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**(2009) 05 P&H CK 0114**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : R.A. No. 68 of 2007 ;**

Ram Mehar

APPELLANT

Vs

Uoi, Ministry of Railways and Others

RESPONDENT

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**Date of Decision :** 20-05-2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

**Citation :** (2009) 3 ICC 795 : (2010) 1 RCR(Civil) 263

**Hon'ble Judges :** J.S.Khehar, J and Uma Nath Singh, J

**Advocate :** For the Applicant-Petitioner, Mr. O.P. Aggarwal, Advocate. Mr. Puneet Jindal, Advocate., Advocates for appearing Parties

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## Judgement

J.S.Khehar, J.

1 The applicantpetitioner was inducted into the Railway Protection Force (Northern Region) as a Constable on 1.1.1990. Ever since his induction into the service of the. Railway Protection Force, he claims to have been posted at Kalka.

2 While in the employment of the Railway Protection Force the applicant petitioner was issued a charge sheet dated 3/7.4.2003 under Section 9(i) of the Railway Protection Force Act, 1957 (as amended), read with Rule 153 of the Railway Protection Force Rules, 1987. In the aforesaid charge sheet, three charges were levelled against him. The aforesaid charges are being extracted hereunder :

"1. Constable Ram Mehar s/o Sh. Ram Bhaj of RPF Post, Kalka is charged for gross misconduct and negligence in duty in that while performing special duty at Rly. Station, Chandigarh in connection with R.R.B. Examination, he absented himself from duty and consumed liquor during duty hours w.e.f. 12.00 hrs. to 24.00 hrs. on 9.3.2003. An entry in Roznamcha to this effect was made by IPF/ Kalka vide DE No. 30 at 14.05 hrs. on 9.3.2003 in Daily Diary of RPF Out Post/ Chandigarh and remained absent upto 16.3.2003.

2. He violated the lawful orders of his senior officers to report RPF Post/HQ/Kalka

alongwith other RPF staff vide DENo.22 at 20.30 hrs on 9.3.2003 at Kalka and DE No.24 at 21.30 hrs on 9.3.2003 at Kalka

3. He consumed liquor on duty". After a regular departmental inquiry was conducted against the applicantpetitioner in furtherance of the charge sheet referred to hereinabove, the Inquiry Officer submitted his inquiry report. A copy of the said inquiry report was forwarded to the applicantpetitioner by the Senior Divisional Security Commissioner, along with his covering letter dated 14.5.2003. Through the aforesaid communication, the applicantpetitioner was required to respond to the inquiry report, if he so desired, within 15 days. In furtherance of the liberty granted to him, the applicant petitioner submitted a representation dated nil (copy whereof was appended to CWP No. 18346 of 2005, as Annexure P3) In his representation the applicant petitioner, inter alia, stated that his case should be considered sympathetically, as he had to leave his station of employment under compelling circumstances, because of the death of his brotherinlaw. In his representation he also stated that he had not taken liquor during duty hours, and further that, he had not misbehaved with any of his colleagues.

3 Having considered the totality of the circumstances of the case, as well as, the representation filed by the applicantpetitioner, the punishing authority i.e., the Divisional Security Commissioner vide his order dated 7.7.2003 imposed the punishment of removal from service with immediate effect on the applicantpetitioner. Dissatisfied with the punishment order dated 7.7.2003 the applicantpetitioner preferred an appeal challenging the punishment order before the Divisional Security Commissioner. The Appellate Authority however, dismissed the appeal preferred by the applicantpetitioner by an order dated 30.10.2003. After having failed at the appellate stage, the applicantpetitioner availed of his remedy of filing a revision petition. The said revision petition was filed before the Chief Security Commissioner. The Chief Security Commissioner dismissed the said revision petition on 1.10.2004.

4 The applicantpetitioner then approached this Court under Article 226 of the Constitution of India, so as to challenge the orders passed by the Punishing Authority, the Appellate Authority and the Revisional Authority. CWP Mo.18346 of 2005, filed by the petitioner was dismissed by a Division Bench of this Court by an order dated 25.11.2005. The said order passed by the Division Bench is being extracted hereunder :

"Present : Mr. G.I. Sharma, Advocate, for the petitioner. \*\* \*\* The petitioner was absent from duty for seven days but what is more significant is that he was found dead drunken while on duty at the Chandigarh Railway Station. We, in this situation, are of the opinion that any technical argument that might flow would become irrelevant more particularly when he had accepted the fact that he had been deeply under the influence of alcohol at the relevant time and had sought forgiveness. Dismissed. Sd/ (H.S.BEDI) JUDGE Sd/ (VINEY MITTAL) "JUDGE November 25, 2005". A perusal of the aforesaid order reveals that the

