2023:DHC:5413-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 25th January, 2023***
Pronounced on: 03rd August, 2023

\+ **W.P.(C) 123/2018**

NASIMUDDIN ANSARI ..... Petitioner

Through: Mr. Tapan Das, Advocate

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena, Mr. Mukesh Kumar tiwari, Ms. Poonam Shukla and Ms. Reba Jena Mishra, Advocates. SAO Naveen Bhardwaj, OS D.K. Mishra and NB Sub. Shyam Singh Negi, for UOI.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing of Memorandum dated 29.11.2012 along with the Charge Sheet issued by respondent no. 1; the Tentative Disagreement Note 11.07.2017 and the Order dated 26.10.2017 vide which the penalty of "*Reduction to a lower stage in the time-scale of pay by three stages for a period of one year with further direction that the petitioner shall not earn increment of pay during the period, though*

reduction shall not have a future effect of postponing his increments" has been imposed upon the petitioner.

2. The petitioner upon his selection by UPSC, was appointed as Assistant Executive Engineer (Electrical & Mechanical) in Border Road Engineering Service on 20.06.1990. He was promoted to the post of Executive Engineer on 01.06.2005 w.e.f. 2003-2004. He was then appointed as a Commanding Officer in 1064 Field Workshop in Manipur under 25 BRTF Project Sewak from July, 2010 till September, 2013.

3. In the following year, Recruitment Board of vehicle mechanics at General Reserve Engineering Force Centre, Pune (*hereinafter referred to as* "GREF") was set up by the Chief Head Quarter, Dimapur. Lt. Col. S.S. Sisodia was appointed as the Presiding Officer. The petitioner was deployed as first member and S.K. Mendhapure was appointed as the second member of the Recruitment Board.

4. Some irregularities were alleged to have taken place during the recruitment process at Pune and Rishikesh by the Recruitment Board. Ministry of Road Transport and Highways, Border Road Development Board pursuant to its Order dated 27.06.2011 got a Preliminary Enquiry conducted by Shri Ghasi Ram, Chief Engineer who gave a Preliminary Enquiry Report dated 22.07.2011 noting certain irregularities and involvement of both Army and GREF officers.

5. Consequently, the Government decided to hold a Court of Inquiry vide two separate Orders dated 13.06.2012 and 21.09.2012 with Brig. K.C. Panchnathan as the Presiding Officer.

6. The petitioner was served with the Memorandum dated 29.11.2012 with Statement of Articles of Charge; *first* pertaining to the alleged

irregularity in awarding 75 out of 75 marks to 33 candidates in the written test for recruitment to the post of Vehicle Mechanic, and *secondly*, irregularity in evaluation of 13 Answer Sheets. It was alleged in the Memorandum that when the candidates were evaluated again, they secured far less marks ranging between 27 to 30 marks and some of them even secured zero.

7. The petitioner wrote a letter dated 11.12.2012 refuting all the charges and allegations and requested for a copy of the Preliminary Inquiry.

8. As things stood thus, a Departmental Enquiry was initiated with Shri Subrata Aich Joint Director (Admn.) (Retd.) and Sh. M.B. Negi EE (E&M) appointed as Inquiry Officer and Presenting Officer respectively by the Ministry of Road Transport and Highway, Boarder Road Development Board, vide Order dated 14.05.2013.

9. In the Departmental Enquiry, the State did not examine any witnesses. The petitioner, however, submitted his defence statement on 23.09.2013 refuting all the allegations, examined the prosecution witnesses namely Lt. Col. S.S. Sisodia, the Presiding officer of the Board, and S.K Mendhapure, the second member of the Board, as his defence witnesses.

10. Lt. Col. S.S. Sisodia deposed that the evaluation of the answer sheets was done correctly. In his cross-examination, he stated that out of 51 answer sheets, only 23 answer sheets were checked by the petitioner and the Charge framed under Article I was baseless. In respect of charge in Article II, he deposed that the Charged Officer had checked only 5 answer sheets out of 13 and all the 5 answer sheets had been evaluated

correctly. He had also stated that the evaluation of answer sheets is the collective responsibility of Board of Officers (BOO) and recruiting Wing of GREF Centre as per the Directions/Guidelines issued by Head Quarter, DGBR.

11. The Inquiry Officer, on the basis of evidence and documents produced, concluded in his Inquiry Report dated 28.11.2013 that the Charges were not proved. The copy of Inquiry Report was served upon the petitioner, on receipt of which he submitted his Representation on 12.06.2014 requesting the Authorities to issue formal order of exoneration.

12. Pertinently, in another case, a penalty of recovery of 20% of Loss of Amount of Rs. 19,83,468.49/- from the salary of the petitioner was imposed, which was recoverable in 100 equal monthly instalments from December 2009, which also blocked his promotion. The penalty was however, quashed by High Court of Gauhati vide Order dated 27.09.2015 in WP(C) No.304/2010.

13. **The petitioner has asserted** that the senior and superior officers got annoyed by the decision of Gauhati High Court and decided to fix the petitioner with trumped up allegations.

14. The petitioner then wrote a letter dated 04.08.2016 to the Headquarter, DGBR expressing his grievance in respect of blocking his legitimate promotion to NFSG and NFU with effect from 2010-2011, despite clear Order of the DOPT vide OM No.21/5/70/Ests (A) dated 15.05.1979 and OM No.22011/2/78-Estt(A) dated 16.02.1979. The petitioner asserted that keeping the outcome of DPC in sealed cover after conclusion of Departmental Proceedings, was illegal and requested them

to consider him for promotion w.e.f 2010-2011. This infuriated his seniors further who with malafide intention, instead of accepting the Inquiry Report dated 28.11.2013 which gave a clean chit, directed further enquiry to examine all the relevant documents and witnesses vide letter dated 11.11.2016 i.e. after a gap of three years which was unmistakably liable to be quashed. There is unconscionable delay of three and a half years in recording the dissent by Disciplinary Authority. On examining the matter afresh, the Inquiry Officer arrived at the same conclusion vide the Final Inquiry Report dated 22.12.2016.

15. The petitioner then filed Contempt Petition No.79/2017 before the Gauhati High Court, but the same is pending in view of the stay granted by the Division Bench of the same High Court in a belated Appeal filed by respondent no. 1 against the original Order of the High Court dated 20.09.2015.

