post inquiry leads to the irresistible inference that there was a very real likelihood of bias. In such event, such a bias can be inferred and the administrative action cannot be sustained [See *State of Punjab Vs. V.K. Khanna and Others*, , *Secretary to Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and Another*, , *ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others*,].

14. We, however, are not impressed with the contention of the petitioner that the disciplinary proceeding is vitiated because of non appointment of any Presenting Officer, in absence of any material to show that the petitioner has been prejudiced because of non appointment of a Presenting Officer, though, we do find substance in the contention of the petitioner that the inquiry report suffers from material defects as discussed above and also that the punishment is too harsh.

15. We are of the view that the inquiry report submitted, does not conform to and fails to satisfy the test of a reasoned order/finding, as the findings and conclusions are not supported by appropriate analysis of the oral or documentary evidence on record as discussed above. We are, thus, unable to persuade ourselves to accept the inquiry report as a valid one. Accordingly, the dismissal and appellate order which are based on the said inquiry report also cannot be sustained.

16. We are also of the view that the punishment meted out to the petitioner of dismissal from service, is too harsh as against the charges said to have been proved, considering the circumstances as revealed in the case. It is not the case of the Department that the petitioner had failed to do his sentry duty or that he deserted the post thus exposing the organisation to serious risk. What is alleged against him is that though he had performed sentry duty on the fateful day in place of another personnel it was without obtaining permission from the competent authority and he was under the influence of liquor. As discussed above, neither the person in whose place he performed sentry duty was examined and the said person continues to be in service. In fact, the said person was let off with a lesser penalty by taking a sympathetic view, which sympathy, however, was not shown to the petitioner. The petitioner did the sentry duty

under an emergent circumstance at the request of the said person, which has not been controverted by the authority. Further, consumption of liquor per se, and even if proved, without being in a state of intoxication, without compromising with the security and safety of the organisation, cannot be considered too serious to invoke the penalty of dismissal, the ultimate penalty as provided under the rules.

17 As regards the other allegation against the petitioner that he cocked his rifle and pointed towards the patrol party under the influence of liquor is not proved. What is proved is only that he had cocked the rifle. The allegation that he had pointed towards the patrol party is not proved as evident from the inquiry report itself which clearly stated that the barrel of the rifle was towards the sky. If the barrel of the rifle was admittedly not pointed towards any person but to the sky, one fails to understand, how it could have posed any threat to anybody. Therefore, if the extreme penalty is to be imposed merely because the petitioner had cocked his rifle, without posing or causing any threat or danger, such a penalty of dismissal can be said to be shockingly disproportionate.

It is now well settled principle of law that it is not sufficient, to interfere with any penalty, merely on the ground that disproportionate to the charge proved but it must be shown to be shockingly disproportionate to the charges proved. In the present case, if it is held, as we have done so, that the petitioner was not proved to have been in a state of intoxication and that though he cocked his rifle, it was not pointed to the patrolling party as charged, the penalty of dismissal can be said to be shockingly disproportionate.

Therefore, taking an over all consideration of the materials and circumstances as revealed on record, even if it is proved that the petitioner had performed sentry duty by consuming liquor in place of another person without proper authorisation and that he cocked his rifle though not pointing towards the patrol party, these materials, on their own, could not, in our view, invite the extreme penalty of dismissal from service.

18 Since this Court has come to the conclusion that the inquiry report suffers from a fatal flaw and cannot be sustained and also that the punishment meted to the petitioner is shockingly disproportionate to the charges proved, under normal circumstances, this Court would have remitted the matter back to the disciplinary authority to start the inquiry from the stage of submission of inquiry report and also direct the authority to reconsider the quantum of punishment. However, as discussed above, the charges against the petitioner are not complicated, entailing complicated facts and involving complicate questions of law but simple instance of consumption of liquor while on duty, doing sentry duty in place of another Constable without permission from the authority and cocking of his service rifle. Since the petitioner has also admitted to have performed sentry duty in place of another of his colleague without permission of the appropriate authority, and we have already held that the charge that he was under influence of liquor has not been proved, and also in view of the evidence as reflected in the

inquiry report that though the petitioner had cocked his rifle it was pointed towards the sky, which the petitioner himself also do not deny, and since the incident occurred on 18.11.2011, and having regard to the penalty imposed on the other person, N.G. Siranau, we are of the view that rather than referring the matter back to the authorities to start the departmental enquiry afresh as indicated above, we deem it fit and proper that we remit the matter to the authorities for the purpose of deciding afresh the quantum of punishment so that the authority can impose any other lesser punishment to the petitioner other than dismissal/removal/compulsory retirement from service.

In the result, the writ petition is allowed. The dismissal order dated 12.7.2012 (Annexure-A/4) as well as the order issued by the appellate authority dated 6.9.2012 (Annexure-A/5) dismissing the appeal preferred by the petitioner are quashed and we remit the matter to the authority to decide the quantum of punishment to be imposed on the petitioner other than the penalty of dismissal/removal/compulsory retirement from service for the reasons discussed above, which may be done by the authorities within a period of 2 (two) months from today.