applicantpetitioner was represented by Sh. G.I. Sharma, Advocate, in the writ petition filed by him before this Court. The applicantpetitioner has, through the present application sought a review of the order dated 25.11.2005 vide which CWP No. 18346 of 2005 was dismissed by this Court. Through the instant application, the applicant petitioner prays for, inter alia, the following reliefs : "(a) Review/recall its order dated 25th Nov.2005 in CWP No. 18346 of 2005 and notify the case for fresh hearing to meet the ends of justice and to save the life of the petitioner and his dependents. (b) Pass such order (s) as this Hon''ble Court may deem fit and proper in the given facts of the present case". It would be pertinent to mention that the aforesaid Review Application was filed by the applicantpetitioner through Shri O.P. Aggarwal, Advocate. It is therefore apparent that the counsel who appeared for the applicantpetitioner when the aforesaid writ petition was filed, was different from the one who is representing the applicantpetitioner in the instant Review Application. The Review Application filed by the applicantpetitioner bears the following note of Shri O.P.Aggarwal, Advocate : "Note: It is certified that the grounds set out in the present petition are sufficient to Review the order sought to be reviewed. Sd/ (O.P. Aggarwal Advocate)"

5 While addressing his first contention learned counsel for the applicant petitioner stated, that the instant review application was a mercy petition on behalf of the applicantpetitioner. He vehemently contended that mercy be shown to the applicantpetitioner, and that he be forgiven for his behaviour depicted in the charges levelled against him. It was the contention of the learned counsel for the petitioner that if mercy was not shown to the applicantpetitioner, the life of the applicantpetitioner, as well as, his dependent family members will be ruined.

6 The first contention advanced by the learned counsel for the applicant petitioner was a matter of shock and surprise for us. We were embarrassed even to respond to the aforesaid submission. Learned counsel for the applicant petitioner does not regularly practice in this Court. But his demeanour and mamrism reflected that he was a sufficiently experienced counsel. Our embarrassment apart we expressed our difficulty to the learned counsel by advising him, that Courts have to adjudicate upon matters in accordance with law and not on the basis of compassion or mercy. We also told him that it is not within our domain to accept a plea of the kind advanced by him. We also invited the attention of the learned counsel for the applicantpetitioner, to the fact that he was addressing arguments in a Review Application. We also brought to his notice the fact, that under the High Court Rules and Orders, we were obliged to keep in mind the parameters laid down under Order XLVII rule 1 of the Code of Civil Procedure, while adjudicating the instant Review Application. Since the first contention advanced by the learned counsel for the applicantpetitioner was clearly misconceived, we rejected the same and invited the learned counsel for the applicantpetitioner to assist this court within the parameters of law.

7 In furtherance of our advice, learned counsel for the applicantpetitioner

submitted that he would now advance arguments only within the framework of law, and the parameters laid down under Order XLVII rule 1 of the Code of Civil Procedure.

8 The second contention advanced by the learned counsel for the applicant petitioner was, that the Division Bench of this Court while dismissing CWP No. 18346 of 2005, erred in law by recording that the applicantpetitioner "... was found dead drunk...". Learned counsel forthe applicantpetitioner submitted, that it is not his case that the applicantpetitioner was not drunk. He however contended that "being drunk" was substantially different from "being dead drunk". It is, therefore, the contention of the learned counsel for the applicantpetitioner that the order dated 25.11.2005, deserves to be recalled, as this Court had committed an error apparent on the face of the record by recording that the applicantpetitioner was "dead drunk".

9 In response to the second submission advanced by the learned counsel for the applicant petitioner, the submission advanced by the learned counsel for the respondents was that the applicantpetitioner in his own statement before the Inquiry Officer had acknowledged that he had "...consumed liquor in a very heavy quantity...". He further submitted that one of the witnesses produced by the applicantpetitioner during the departmental inquiry held against him, namely, Sub Inspector O.P.Rawat DW2, acknowledged during the course of his cross examination, that he could not understand what the applicantpetitioner Ram Mehar was stating, when he found him under the influence of liquor near the A.C. coach. He further stated that his utterances at that juncture were irrelevant and had no meaning. The statement of the applicantpettioner Ram Mehar relied upon by the learned counsel for the respondents is being extracted hereunder. "Statement of Sh. Ram Mehar S/O Sh Ram Bhai CT/RPF/KLK (Party Charged) : Durinu the DAR enquiry the statement of Sh. Ram Mehar S/O Sh. Ram Bhaj CT/RPF/KLK was recorded. He stated in his statement that before one week from 09.03.03 my brother in law Sh. Ramesh Chand S/O Sh. Jnderjeet Vill.Badoli, the Badoli. Distt.Panupat,(HY) has been expired. I was sanctioned and availed 2 days leave due to his death. I was applied for 2 days leave to finish some customary work for 08 & 09 March2003. Sh.Balak Ram IPF/RPF/KLK called me in his office and told that you had availed leave in connection with death. What is necessary to go this time now. RRB Examination is to be held at Chandigarh so leave could not be sanctioned I have consumed liquor in a very heavy quantity in the night of 08.03.03. I was deployed for duty 12.00 to 24.00 hrs.shift on 09.03.03 as reserve staff in connection with RRB Examination. At about 12.03 hrs. Sh. Balak Ram IPF/RPF/KLK and Sh. O.P. Rawat SI/RPF/KLKWreached at saloon siding where AC Coach was stabled for the staff and told me that you have to go Sector9 for duty with CT/RPF/Sanjeev Kumar. When I ready to go with CT/RPF/Sanjeev Kumar then Sh. O.P. Rawat SI/RPF told that not to send him. Then told me to sit in Maruti Van in which SI Rajiv Nagpal RPF/CDG, ASI Naresh Chand RPF/KLK had already been seated after my seating HC Satish Kumar also seated in Van and carried me to Sector6, Panchkula and got my medically examination.