16. It is asserted that the filing of Contempt Petition by the petitioner triggered virulent reaction from respondent no. 1, who in the absence of any material whatsoever, tentatively placed its Disagreement Note dated 11.07.2017 with Inquiry Report dated 22.12.2016 and directed the petitioner to submit representation, if any. The petitioner then sent his representation dated 09.08.2017 in which he vociferously and vehemently refuted all the allegations imputed on him.

17. The petitioner has contended that the Tentative Disagreement Note dated 11.07.2017 suffers from perversity as the contradictions recorded in the said Note were fallacious and based on no evidence whatsoever. The Tentative Disagreement Note exposes the predisposed mindset of respondent no. 1 to inflict penalty on the petitioner irrespective of the

representation made by him.

18. The Disciplinary Authority vide impugned Order dated 26.10.2017 mechanically recorded that Charges were proved and held the petitioner guilty and imposed the penalty of "*Reduction to a lower stage in the time-scale of pay by three stages for a period of one years, with further direction that the CO shall not earn increment of pay during the period, and the reduction will not have the effect of postponing his future increments"* which had the effect of reducing his salary to the tune of Rs.10,000/- per month and blocking his promotion in near future.

19. **It is submitted by the petitioner** that Preliminary Enquiry was conducted at the back of the petitioner, without providing him an opportunity to be heard. The Charge Sheet dated 29.11.2012 was framed based on the outcome of the Preliminary Enquiry conducted by Sh.Ghasi Ram, CE even prior to the conclusion of the Court of Inquiry proceedings being held by Brig. K.C. Panchnathan which finally gave a finding of the Charges "not proved" which discredit the Preliminary Inquiry and vitiate the Charge Sheet as well.

20. The petitioner has submitted that though the Disciplinary Authority has the power to differ from the findings of the Inquiry Officer, but such a dissent cannot be based on mere conjectures and surmises. Establishing the existence of compelling material and the perversity in the Inquiry Report is a *sine qua non*. Moreover, Disciplinary Authority could not have differed from the Inquiry Report of "*No guilt*" given by Court of Inquiry as a matter of course, as it amounts to abuse of power.

21. The petitioner has claimed that according to the respondents there were total 819 papers that were evaluated by the Board which comprised

of three members. 300 papers would then have come to the petitioner which would have been evaluated by him. So far as the *First Charge* is concerned, it could not be proved and in respect of *Second Charge* the Presiding Officer had deposed that petitioner had evaluated only five papers and all had been evaluated correctly. There was no documentary or ocular evidence to the contrary against the petitioner that any irregularity was committed by in the course of evaluation of papers.

22. The petitioner has further asserted that Respondent no. 2 disregarded the unimpeachable testimony of Col. S.S. Sisodia that the selection was the *collective act* of the Recruitment Board. The Disciplinary Authority has singled out the petitioner for disciplinary action and imposed major penalty to the exclusion of other members of the Board. The impugned penalty suffers from perversity in the absence of any material.

23. The petitioner has assailed the Order of major penalty on the ground that the was repeated delay at every stage of Enquiry in contradistinction to his right to speedy enquiry guaranteed under Articles 14, 16 and 21 of the Constitution which has been violated . Moreover, the impugned act is discriminatory as the petitioner has been singled out despite collective responsibility of all the members of the Board which is in violation of Article 14 of the Constitution of India. There is victimization of the petitioner and the impugned action is liable to be quashed.

24. **Respondent No.1 and 2 in their counter-affidavit** have explained that the process of recruitment for BRO to be followed by the BOO entails the following steps:

(i.) *Verification of documents of candidates followed by physical test and preparation of list of successful candidates by BOO;*

(ii.) *Viva voce to be conducted by BOO followed with interview by Commandant;*

(iii.) *Written examination to be conducted and thereafter the coding was to be done by OIC;*

(iv.) *The Presiding Officer thereafter were to collect the model solution from Commandant GREF centre and check the papers/ answer sheets of the candidates; and*

(v.) *Compile the result of the test and submitted to the Recruitment Wing.*

25. The recruitment process started on 10.03.2011 and was completed on 30.03.2011 and the results were finally submitted to Recruitment Wing by the Board of Officers. After the recruitment process got over, some oral as well as written complaints were received by the Secretary, Border Road Development Board (BRDB) with the allegations that some candidates had paid for their selection.

26. A preliminary enquiry in view of these complaints, was ordered vide ID Note dated 27.06.2011 which was duly approved by Raksha Mantri (RM). In the preliminary enquiry conducted by Shri Ghasi Ram, there were six officers and eleven GREF officers found responsible for the irregularity and accordingly action has been taken against all of them. It was found that selection/ recruitment process undertaken by the Board of Officers for Vehicle Mechanic was not transparent and fair resulting in excess recruitment of non deserving candidates and opined that the entire Board of Officers was involved in the irregularities.

27. Pursuant to this Preliminary Report, Ministry of Road Transport and Highways, BRDB issued a letter dated 21.02.2012 to DGBR

informing that in terms of the Inquiry Report, the Hon'ble RM had cancelled the entire selection process as the Officers of the Board were found prima facie responsible for vitiating the selection process. Therefore, disciplinary action was recommended to be taken by Adjutant General against the GREF Officers and the Army Officers, under the Army Act, 1950. The draft charges framed vide letter dated 21.02.2012 under Rule 14 of CCS(CCA) Rules, 1965, were issued to the petitioner and other Officers. It is denied that the petitioner had been singled out or there was any discrimination. Shri S.K. Mendhapure the second officer of the Board was also issued the Charge Sheet under Rule 13 of CCS (CCA) Rules. It is, therefore, submitted that due procedure has been followed for imposing the penalty on the petitioner and the petition is liable to be dismissed.

28. DGBR, in due compliance of the procedure, issued letter dated 17.03.2012 to the petitioner seeking his response which was responded by him vide his letter dated 26.03.2012. In the meanwhile, the Department also approached Central Vigilance commission (CVC) seeking their advise on the aspect of initiating disciplinary proceedings against the petitioner. CVC vide its letter dated 25.10.2012 advised to initiate major penalty proceedings against the petitioner and other charged officers.

29. In terms of advice of CVC and the Preliminary Enquiry Report, a Memorandum dated 29.11.2012 along with Articles of Charges was issued by BRDB. The petitioner was directed to submit his response/ written statement of defence within ten days from the date of receipt of the Memorandum. The petitioner submitted his written Representation vide letter dated 22.12.2012 denying the charges and asserted that the

Preliminary Enquiry had been held in his absence without giving him any opportunity to give his statement of defence and thus, it was not possible for him to submit his version on the proposed Articles of charge. He also made a request to be provided with copy of Preliminary Enquiry.

30. The Disciplinary Authority not being satisfied with the Representation of the petitioner, vide its Order dated 14.05.2013 directed an enquiry to be conducted under Rule 14 of CCS (CCA) Rules and appointed Shri Subrata Aich, Joint Director (Admin) as the Inquiry Authority. The Inquiry Officer conducted the enquiry and submitted the Inquiry Report dated 28.11.2013 to DG, Border Road which was directed to be forwarded to the petitioner for his written representation, if any, vide letter dated 24.04.2014.

31. The representation dated 12.06.2014 of the petitioner, seeking for his exoneration was forwarded by Dy. Director, D&V to Director and CVO in the Secretariat of BRDB.

32. In the interim, vide Notification dated 09.01.2015 the functioning of BRO was shifted from Ministry of Road Transport and Highways to Ministry of Defence. Since, there was a change in Disciplinary Authority, the Inquiry Report of the petitioner was presented before the Disciplinary Authority, Ministry of Defence, wherein the Department of Vigilance found some procedural lapses/ lacunae in the Departmental Enquiry and requested vide its letter dated 09.09.2016 to the Inquiry Officer to conduct further enquiry and to give fresh opinion. The Inquiry Officer reaffirmed his findings vide his letter dated 29.09.2016.

33. The Disciplinary Authority after examining the letter dated 29.09.2016 of the Inquiry Officer observed that the justification given by

the Inquiry Officer was not convincing and Departmental Enquiry was quasi-judicial in nature and it was subject to judicial scrutiny.

34. Inquiry Officer further gave a report along with original Inquiry Report vide letter dated 22.12.2016 reaffirming that the charges were not proved. The Disciplinary Authority gave its Disagreement Note to the Inquiry Report on 11.07.2017 to which the petitioner gave his Representation dated 09.08.2017, after which the penalty was imposed on the petitioner.

35. In response to the contention regarding the singling out of the petitioner, it is stated that penalty has been imposed against the Presiding Officer and the second member as well.

36. The respondents have submitted that there were irregularities noticed in the recruitment and final selection process of the candidates. When finally selected candidates were asked to attempt the same question paper again, their performance was very poor and scored marks ranging between 27 to 30 and some candidates scored zero. It cannot therefore, be disputed that the recruitment process was tainted with illegalities.

37. It is further asserted that the Inquiry Officer had erroneously held that the Charges against the petitioner were not proved. The Disciplinary Authority itself had gone through the record and after examining the same with objectivity and purpose, disagreed with the findings of the Inquiry Officer and gave an opportunity to the petitioner to represent against the Note of Disagreement.

38. The respondents have claimed that the petitioner has not challenged the basic facts that the candidates were unable to solve the same question paper when they were subjected to repeat the same test to check their

basic knowledge, but the petitioner has only challenged the Memorandum of Charge dated 29.11.2012, Disagreement Note dated 11.07.2017 and Penalty Order dated 26.10.2017 which is untenable and the petitioner cannot escape the consequences originating from the irregularities and illegalities committed in the recruitment process.

39. It is further asserted that the procedure has been duly followed for imposing penalty under CCS (CCA) Rules, 1965 and the opportunity for representation was duly given to the petitioner before imposing the penalty. In so far as the claim of the petitioner that he was not allowed to participate in the Preliminary Enquiry, is concerned it was only a Fact Finding Enquiry and the petitioner was not required to participate in the same. The petitioner has not disputed that even during the Preliminary Enquiry, he was asked to respond to the questionnaire, which he did and thereafter a regular Enquiry under Rule 14 was conducted in which the petitioner had participated. Therefore, his objection that he was not allowed to participate in Preliminary Enquiry is baseless and without any ground.

40. It is submitted that the since the petitioner is under the "*is paid out of the defence service estimates*", it is not necessary to consult the UPSC as per the Chapter XVI para 3 (i) of the CVC Manual. It is also stated that the petitioner had the alternate remedy of Review available under the CCS (CCA) Rules, 1965 but instead of availing it, he has approached the High Court.

41. The **petitioner in his rejoinder** has reaffirmed the assertions as contained in the Writ Petition.

42. **In the written submissions, the petitioner has asserted** that the

Inquiry Officer had exonerated the petitioner since the charges framed were fictitious, despite which the Department has maliciously given a Dissent Note without consulting UPSC which is in violation of settled law and the punishment imposed upon the petitioner is liable to set aside.

43. The petitioner in support of his case has relied upon the following judgments:

(i) *Roop Singh Negi vs. Punjab National Bank & Ors.* (2009) 2 SCC 570;

(ii) *Govt. of A.P. and Ors. Vs. A. Venkata Raidu* (2007) 1 SCC 338;

(iii) *Union of India and Ors. Vs. Laxman Prasad* 2019 SCC OnLine Del 9027; and

(iv) *Satpal vs. UOI* W.P.(C) 5469/1998 decided on 01.08.2012.

44. **Respondent no. 1 in its written submissions** has reaffirmed his stand as taken in the counter-affidavit and has asserted that no interference is warranted in the Penalty Order dated 26.10.2017.

45. **Submissions heard**.

46. The petitioner has sought directions for quashing the Memorandum along with the Articles of Charge dated 29.11.2012, the Tentative Disagreement Note dated 11.07.2017 and the Disciplinary Order dated 26.10.2017 issued against him.

47. Admittedly, a Board Of Officers (BOO) of GREF for filing up the vacancies of Vehicle Mechanics in the Force, was constituted of which Lieutenant Colonel S.S. Sisodia was the Presiding Officer while the petitioner and S.K. Mendhapure were the First and Second member respectively. A Fact Finding Enquiry was held which gave its Report dated 22.07.2011 which noted certain irregularities and involvement of

both Army and GREF officers and recommended that the existing BOO should not be involved in future recruitment. On the basis of this Enquiry, a Departmental Enquiry was initiated in which the petitioner participated and examined his witnesses, who were none other than the witnesses of the Department. The petitioner has claimed that despite the exculpatory testimony of his witnesses, he has been penalized with imposition of major penalty by the Disciplinary Authority.