Doctor on duty had written his opinion on letter No.RPF/CDG/03 dated 09.03.03 and taken my blood and urine .sample. On that letter I had signed in presence of Doctor as per instruction of SI Rajiv Nagpal RPF/CDG, ASI Naresh Chand RPF/KLK. After medical examination I was brought to RPFO/Post/CDG. IPF/RPF Balak Ram told me that you go to KLK. On 09.03.03, I called/phoned to my inlaws to know about my children. Then I came to know that my wife Rajesh is seriously III. Then I went to my inlaws house without getting any order/authority and sanction of leave. From there I reached at KLK Post on 13 or 14, March and submitted application to IPF/RPF Balak Ram for duty. He told that ASC/RPF/UMB will give you duty. Due to this my 45 days have been spoiled. I told to IPF/RPF/ to give me letter regarding this but he did not give any letter. On 17.03.03 as per order Sr.DSC/RPF/UMB, I did my duty in 16.00 to 24.00 hrs.shift". In so far as the statement of Sub Inspector O.P. RawatDW2 is concerned, the same is also being extracted hereunder :

"Statement of Sh, O.P. Rawat SI/RPF/KLKW (DW2) :

During the DAR enquiry the statement of Sh.O.P.Rawat SI/RPF/KLKW has been recorded. He stated in his statement that he was deployed for bandobast duty at PF No. 1 of CDG Railway station on 09.03.03 in connection with RRB Examination at Chandigarh at about 12.00 hrs. Reserve staff was fallen by IPF/RPF/KLK. He found that CT/RPF/Ram Mehar absent. He asked to other staff about the where about of CT/RPF/ Ram Mehar. Then RPF staff replied that CT/RPF Ram Mehar had consumed liquor and they did not know his where about. At about 12.30 hrs. IPF/RPF/KLK Balak Ram arrived at PF.No. 1 where I was present since before. I along with IPF/RPF reached near AC Coach where the RPF staff were stayed, we saw CT/RPF/Ram Mehar. On seeing his Uniform and outlook, we found/noticed that CT/RPF Ram Mehar is under influence of liquor. I and IPF/RPF/KLK brought CT/RPF/Ram Mehar to RPF/Out Post/CDG and gave the report to ASC/RPF/UMB. ASC/RPF/UMB ordered to IPF/RPF/KLK to get medical examination of CT/RPF/Ram Mehar. As per order of ASC/RPF/UMB, SI/RPF/CDG Rajiv Nagpal, ASI/RPF/CDG Naresh Chand and HC Satish Kumar along with CT/RPF/Ram Mehar proceeded for medically examination of CT/RPF/Ram Mehar. Questioned asked by party charged CT/RPF Ram Mehar to Sh. O.P. Rawat SI/RPF/KLKW: Question No. 1. Whether it is not true that IPF/RPF/KLK asked me whether you know Sector9 where you are deployed for duty. On my reply as yet, he told me to proceed for duty with CT/RPF/Sanjeev Kumar and you told for medical examination first. Answer : When I along with IPF/RPF/KLK reched near AC Coach I found Ram Mehar under influence of liquor. I never told him for duty. On seeing his outlook I brought him to ASC/RPF/UMB. ASC/RPF/UMB ordered for examination of CT/RPF. Questioned asked by inquiry officer to Sh. O.P.Rawat SI/RPF/KLKW: Question No. 1. Whether it is true that CT/RPF Ram Mehar was found under influence of liquor near AC Coach and on asking by IPF/RPF/Balak Ram about why he was not present for duty, CT/RPF/stated irrelevant languages. Answer : above said statement is true. I could not understand what CT/RPF/Ram Mehar stated. He stated irrelevant matters which had no meaning".

In addition to the aforesaid, learned counsel for the respondents invited our attention to the fact that the applicantpetitioner Ram Mehar was deputed for medical examination, under the escort of Sub Inspector Rajiv Nagpal, Assistant Sub Inspector Naresh Chand and Constable Jagdish to Civil Hospital, Panchkula vide SI/CDG letter No.RPF/CDG/03 dated 9.3.2003. Dr.Payal Puri who was the doctor on duty at the Civil Hospital, Panchkula, at the time of arrival of the applicantpetitioner Ram Mehar, made the following endorsement on the aforesaid letter dated 9.3.2003, after medically examining the applicant petitioner :

"NameCT/RPF/Ram Mehar S/O Sh. Ram Bhaj Sharma 34 years, M. Caste Brahmin, 3.05 PM 09.03.03,I.M.Scar mark over left eyebrow (Laterally) Patient smeling of alcohol conjunctiva (Red) speech slurred. Talking irrelevantly.Gait wadding. Finger nose test abnormal. Patient is under the affect of Alcohol. BP 150/100, Pulse 88/mnt., Chest/CUS(N)".