I. Infirmities in the Preliminary Enquiry and the consequent vitiation of the Charge Sheet.

48. The first ground of challenge is that the petitioner was not allowed to participate in the Preliminary Enquiry. However, as has been rightly explained by the respondents, it was only a Fact Finding Enquiry to ascertain the facts before initiating any disciplinary action for which the participation of petitioner at this stage is neither mandated nor warranted. The procedure of Fact Finding Enquiry has been conceptualized as a first step in any disciplinary action to determine the facts before subjecting any officer to the rigors of Departmental Enquiry. It is a process to alleviate any unwarranted harassment of the petitioner, of which no grievance can be made by the petitioner.

49. This view is supported by the observations of Allahabad High Court in *Gopal Ji Rai vs. State of UP*, 2006 (63) ALR 616 that no statutory provision or other established legal rule mandates that delinquent employees be given the chance to participate in a preliminary enquiry. This enquiry is merely an inquiry into facts to determine whether or not the allegations made against the employee in question deserve any probe and whether or not a departmental investigation should be initiated.

There is no reason for participation of the employee in the aforesaid proceedings.

50. Based on the determination of suspicion in the preliminary enquiry, the Disciplinary Authority is entitled to arrive at an opinion on whether there exist any grounds for enquiry under Rule 14 (2) of the CCS CCA Rules, 1965. The provision reads under:

> *"(2) Whenever the disciplinary authority is of the opinion that there are* ***grounds for inquiring i****nto the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."*

51. Section 2 of the Public Servants (Inquiries) Act, 1850 empowers the Government to draw Articles of Charge on such imputations. The provision reads under:

> *"Whenever the Government shall be of opinion* ***that there are good grounds for making a formal and public inquiry*** *into the truth of any imputation of misbehaviour by any person in the service of the Government, not removable from his appointment without the sanction of the Government it may cause the* ***substance of the imputations to be drawn into distinct articles of charge, and may order a formal and public inquiry to be made into the truth thereof."***

II. Alleged infirmities in framing of charges.

52. The charges were framed based on the initial opinion of fact finding inquiry by the disciplinary authority as under:

> *"**Article I***
> *That the said Md Nasimuddin Ansari, EE(E&M) of 1064*

FW (P) Sewal as 1st member of Board of Officer for Recruitment to the post of Vehicle Mechanic at GREF Centre, Pune committed irregularities during the recruitment/ selection of candidates to the post of Vehicle Mechanic for BRO as ***33 candidates have been awarded 75 marks out of 75 marks in written test*** *for recruitment to the post of Veh Mech, in GREF Centre, Pune. Out of these 33 candidates 28 were selected and no candidate from other centres was awarded full 75 marks.* ***When these 28 selected candidates were given the same question paper after some time, none of these 28 candidates could get 75 marks.*** *In fact some of these candidates secure as little as 27 to 30 marks. This gave ground for suspicious that these 28 selected candidates did not actually know the answers because the knowledge once gained, does not fade away so quickly. If approved that these 28 candidates were allowed to adopt unfair means for attempting' answers to some question which they actually did not know that's why they could not give correct answers in the repeat test. They performed even worse when another question paper designed to test their basic knowledge on vehicle mechanism, was given to them some of these 28 candidates who had secured full marks obtained '0' marks out of 45 marks. This fact has confirmed the suspicious that these selected candidates had no basic knowledge of vehicle mechanic's trade and would have committed blunders if allowed to continue in the department.*

Article II

That the said Md Nasimuddin Ansari, EE(E&M) of 1064 FW (P) Sewak as 1st member of Board of Officer for Recruitment to the post of Vehicle Mechanic at GREF Centre, Pune during the recruitment/ selection of candidates to the post of Vehicle Mechanic for BRO, ***made wrong evaluation in 13 answer sheets****. 9 candidates out of these 13 cases have scored between 64.5 to 75, marks in written test. After re-evaluation the*

merit position of these 9 candidates has undergone change"

53. The petitioner has asserted that there are serious infirmities in the Preliminary Enquiry and that the Articles of Charge dated 29.11.2012 framed on the basis of the Preliminary Enquiry also stands vitiated. Ad rem to this contention, it must be borne in mind that a cause of action arises under Article 226 of the Constitution of India for the petitioner only when a right has been infringed. A Charge Sheet filed against an officer thus, cannot be quashed per se by a court as it does not adversely affect the rights of a delinquent employee as held in the case of *Secretary, Ministry of Defence vs Prabhash Chandra Mirdha*, AIR 2012 SC 2250.

54. Furthermore, the petitioner has placed reliance on *Venkata Raidu* (supra) to posit that the charges framed are vague in nature. However, this Court sees no merit in this contention; more so when the Charge Sheet has already culminated into final order.

55. The petitioner has further asserted that the entire process of the Preliminary Inquiry stood vitiated as eventually the Court of Inquiry found that the petitioner was not blameworthy. In this regard, it is pertinent to clarify that no documents regarding the outcome of the Court of Inquiry presided by Brig. K.C. Panchnathan, have been produced. Therefore, it is unclear if the said Court of Inquiry was completed or abandoned. Moreover, the outcome of the said Court of Inquiry is irrelevant as the Disciplinary action was initiated under Rule 14 (2) of the CCS (CCA) Rules, 1965 which contains a complete procedure. The impugned Disciplinary Order dated 26.10.2017 is based on the proceedings under CCS (CCA) Rules, 1965 and the petitioner has not

been able to highlight any procedural infirmity or non-applicability of CCS Rules.

III. Challenge to the penalty in the light of the two of Departmental Inquiry Reports exonerating the Petitioner: Tentative Disagreement Note based on no evidence.

56. The petitioner faced the Disciplinary Enquiry in two stages since 2011; one in 2012 in which the charges were found "*Not Proved*" *vide* Report dated 28.11.2013 and in 2016 when further enquiry was directed when he was again found not at fault vide Final Report dated 22.12.2016.

57. The respondents have explained that the first Enquiry was conducted while the BRO was under the Ministry of Road Transport which was shifted to Ministry of Defence vide Notification dated 09.01.2015. This change in Ministry led to a change in the Disciplinary Authority as well. Apparently, the Inquiry Report was sent to UPSC and in view of the observations of UPSC with respect to the non-compliance of Rule 14 (18) of the CCS CCA Rules, 1965, further enquiry was directed vide letter dated 11.11.2016, which reads as follows:

> *"It is further stated that Departmental Enquiries are quasi judicial in nature and in many cases the same are subject to judicial scrutiny and also inquiry gets vitiated due to non compliance of procedural formalities. Moreover, in the above cases, the UPSC have observed the above procedural deficiency and the Commission is very particular in fulfilment of procedural requirement. Further, you have been requested to hold further Inquiry in the above cases after due approval of the Disciplinary Authority."*

58. Respondent no. 1 has not been able to show any other procedural irregularity the lacunas or any challenge on merits in the findings of First

DE. However, in view of the opinion of the UPSC, of certain procedural irregularities, the matter was referred back for further enquiry on vide letter dated 09.09.2016 by the Disciplinary Authority, Ministry of Defence and the outcome of charges "*not proved*" as given in the Inquiry Report was again confirmed on 22.12.2016 by the Inquiry Officer Subrata Aich. This also explains the period of three and a half years taken to complete the disciplinary proceedings.

59. The tenacity of the Disciplinary Authority to somehow penalize the petitioner is evident from the fact that despite the finding of charges "*not proved*" twice, it still held the petitioner responsible and thus, gave a Disagreement Note and sought the response of the petitioner.

60. While it is not in dispute that the Disciplinary Authority is not bound to accept the findings of Inquiry Report and can form its independent opinion, but this can be done only on justifiable grounds and not on whimsical, capricious and non-existent ones.

61. No evidence was led by the respondents in both stages of Departmental Enquiry. The reason for non-examination of Lt. Col. S.S. Sisodia and S.K. Mendhapure who were cited as State Witnesses, was that they had also been implicated for the same Charges as the petitioner as was mentioned in Inquiry Report dated 28.11.2013 as under:

> *"The PO stood by the charges framed against the CO as mentioned in the Memorandum No. BRDB/13(14)/2011/GE-ll dated 29 Nov 2012**. The State Witness was not called by him as they were also implicated in the same case but alternatively he cross-examined the Defense witneses effectively** to bring out the facts. He has also submitted his BRIEF accordingly."*

62. On the other hand, Lt. Col. S.S. Sisodia and S.K. Mendhapure, two

State witnesses were examined by the petitioner as his defence witnesses.

63. Shri. Lt. Col. S.S. Sissodia deposed thus:

> *"**Examination Of Defence Witness Shri Lt. Col S.S. Sissodia:***
> *...Q3. How many answer-sheets have been checked by me?*
> *Ans: The SE-26, 37,40, 41 and 45 have not been checked by me. But to the best of my knowledge and belief, after seeing the initials on the Answer Sheets, those were checked by you.*
> *Q4. Have they been correctly evaluated?*
> *Ans: Yes. During this DE, I have again cross-checked the **evaluation of the Answer sheets and found that the evaluations has been done correctly.***
> *05. How many answer-sheets have been checked by you among SE-1,20, 22, 33, 38, 42 and 48?*
> *Ans: After seeing the initials on the first page of the Answer sheets and tick marks on the answers accept that SE-1, 20,22,33,38 and 48 have been checked by me.*
> *06. SE-36 does not pertain to Pune Centre. Is it correct?*
> *Ans: Yes. The SE-36 does not pertain to GREF Center Pune as it has the Round Stamp of Recruitment Zone Rishikesh on all the three pages."*

64. It may also be mentioned that Lt. Col. S.S. Sisodia has deposed that full marks were awarded in Q7 and Q11 to all the candidates based on the instruction given by the Commandant, GREF. Respondent no. 1, however, did not even make the efforts to examine the Commandant, GREF to rebut this testimony.

65. **Shri S.K. Mendhapure**, the second defence witness deposed thus:

> *"Examination Of Defence Witness Shri Sk Mendhapure*
> *...Q3.How many answer-sheets have been checked by me?*
> *Ans: SE-26, 37, 40, 41 and 45.*
> *Q4.Have they been correctly evaluated?*
> *Ans:Yes.*

Q5. How many answer-sheets have been checked by you among SE-1, 20, 22, 33, 38, 42 and 48?
Ans: SE-42.
Q6. SE-36 does not pertain to Pune Centre. Is it correct?
Ans: Yes. Correct."

66. Based on this evidence, once in the Report dated 28.11.2013 and second time in Final Report dated 22.12.2016 the petitioner was found not at fault.

67. A Tentative Disagreement Note dated 11.07.2017 was thus put in respect of the Charge II alone. Respondent no. 1 has not challenged the findings of Inquiry Officer on First charge in regard to awarding of full marks to the 33 candidates whose answer sheets were corrected by the Petitioner, **but held that Charge II appeared to be proved, which was in respect of the 13 answer sheets.** The relevant paragraph from the Tentative Disagreement Note has been extracted below:

"Tentative reasons of disagreement by the Disciplinary Authority
The charges under Article II were not proved by IO primarily based on followings:

(i) The contention of the CO that out of 13 Question-cum-answer Sheets, ***only 3 were checked by him*** *and the remaining Question-cum answer Sheets were not checked by him and that these 3 Question cum- answer sheets of S/Shri Karankal Sachin Dhanraj, Kalinkar Padamkar Kamlakar and Markam Sanjay Channilal were correctly checked.*

(ii) Statement of both the Defence witnesses (i.e. Lt Col SS Sisodia and Shri SK Mendapure) that only 5 ***Question-cum-answer Sheets (SE-26, 37, 40, 41 and 45) were checked by the CO*** *and evaluated correctly.*