On the basis of the aforesaid, it is the vehement contention of the learned counsel for the respondents, that the submission made at the hands of the applicantpetitioner that the applicantpetitioner was not dead drunk is wholly misconceived.

10 Having given our thoughtful consideration to the second submission advanced by the learned counsel for the applicantpetitioner, we are satisfied, that the instant submission advanced by the learned counsel for the applicantpetitioner, is totally against the record of the case. In his own statement made before the Inquiry Officer, the applicantpetitioner Ram Mehar acknowledged having taken "...liquor in a very heavy quantity...". A witness produced by the applicantpetitioner in his own defence before the Inquiry Officer, namely, Sub Inspector O.P.RawatDW2, acknowledged that when he found the applicant petitioner Ram Mehar near the A.C.Coach, he was "...under the influence of liquor...". He further stated that he could not understand what the applicantpetitioner Ram Mehar was stating, and that, his statements were irrelevant, which had no meaning. In view of the above, we are satisfied, that the Division Bench of this Court which dismissed CWP No. 18346 of 2005 filed by the applicantpetitioner was fully justified in recording that the applicant petitioner was "dead drunk". We, therefore, find no merit even in the second contention advanced by the learned counsel for the applicantpetitioner. In fact, we were amazed how such a submission could have been advanced by learned counsel, as the same was clearly contrary to the record of the case. Such a plea must be considered as a misrepresentation at the hands of the learned counsel. We, therefore, politely indicated our impression to the learned counsel for the applicantpetitioner.

11 The third contention advanced by the learned counsel for the applicant petitioner was that in case it was alleged against the applicantpetitioner that he was under the influence of liquor, he should have been medically examined, and the medical report depicting that he was under the influence of liquor should have been relied upon to record a finding against the applicantpetitioner. It was

vehemently contended that the applicantpetitioner was neither medically examined, nor was there any medical report available with the respondents, on the basis of which it could be concluded that the applicantpetitioner was under the influence of liquor. Learned counsel accordingly submitted, that there was no material on the record of the inquiry file on the basis of which the Inquiry Officer could legitimately record a finding that the applicantpetitioner was under the influence of liquor.

12 We have considered the the third contention advanced by the learned counsel for the applicantpetitioner. It is not understandable how learned counsel had the courage to address the instant submission. Not only is the issue of the applicantpetitioner being under the influence of liquor substantiated by his own statement, the same is also fully established by the statement of one of the defence witnesses produced by him before the Inquiry Officer namely, Sub Inspector O.P.RawatDW2. Details in this behalf have already been recorded by us while examining the second contention advanced on behalf of the applicantpetitioner. In fact, the instant contention advanced by the learned counsel for the applicantpetitioner is clearly misconceived, inasmuch as, in the list of documents appended to the charge sheet the applicantpetitioner was duly provided with the medical report submitted by the doctor on duty Dr.Payal Puri when the applicantpetitioner was taken to the Civil Hospital, Panchkula. In the list of documents appended to the charge sheet, the applicantpetitioner was clearly informed of the report of Dr.Payal Puri. A copy thereof was also enclosed with the chargesheet (as a part of AnnexureIII). In fact in his own statement before the Inquiry Officer (extracted above) the applicantpetitioner Ram Mehar accepted that Sub Inspector Rajiv Nagpal, Assistant Sub Inspector Naresh Chand, and Head Constable Satish Kumar had taken him in a Maruti Van to the Civil Hospital in Sector6 at Panchkula, where he was examined by the doctor on duty. He also acknowledged that the doctor on duty also recorded her opinion on the letter dated 9.3.2003. He also admitted that during his examination his blood and urine samples were taken. The aforesaid factual position was also confirmed in the statement of Sub Inspector O.P.RawatDW2 (also extracted above) who was produced by the applicantpetitioner himself as his defence witness before the Inquiry Officer. As such, it is apparent that the instant submission advanced by the learned counsel for the applicantpetitioner is again clearly contrary to the record of the case. In fact details in this behalf were also made a part of the discussion recorded by the Inquiry Officer in his inquiry report. The report of the Medical Officer on duty namely, Dr.Payal Puri, (has already been extracted by us while dealing with the second submission advanced by the learned counsel for the applicantpetitioner) was also duly furnished to the applicantpetitioner. For the reasons recorded hereinabove, we are of the view that the instant submission is not only devoid of merit but is an attempt at the hands of the learned counsel for the applicantpetitioner to mislead this Court. In view of the factual position noticed above, it is obvious that the instant submission advanced by the learned counsel for the applicant petitioner was not only based on falsity, but was totally

contrary to the record of the case. It seemed to us that learned counsel felt that in his capacity as an advocate he had the licence to say and canvass whatever he wished even if it was false. We again, therefore, expressed our view to the learned counsel, advising him that he should not address submissions which were contrary to the record, lest we would be compelled to record findings to that effect.