> *2. The above findings have **following shortcomings:***
> *(a)First of all, statements under para (i) and (ii) above are contradictory. Thus, the IO has failed to bring out the true fact of the case.*
> *(b)The charged officer was the 1st member of the Board and in this capacity, he was duty bound to ensure that evaluation of Question-cum answer Sheets were completed correctly. Contention of the CO that he checked only 3 Question-cum-answer Sheets; and finding of the 10, that he checked **only 5 answer scripts, which were not found wrong**; are not relevant, as the Board members were jointly and individually responsible for ensuring fairness and rightful selection of candidates. The BOO entrusted with the duty of conducting competitive examination ought to have done the examination objectively, fairly and dispassionately.*
> *(c) **The visual inspection of Question-cum-answer** Sheets in respect of' - following candidates revealed that there were wrong evaluation of marks by the BOO at the time of selection, which lead to preparation of defective merit list:- ...*
>
> *** *** ***
>
> *3. From the above, it is observed that the Charged Officer failed in his duty individually and collectively as member of the Board of officer and evaluation of question cum answer sheets could not be done fairly and correctly. Thus the charge under **Article-II appears as proved**."*

68. The petitioner has asserted that the Tentative Disagreement Note dated 11.07.2017 is based on no evidence as the contradictions alluded to by respondent no. 1 do not display any incongruity in the findings of the Inquiry Officer.

69. The Disagreement Note did not agree with the findings of the Inquiry Officer in respect of Second charge on the ground that there was a contradiction in the statement of the petitioner and his witnesses. Even though the petitioner initially took a stance that only 3 answer sheets were evaluated by him, Lt. Col. S.S. Sisodia and S.K. Mendhapure, the Presiding Officer and the Second Member confirmed that he has evaluated 5 answer sheets, and that all the 13 answer sheets as imputed in the Charge II, were not corrected by the petitioner. Conspicuously, there is no material contradiction as it was proved from the evidence that out of the 13 answer sheets mentioned in Charge II, only five and not three answer sheets were corrected by the petitioner.

70. Respondent no. 1 asserted that the Answer Sheets mentioned in Charge II were revaluated which resulted in a drastic change in the results of those candidates. It is further asserted that "*the visual inspection of Question-cum-answer Sheets in respect of' - following candidates revealed that there were wrong evaluation of marks by the BOO at the time of selection, which led to preparation of defective merit list".* Now, there is no explanation as to what *"visual basis"* reflected evaluation was incorrect. There cannot be more vague reasoning sans any explanation or evidence, which warrants immediate intervention by this Court.

71. This court *vide* Order dated 16.12.2016 directed the respondents to produce the original records of the revaluated 13 Answer Sheets that were referred to under Charge II and from their perusal, it was not clear from the photocopies whether those Answer Sheets were in fact re-evaluated since the re-evaluated marks are not reflected in the Answer Sheets. This court is of the view that even the original Answer Sheets produced in the

Court did not reflect any basis from which the wrong evaluation of Answer Sheets could be assessed.

72. In *Nirmala J. Jhala vs State of Gujarat & Another*, (2013) 4 SCC 301, the Apex Court places reliance on the judgement in *M.V. Bijlani vs Union of India*, (2006) 5 SCC 88 to determine the standard of proof in a disciplinary proceedings:

> *"25. ... Disciplinary proceedings, however, being quasi-criminal in nature,* ***there should be some evidence to prove the charge.*** *Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubts****, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record.*** *While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures."*

73. Similar observation was made in *Noor Aga* (supra), the Apex Court held as under:

> *"88. ..17. The departmental proceeding being a quasi-judicial one the principles of natural justice are required to be complied with.* ***The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles.****"*
>
> *(emphasis supplied)*

74. Respondent no. 1 asserted that there has been a drastic change in the merit of 9 out of 13 candidates. However, no explanation has been provided regarding the revaluation of the papers. It may be in the context of full marks being awarded in Question Nos. 7 and 11 to all candidates pursuant to directions of Commandant, GREF as deposed by Lieutenant Colonel S.S. Sisodia. There is no evidence led or circumstance explained leading to wrong evaluation by the petitioner or the members of the BOO. The documentary evidence apparently collected against the accused, cannot by itself be treated as evidence unless it is proved by the evidence of management witnesses, the same as observed in *Roop Singh Negi* (supra).

75. The finding of the Inquiry Officer is premised on the fact that respondent has not led any substantial evidence to prove the wrong evaluation of the 13 Answer Sheets the charge or disprove the evidence presented on behalf of the petitioner in his defence, to say the least. It is amply clear that the conclusion of the Inquiry Officer in the DE was arrived at on the basis of evidence of the witnesses and the documents, duly proved in the DE by the petitioner which the respondent failed to rebut by producing any cogent evidence.

76. A Representation was submitted by the petitioner in response to the Tentative Disagreement Note to the findings of the Inquiry Officer. Rule 15(4) CCS (CCA) Rules 1965 mandates the Disciplinary Authority to address the contents of the representation made by the government servant against a Tentative Disagreement Note before passing its disciplinary order. The Rule reads as under:

"(4) The Disciplinary Authority shall consider the

> *representation under sub rule (2) and/or clause (b) of sub-rule (3), if any, submitted by the Government servant and record its findings before proceedings further in the matter as specified in sub-rules (5) and (6).”*

77. The Representation of the petitioner was considered as reflected in the Disciplinary Order dated 26.10.2017. Pertinently, no findings have been recorded by the Disciplinary Authority as required under Rule 15(4) of the CCS (CCA) Rules, 1965 on the Representation made by the petitioner against the Tentative Disagreement Note while passing the Disciplinary Order imposing the penalty. It has not cited any independent reasons while holding that the Charge under Article II stands proved but has mechanically accepted the reasons cited in the Tentative Disagreement Note dated 11.07.2017. An extract of the Disciplinary Order dated 26.10.2017 is reproduced as under:

> *“6. And whereas Md. Nasimuddin Ansari, EE (E&M) submitted his representation dated 09.08.2017, in which he stated that the 13 answer sheet which are stated to be wrongly evaluated, were actually not evaluated by him. Further, the Presiding Officer of the recruitment Board bears more responsibility than 1st Member of the Board. He has also raised question on the charges of awarding of marks against wrong answer to 5 candidates and pleaded that 10 in his examination has held charges not proved against him.* ***And whereas the representation was carefully analysed by the Disciplinary Authority and it has been held that the charge under Article II stands proved.”***

78. It can be observed that the reasons cited in the Disciplinary Order are not only devoid of any evidence but is also in non-consideration of the evidence led by the petitioner and his Representation.

79. Based on the above analysis, it can be concluded that Disciplinary

Order dated 26.10.2017 is based on no evidence and therefore not sustainable. We find that despite the reasoned conclusion of the charges "*not proved*", the Disciplinary Authority in its adamancy, ignored the findings and gave its Disagreement Note based purely on absurd justification and specious reasoning of *visual inspection*. This conduct of the respondents can not only be held to be a desperate attempt to somehow pin the blame on some officer, but is in complete violation of due process. We therefore, are compelled to conclude in the light of the aforesaid discussion, that the Disagreement Note followed by the Disciplinary Order dated 26.10.2017 imposing major penalty is absolutely arbitrary as it is based on no evidence.

80. The scope of interference under Article 226 in administrative decisions is extremely limited. The Apex court in *State of Karnataka vs Umesh*, (2022) 6 SCC 563, held that in exercise of judicial review, a court must restrict itself to determine whether the rules of natural justice have been complied with; ***finding of misconduct is based on some evidence***; statutory rules governing the conduct of disciplinary enquiry were followed; findings of disciplinary authority suffer from perversity; or the penalty is disproportionate to the proved misconduct.

81. The respondents have though charged the petitioner for evaluating 13 answer sheets incorrectly, but have dismally been unable to support it by any evidence. We find that this is one case demonstrative of imposing penalty despite there being no evidence, which calls for intervention of this court to exercise its power of judicial review to countermand the arbitrariness in administrative/ disciplinary action of the respondents.

82. We here by conclude that the Order imposing major penalty is not

sustainable.

IV. Collective Responsibility of Board of Officers.

83. The respondents have also cited another reason in the Tentative Disagreement Note for holding the petitioner guilty by asserting that if the petitioner had only corrected 5 papers, that does not absolve him as all the members of the BOO had the *"collective responsibility"* to ensure that the papers were evaluated correctly. According to the respondents, the petitioner and all the members of the BOO were equally responsible as 9 out 13 papers were not evaluated correctly. However, aside from this bald assertion, no evidence whatsoever has been led to establish that the Answer Sheets were not evaluated correctly, as already discussed above. Respondent No.1 in their Counter Affidavit, in order to justify the claim of collective responsibility, had stated that penalty had stated been imposed against the Presiding Officer as well i.e., Lieutenant Colonel S.S. Sisodia.

84. The Preliminary Enquiry Report prima facie suspected the involvement of all the Officers of the BOO for malpractice. The Office Memorandum dated 25.10.2012 was also issued by the CVC for initiation of penalty proceedings and respondents apparently issued the draft charges against the suspected officers as evident from the documents presented in Order dated 21.02.2012.

85. However, the Presiding Officer Lt. Col. S.S. Sisodia, of BOO, during the Enquiry in response to question no. 7 of his Examination-in-Chief, admitted that he had not been served with any Charge Sheet by respondent no. 1.Therefore, though the respondents claimed that action

was being taken against all the members of the Board, no action was taken against the Presiding Officer Lt. Col. S.S. Sisodia.

86. An enquiry was conducted against S.K. Mendhapure, the 2nd Member in the BOO, wherein the same conclusion of not being guilty was found in the Departmental Enquiry, but the respondent No.1 as in the present case, had disagreed with the findings of the Inquiry Officer and had filed a Disagreement Note. The said Note was forwarded for advice to UPSC which opined that the charges were not proved. The Disciplinary Authority then passed an order in consonance to this opinion. The petitioner has produced the Order dated 07.01.2021 by the Ministry of Defence wherein S.K. Mendhapure has been exonerated of all charges.

87. The Record and the documents establish the blatant differential treatment that has been accorded to the petitioner *vis-a-vis* the other members of BOO against whom no action has been taken; if all had the collective responsibility, then *all sail or sink* together. It cannot be that the petitioner alone could be held guilty without any evidence, while S.K. Mendhapure has been exonerated. The principle of collective responsibility therefore, does not come to the rescue of the respondents to defend their arbitrary decision to disagree with the Inquiry Reports dated 28.11.2013 and 22.12.2016.

V. Predisposed mindset in the Tentative Disagreement Note.

88. The petitioner has also assailed the Tentative Disagreement Note by stating that it is in the nature of a Final Order which displays the pre-disposed mindset of respondent no. 1. Reliance has been placed on the judgement of this court in *Laxman Prasad* (supra) to aver that Disagreement Note must be tentative in nature and can in no way indicate

conclusiveness, which would render it liable to be quashed. Such conclusiveness implies that the Disciplinary Authority has pre-determined their decision rendering the right of the charged officer to submit their representation against the Disagreement Note to be an empty formality, which is in turn violative of the principles of natural justice.

89. It would also be pertinent to refer to the judgement of the Apex court in *Yoginath D. Bagde v. State of Maharashtra,* JT 1999(6) SC 62, where in the disciplinary authority had tentatively imposed a penalty of dismissal from service upon the charged officer. The accused was asked to submit a Show Cause Notice against the said dismissal. The Court viewed this as a conclusive determination of charges rather than a tentative disagreement on the findings of the Inquiry Officer. The Supreme Court in the case of *Yoginath* (supra) has perspicuously observed that the Disciplinary Authority, while recording their reasons of disagreement, should not meddle with the *"Not Proved"* findings of the Inquiry Officer.

90. In the instant case, the Disciplinary Authority, in their Tentative Disagreement Note dated 11.07.2017, has interfered with the findings of the Inquiry officer i.e. "*charges not proved*" by stating that *"Article-II appears as proved"*. The respondent no. 1 has not only displayed its inclination but also provided the final conclusion in the matter. Any opportunity afforded to the petitioner after such conclusion is only a post decisional opportunity and is violative of the *rules of natural justice.*

VI. Consultation with UPSC.

91. Another aspect agitated by the petitioner is that the consultation of UPSC was not sought for the Tentative Disagreement Note dated 11.07.2017 and is in violation of Rules. The respondents have countered

by claiming that there was no requirement to consult with the UPSC as the petitioner's case falls under the scope and purview of the Ministry of Defence and the petitioner is paid out of the Defence Services Estimates.

92. CCS (CCA) Rules, 1965 is applicable to the civilian government servants of the Defence Services. Rule 15(3) provides that when the Disciplinary Authority comes up with tentative reasons to disagree with the findings of the Inquiry officer, the Disciplinary Authority may consult the UPSC in cases where it is necessary. Rule 15(3) is not thus, a mandatory requirement.