13 The fourth contention advanced by the learned counsel for the applicant petitioner was, that it was clearly incorrect to conclude that the applicant petitioner remained absent from duty from 9.3.2003 to 16.3.2003. In this behalf, it is the vehement contention of the learned counsel for the applicant petitioner that as a matter of fact he was not allowed to resume his duties at Kalka. As such, it is submitted, that it was wholly unfair to treat him as being absent from duty. In fact, it is the contention of the learned counsel for the applicant petitioner, that had he actually been absent from duty, he would have been placed under suspension. The very fact that he was not placed under suspension, according to learned counsel, is sufficient to demonstrate, that he was not absent from duty. Accordingly, it is the submission of the learned counsel for the applicant petitioner, that the order dated 25.11.2005, passed by a Division Bench of this Court while disposing of CWP No. 18346 of 2005, affirming that the applicant petitioner was absent from duty for a period of seven days is clearly misconceived and is not borne out from the record of the case, and as such, the aforesaid order deserved to be recalled.

14 The instant i.e., the fourth submission advanced by the learned counsel for the applicant petitioner to our mind is most irresponsible. We have already extracted the statement of the applicant petitioner Ram Mehar recorded during the course of the inquiry proceedings, while dealing with the second submission advanced before us. In the aforesaid submission, the applicant petitioner Ram Mehar clearly affirmed "...After medical examination 1 was brought to RPFO/Post/CDG. IPF/RPF Balak Ram told me that you go to KLK. On 09.03.03. 1 called/phoned to my inlaws to know about my children. Then I came to know that my wife Rajesh is seriously ill. Then 1 went to my inlaws house without getting any order/authority and sanction of leave. From there I reached at KLK Post on 13 or 14.March and submitted application to IPF/RPF Balak Ram for duty. He told that ASC/RPI7UMB will give you duty. Due to this my 45 days have been spoiled. 1 told to IPF/RPF/ to give me letter regarding this but he did not give any letter. On 17.03.03 as" per order Sr.DSC/RPF/UMB. I did my duty in 16.00 to 24.00 hrs. shift...". In his own statement before the Inquiry Officer the applicant petitioner admitted that rather than reporting for duty at the place of his posting at Kalka, he had proceeded to the residence of his inlaws and remained there from 9.3.2003 to 13/14.3.2003, and thereafter, attended his duties for the first time on 17.3.2003. It, therefore, stands clearly established that according to his own showing the applicant petitioner was absent from duty from 9.3.2003 to 16.3.2003, and that it is wholly false on the part of the learned counsel to allege on behalf of the applicant petitioner that although he had reported for duty at the

place of his posting namely, Kalka on 9.3.2003, but had been prevented from discharging his duties by his superiors. In view of the above, we are satisfied that the instant contention of the learned counsel for the petitioner is also misconceived. And also that the learned counsel acted most irresponsibly in advancing the instant contention.

15 The fifth contention advanced by the learned counsel for the applicant petitioner was. that when the applicant petitioner was sent to Chandigarh to perform special duties in connection with the Railway Recruitment Board examination to be conducted at Chandigarh from 8.3.2003 to 9.3.2003. a large number of other railway personnel were also deputed along with the applicant petitioner for the same purpose. It is the submission of the learned counsel for the applicant petitioner, that if there had been any truth in the allegation contained in the charge sheet served upon the applicant petitioner, then at least 50% of the personnel deputed from Kalka, who were known to the applicant petitioner, and could have identified him, should have been produced by the department as witnesses during the course of the departmental inquiry. It is the submission of the learned counsel for the applicant petitioner, that if he had been a counsel when the writ petition was argued before this court, he would have definitely press this point, and that the very fact that the counsel who appeared to address arguments in the writ petition did not agitate the instant contention, the applicant petitioner has remained unsuccessful.

16 After hearing the fifth contention advanced by the learned counsel for the applicant petitioner, we requested learned counsel who had by then addressed arguments for over an hour, not to waste further Court time. In response, he submitted that he was making the instant submission with complete responsibility. He also requested us to give our verdict on the instant issue one way or the other, failing which the applicant petitioner would feel that complete justice had not been done to him. At the insistence of the learned counsel for the applicant petitioner, we take upon ourselves the responsibility of recording a finding even on the fifth contention advanced by the learned counsel for the applicant petitioner. In this behalf, it may be pointed out, that it is not for the applicant petitioner to choose the witnesses on the basis whereof the department desires to establish the charges levelled against the delinquent. The conclusion in a departmental inquiry is obviously to be based on the evidence presented by the department. In case a delinquent desires to challenge the veracity of the statement of any witness produced by the department, it is open to him to lead evidence in this behalf. In so far as the instant contention of the learned counsel for the applicant petitioner is concerned, if the department chose to overlook personnel from Kalka. who were deputed along with the applicant petitioner to discharge duties at Chandigarh, the applicant petitioner could have produced such witnesses in his defence in the same manner as he had produced other defence witnesses on his own behalf. It does not lie in the mouth of the applicant petitioner to assail the action of the respondents on the ground that the other relevant witnesses had not been produced. In view of the above, we find

no merit in the instant contention advanced by the learned counsel for the applicant petitioner. All the same we are again compelled to record that the conduct of the learned counsel for the applicantpetitioner was not only unprofessional but also possibly unethical.