93. Further, the Notification No.18/4/51-Estt.(B) Government of India Ministry of Home Affairs specifies the cases where is not necessary to consult UPSC. Rule 5(2) reads as under:

> *"5 (2) It shall not be necessary to consult the Commission in regard to any disciplinary matter affecting a person belonging to a Defence Service (Civilian)."*

94. Since the consultation with the UPSC is not mandated for the civilian employees in the Defence Services, there is no procedural aberration on the part of the Disciplinary Authority.

VII. Alternate Remedy of Review.

95. The respondents have also made a dolorous attempt to deny the legitimate right to the petitioner by claiming that this petition is premature on the technical ground that alternate remedy of Review under the CCS (CCA) Rules, 1965 and memorials or mercy petition praying for remission of penalty or pardon, has not been availed by the petitioner before approaching this Court under Article 226 of the Constitution of India.

96. Albeit, it is a settled position of law that the constitutional remedy

under this Article is not ousted due to the existence of alternative remedy, this is a self-imposed judicial restraint while entertaining such petitions as long as the alternate remedy is effective and efficacious.

97. The High Court can still exercise its writ jurisdiction in exceptional circumstances notwithstanding the existence of an alternative remedy under the statute as has been delineated in *Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1 as follows:

> *"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.* ***But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged****. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field"*
>
> *(Emphasis supplied)*

98. The same principle has been reiterated in *Harbanslal Sahnia v Indian Oil Corporation Ltd*, (2003) 2 SCC 107 where it observed that the existence of an alternate remedy is not an absolute bar to the admissibility of writ petitions.

99. This Court is not hesitant to observe that in the light of above discussed obstinate attitude of the respondents to somehow nail the

Petitioner, any statutory remedy was likely to result in same fate. The exceptional circumstances of this case justifies resort to the writ jurisdiction of this court as the petitioner has raised grounds of discriminatory treatment when compared to the other members of the BOO, injustice caused in view of inordinate delays and violation of principles of natural justice and fundamental rights under Articles 14, 19 and 21 of the Constitution of India.

VIII. Conclusion.

100. As already discussed above, the petitioner was not found responsible for the irregularities in the recruitment process in the two stages of Departmental Enquiry conducted against him. Respondent's insistence to put a Disagreement Note despite the findings of charges "*not proved*" by Inquiry Reports, only reflects the predetermined mind and mala fide of the respondents to impose penalty. The significance of transparency and reasonableness in adjudicatory process by the Disciplinary Authority can never be over emphasised in Disciplinary matters on which the entire career of an officer is dependant. Any wrong decision not only brings disrepute but also dampens the zeal to work with honesty. The competency in any Department can be inculcated only by appreciation of good work and severe action against the delinquent officers. The Respondents being the appointing Authority and responsible for the entire disciplined force, cannot be expected to work in such an arbitrary and non transparent manner. The penalty imposed by the respondents is not sustainable.

101. We, therefore, conclude that the Disciplinary Order dated 26.10.2017 imposing major penalty is patently not sustainable in law and

is hereby set aside. All consequential reliefs in view of the above shall be awarded to the petitioner by the respondents.

(NEENA BANSAL KRISHNA, J)

SURESH KUMAR KAIT, J

102. I agree with the judgment written by my esteemed colleague, Ms. Neena Bansal Krishna, J. The present case is a glaring example of victimizing the petitioner maliciously, malafidely and with a predetermined mind. We are conscious of the settled law of the Hon'ble Supreme Court in the case of ***State of Karnataka vs. Umesh*** (supra) that in exercise of Judicial Review, Court must restrict itself to determine whether the Rules of natural justice have been complied with. It is not in dispute that the Disciplinary Authority is not bound to accept the findings of Inquiry Report and can form its independent opinion, but this can be done only on justifiable grounds and not in a whimsical, capricious, arbitrary, *mala fide* manner and on non-existent grounds.

103. In the case in hand, we find that despite the conclusion of the charges "*Not Proved*", the Disciplinary Authority in its adamancy, completely ignored the findings and gave its *Disagreement Note* based purely on an absurd justification and specious reasoning of visual inspection. Such conduct of the Disciplinary Authority cannot be accepted and is an antithesis to the "Rule of Law". No Department/Institution can be administered like its personal property.

104. Every action of the Authority should be based on reasonable grounds and that too without any personal grudge, bias and vindictiveness.

Whereas in the present case, the Disciplinary Authority has crossed all limits. In such like cases, the courts should not spare officers who take decisions as taken against the petitioner herein. Due to such disparaging action vide *Disagreement Note* dated 11.07.2017 and Disciplinary Order dated 26.10.2017, the Disciplinary Authority not only made the petitioner defend himself for half a decade before the respondents but also litigate before this Court as well, for another prolonged period of half a decade. Such Officers of the Disciplinary Authority cannot be spared, as any wrong decision not only brings disrepute to the Department but also dampens the zeal of the officers to work with honesty.

105. In view of above discussion, the respondents cannot escape their accountability with impunity as such conduct calls for strict action. The interest of justice would be met if we compensate the petitioner herein for the suffering anxiety and mental agony; monetary expenditure incurred and energy spent to get his due promotion and consequential benefits thereto after a long battle of litigation, which he was otherwise entitled to.

106. Accordingly, we direct the respondents to pay the costs for an amount of Rs.5,00,000/- (Rupees Five Lakhs only) in favour of the petitioner within four weeks of passing of this judgment. However, the Department should not be made to suffer for the deliberate dereliction of duty by an Officer. Therefore, the costs shall be paid by the Department in the first instance, but it shall be entitled to recover the same equally from the erring officers who had written the *Disagreement Note* dated 11.07.2017 and the *Disciplinary Order* dated 26.10.2017.

(SURESH KUMAR KAIT, J)

107. I concur with the observation made by my esteemed brother, Suresh Kumar Kait, J.

(NEENA BANSAL KRISHNA, J)

108. Registry is directed to transmit the order passed by this Court to the Authorities DoPt, DG of all CAPFs and Head of the PSUs for information and necessary orders.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

AUGUST 03, 2023
***S.Sharma*/ek/va**