17 The sixth contention advanced by the learned counsel for the applicant petitioner is similar to the fifth contention advanced by him. It is pointed out by the learned counsel for the applicantpetitioner that it was imperative for the respondents to produce as a witness Dr.Payal Puri, the doctor on duty at Civil Hospital,Panchkula who had conducted the medical examination on the applicantpetitioner when he was taken to the Civil Hospital for examination. It is the contention of the learned counsel for the applicantpetitioner that an adverse inference deserves to be drawn against the respondents for not producing Dr.Payal Puri as a witness. In this behalf, it is submitted that it is imperative to conclude that if Dr. Payal Puri had appeared as a witness, she would have deposed against the respondents, and in favour of the applicantpetitioner. In the absence of the production of Dr. Payal Puri as a witness it should be concluded that the charge against the applicant petitioner Ram Mehar to the effect that he was under the influence of liquor, has not been substantiated/proved.

18 The sixth contention advanced by the learned counsel for the applicant petitioner is wholly misconceived. In view of the conclusion drawn by us in response to the third contention advanced by the learned counsel for the applicantpetitioner, we have already concluded hereinabove, that there was sufficient evidence available on the record of the inquiry proceedings to conclude, that the applicantpetitioner was under the influence of liquor. However, for the same reasoning and logic, as have been recorded by us while dealing with the fifth contention advanced by the learned counsel for the applicantpetitioner, we are of the view that it was open to the applicantpetitioner to produce Dr.Payal Puri, i.e., the doctor on duty at the Civil Hospital, Panchkula, if he so desired. In view of his own admission, as well as, the statement of one of his defence witnesses namely Sub Inspector O.P.RawatDW2, as also the report recorded by Dr.Payal Puri, it stands fully established that the applicantpetitioner was under the influence of liquor. In our view, non production of Dr.Payal Puri, as a witness during the course of departmental inquiry by the. respondents, was inconsequential in the facts and circumstances of this case. In view of the above, we find no merit even in the instant contention advanced by the learned counsel for the applicantpetitioner.

19 The seventh contention advanced by the learned counsel for the applicant petitioner was based on Rules 148.1 to 148.4 of the Railway Protection Force Rules, 1987. Rules 148.1 to Rule 148.4, are being reproduced hereunder :

"148.1 Any of the following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed on an enrolled member of the Force :

148.2 Major punishments. (a) Dismissal from service (which shall ordinarily be a disqualification for future employment under the Government).

(b) Removal from service (which shall not be disqualification for future employment under the Government).

(c) Compulsory retirement from service.

(d) Reduction in rank or grade.

148.3 Minor Punishments. (a) Reduction to a lower stage in the existing scale of pay.

(b) Withholding of next increment with or without corresponding postponement of subsequent increments.

(c) Withholding of promotion for a specified period.

(d) Removal from any office of distinction or deprivation of of any special emoluments.

(e) Censure.

148.4 Petty punishments. (a) Fine to any amount not exceeding seven days' pay.

(b) Confinement to quarterguard for a period not exceeding fourteen days with or without punishment drill, extra guard duty, fatigue duty or any other punitive duty.

(c) Reprimand."

Relying on the aforesaid rules, it is submitted by the learned counsel for the applicantpetitioner, that even if the instant rule had been brought to the notice of this Court at the time of disposal of CWP No. 18346 of 2005, the order dated 25.11.2005, would not have been passed. According to the learned counsel for the applicant petitioner, only a petty punishment should have been inflicted on the applicantpetitioner under Rule 148.4 (extracted above) in the facts and circumstances of this case. In this behalf, it is also the submission of the learned counsel for the applicantpetitioner, that the applicantpetitioner was not found drunk during working hours. He did not misbehave with anyone while he was under the influence of liquor. He also submitted that the absence of the applicantpetitioner was on account of extremely harsh circumstances which the applicantpetitioner was going through, emanating from the death of his brotherinlaw.

20 It is not possible for us to accept the aforesaid contention advanced by the learned counsel for the applicantpetitioner. When the instant submission was advanced by the learned counsel for the applicantpetitioner, we were surprised, that such a submission could actually have been made at the hands of a counsel. The conclusions drawn by the Inquiry Officer which have been upheld by us hereinabove reveal, that the applicantpetitioner was actually dead drunk. The inquiry report reveals, that he was habitual in consuming liquor, and on account of a similar charge earlier levelled against him, he had been awarded the punishment of reduction to the lowest scale of pay for two years with cumulative

effect. In the inquiry report, it has been concluded that the applicantpetitioner was absent from duty without permission and justification. In the departmental inquiry, it was also proved, that the applicantpetitioner disobeyed lawful orders of his senior officers. In our considered view, the punishing authority would have been fully justified even to pass the severest order under Rule 148.2, so as to inflict the punishment of dismissal from service on the applicantpetitioner. In fact, in our considered view, the applicantpetitioner was treated liberally by merely inflicting on him the punishment of removal from service. In view of the above, it is not possible for us to accept that the applicantpetitioner has been inflicted a punishment which is arbitrary or disproportionate to the allegations levelled against him. In view of the above, we find no merit even in the seventh contention advanced by the learned counsel for the applicant petitioner.

21 The eighth contention advanced by the learned counsel for the applicant petitioner was based on Rule 156 of the Railway Protection Force Rules, 1987. Rule 156 of the Railway Protection Force Rules, 1987, is being reproduced hereunder :

"156. Imposing of punishment of dismissal etc. Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or removal from service to any member of the Force in the following case, namely : (a) Dismissal. (i) conviction by a criminal court; (ii) serious misconduct or indulging in committing or attempting or abetting an offence against railway property. (iii) discreditable conduct affecting the image and reputation of the Force: (iv) neglect of duty resulting in or likely to result in loss to the railway or damage to the lives of persons using railways; (v) insolvency or habitual indebtedness; and (vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment. (b) Removal from service : (i) any of the misconduct for which he may be dismissed under clause (a) above. (ii) Repeated minor misconducts : (iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause". Learned counsel for the applicantpetitioner relying on Rule 156 extracted hereinabove, vehemently contended that the punishment of removal from service could not have been inflicted on the applicantpetitioner in terms of the parameters laid down under the aforesaid rule itself. It is again vehemently contended at the hands of the learned counsel for the applicantpetitioner, that the order dated 25.11.2005, would not have been passed by this Court while disposing of CWP No. 18346 of 2005, had the instant rule been brought to the notice of this Court.

22 We have considered the eighth submission advanced by the learned counsel for the applicantpetitioner. We however, find no merit therein. In fact Rule 156(a) (iii), extracted hereinabove, leaves no doubt in our mind that for the delinquencies committed by the applicantpetitioner, as have been found to be proved in the departmental inquiry held against him, the applicantpetitioner

could have rightfully been dismissed from service, as his conduct would seriously affect the image and reputation of the Railway Protection Force. During office hours the applicantpetitioner was found dead drunk. This is not the first occasion when such an incident had occurred, even on an earlier occasion, as has been pointed out hereinabove, as also in the chargesheet issued to the applicantpetitioner, the applicantpetitioner had been punished by reduction of his pay scale to the minimum of the pay scale cumulatively for a period of two years. In the instant case, the lesser punishment of removal from service has been inflicted upon him. The instant punishment also must be deemed to be fully justified in terms of Rule 156(b)(i), Rule 156 (b)(ii), as well as, Rule 156 (b)(iii) (extracted hereinabove) inasmuch as, the applicantpetitioner fully and independently satisfied the parameters specified therein, which could have independently been sufficient to justify the removal of the applicantpetitioner from service. In view of the above, we find no merit even in the eighth contention advanced by the learned counsel for the petitioner.

23 The ninth contention advanced by the learned counsel for the applicant petitioner was, that the petitioner was provoked by his superiors. And that the behaviour of the applicantpetitioner was his reaction to the said provocation. In this behalf, learned counsel pointed out that the applicant petitioner was denied leave after he returned from the rituals following the death of his brotherinlaw and sought further leave. His behaviour was a reaction to the arbitrary denial of leave to the applicantpetitioner, and as such, the applicantpetitioner could not be held to be blameworthy of his retaliatory behaviour, in the facts and circumstances of the present case.

24 To our mind the ninth submission advanced by the learned counsel for the applicantpetitioner is most ridiculous. The applicantpetitioner was a member of the disciplined force. The inquiry report in which the statement of the applicantpetitioner Ram Mehar was recorded revealed that the brotherinlaw of the applicant petitioner Ram Mehar (Ramesh Chand) had died about a week prior to 9.3.2003. The applicantpetitioner was sanctioned and he availed of two days leave due to the death of his brotherinlaw. After having resumed his duties thereafter, he again applied for further leave"... to finish some customary work..." for two further days i.e. 8th and 9th of March, 2003, but he was denied the aforesaid leave on account of the Railway Recruitment Board examination to be held at Chandigarh. In the instant facts and circumstances of the case, it is not possible for us to conclude that the applicant petitioner was denied leave sought by him, on account of the death of his brotherinlaw Ramesh Chand. In fact, he was sanctioned two days" leave for the said purposes which he availed. Further leave sought by him was denied to him for valid reasons. There was no justification whatsoever for the applicantpetitioner to retaliate, and to behave in the manner that he did. He was found guilty of being under the influence of liquor for disobeying orders of his superiors, as also remaining absent without due authorisation. Neither of these actions at his behest can be treated as acceptable reactions of a member from a disciplined force. We also find no merit

in the contention of the learned counsel for the applicantpetitioner, that he had been provoked to behave in the manner that he did. It is, therefore, not possible for us to accept the instant contention advanced by the learned counsel for the applicantpetitioner.

25 The last and the tenth contention advanced by the learned counsel for the applicantpetitioner was, that as a matter of fact the applicantpetitioner was not deployed at any office at Kalka but he was deployed at the Chairman's residence. It is the submission of the learned counsel for the applicant petitioner, that the initiation of departmental action against the applicant petitioner was on account of the annoyance of the Chairman at whose residence he was posted. It is submitted that it is impossible for a petty constable to fight the might of the Chairman. As such, it is the contention of the learned counsel for the applicantpetitioner, that the entire inquiry proceedings should be set aside.

26 After the learned counsel for the applicantpetitioner had advanced his last i.e., the tenth submission, we inquired from the learned counsel for the applicantpetitioner the basis on which he had advanced the instant contention. We pointed out that even in the pleadings of CWP No. 18346 of 2005, the applicantpetitioner had not raised any such plea. In response to our query, learned counsel for the applicantpetitioner stated that if he had been the counsel in CWP No. 18346 of 2005, he would have definitely raised the instant point, and that under no circumstances the order dated 25.11.2005, could have been passed if such a plea had been raised. It was the submission of the learned counsel for the applicantpetitioner, that the instant plea should now be allowed to be raised in the interest of justice.

27 Having given our thoughtful consideration to the last contention advanced by the learned counsel for the applicantpetitioner, we are of the view that the same is as preposterous as any other submission advanced by him. No such plea is shown to have raised by the applicantpetitioner either in response to the chargesheet or even in response to the inquiry report furnished by him. No such plea is shown to have been raised even in the writ petition filed by the applicantpetitioner. It seems to us that the instant plea is also the brain child of the learned counsel for the applicantpetitioner. We are constrained to record the instant inference because of a number of submissions made by the learned counsel which were totally contrary to the stance adopted by the applicantpetitioner before the Inquiry Officer. We, therefore, find no valid justification to accept the instant contention advanced by the learned counsel for the applicantpetitioner.

28 By the time, learned counsel for the applicantpetitioner had concluded his submissions, he had taken well beyond two hours of Court time. Two hours of this Hon'ble Court actually adds upto about 1/4th of a day's working hours. In our considered view, the conclusions recorded in each of the submissions made by the learned counsel for the applicantpetitioner reveal, that the same were wholly misconceived, irresponsible and preposterous. A number of pleas raised

by him were contrary to the record of the case. Some of the pleas were raised by projecting false facts. At the end of each submission, we politely reminded learned counsel of his professional responsibility to the Court. We could not be harsh towards him, because of his apparent seniority, as also because he told us that he ordinarily practices at Delhi, but had specially been engaged for this case. We are however saddened to record that his conduct was unprofessional and also possibly unethical. A review petition can only be entertained if a certificate is furnished by a counsel affirming that there are sufficient grounds to review the order in respect of which such an application is filed. The applicant/petitioner duly furnished such a certificate (which has been extracted above). As and when we posed questions to the learned counsel for the applicant/petitioner on the various issues raised by him, his stock reply was, that the original writ petition was not filed by him, and that the earlier counsel had drafted the petition without due application of mind. He repeatedly contended that if he had been the counsel at the stage of filing the writ petition, the grounds raised by him in the review application would have been raised and pressed. He repeatedly also contended that the faults of the counsel engaged at the time when the writ petition was filed, should not result in injustice to the applicant/petitioner. It is, therefore, apparent that he did not even spare the counsel engaged by the applicant/petitioner at the writ stage, despite the hollowness of each one of his submissions, as have been dealt with hereinabove. He harped on the plea of justice, as well as, mercy. A senior counsel of the standing of Shri O.F. Aggarwal, who addressed ten most frivolous submissions during the course of arguing the instant review application, and took more than two hours of Court time of a Division Bench is definitely deplorable. He seems to have no sense of responsibility towards the Court. In fact, in our considered view, learned counsel for the applicant/petitioner has not shown responsibility even towards his client. On hearing some of the pleas raised by him, we were wonder struck that a counsel of his standing could raise and press such pleas. Mr. O.F. Aggarwal, Advocate, failed to adhere to our polite advice tendered to him to confine himself to the parameters of Order XLVI1 rule I of the Code of Civil Procedure. Everything we stated fell on deaf ears. We had no alternative but to politely hear and to note down the various submissions advanced by him. At the conclusion of his submissions, we realised that he has done serious damage to the Court. He argued this application before a packed Court room. He proved to be a positive hinderance to Court proceedings, where a full Court room waited for him to conclude. If his submissions were even arguable, whether we accepted the same or not, not only the time taken, but even further time would have been considered as well spent. But that was not so in the instant case. Others who had seen and heard him may behave in the same fashion, if we let this incident pass by. No one has the right to waste Court time. In the instant case, we are fully satisfied that the certificate issued by the learned counsel for the applicant/petitioner at the time of filing the review application, as also the submissions advanced by him were most irresponsible. We, therefore, as a deterrent to such behaviour in future, impose Cost on the learned counsel for the

applicantpetitioner, to be paid by him and not his client, quantified at Rs. 1.00,000/. The applicant petitioner cannot be blamed for the actions of his counsel. The aforesaid costs shall be deposited by the learned counsel for the applicantpetitioner Mr. O.P. Aggarwal. with the Legal Services Committee of the High Court within three months of the pronouncement of the instant order. Disposed of in the aforesaid terms. Order accordingly.