IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7213 OF 2019

Raju s/o Bishan Wasnik,
Aged about 36 years,
Occupation – At present Nil,
Resident of Suyog Nagar (Raje Dahegaon),
Post – Jawahar Nagar, Bhandara, Tahsil
and District – Bhandara. .... **PETITIONER**

VERSUS

1) Inspector General of Police,
Central Reserve Police Force, Tripura
Sector Head Office, Usha Bazaar, Airport
Road, Agartala (Tripura) 799009.

2) The Commandant, 124 Battalion,
Central Reserve Police Force,
Singarbil, Agartala (Tripura).

3) Deputy Inspector General of Police,
Central Police Reserve Force,
Agartala (Tripura). .... **RESPONDENTS**

Mr. A.D. Dangore, Counsel for the petitioner,
Mr. A.J. Gilda, Amicus Curiae,
Mr. V.A. Bramhe, Counsel for the respondents.

CORAM : DIPANKAR DATTA, CJ. &
ROHIT B. DEO, J.

DATE OF RESERVING THE JUDGMENT : 08-12-2021
DATE OF PRONOUNCING THE JUDGMENT : 19-01-2022

JUDGMENT : (PER : ROHIT B. DEO, J.)

Petitioner, who is a former employee of the Central Reserve Police Force (CRPF), is assailing the order of dismissal dated 09-7-2009 issued by the Disciplinary Authority-respondent 2-Commandant, 124 Battalion, CRPF, Singarbil, Agartala, the confirmatory order dated 11-7-2011 in Appeal 124/2011 rendered by respondent 3-Deputy Inspector General of Police, CRPF, Agartala and the order dated 10-7-2019 in Revision 02/2019 rendered by respondent 1-Inspector General of Police, CRPF, Agartala.

2. Facts, to the extent relevant, are as set out infra :

(i) Petitioner, who is a permanent resident of Bhandara, State of Maharashtra, enlisted in the CRPF as Constable, on 17-3-2001.

(ii) Petitioner was posted at A/124 Battalion, CRPF on transfer from 111 Battalion and reported at A/124 Battalion on 02-7-2007.

(iii) Petitioner reported sick on 17-4-2008, and after initial treatment at the Unit, was referred to the Group Centre Hospital, CRPF at Agartala on 24-4-2008. Petitioner was further referred to G.B. Pant Government Hospital at Agartala

where he was admitted from 01-5-2008 to 13-5-2008.

(iv) Petitioner availed leave from 21-5-2008 to 12-6-2008. Petitioner, after resuming duty, again reported sick and was referred to the Group Centre Hospital, CRPF at Agartala where he was examined and further referred to the Composite Hospital, Guwahati.

(v) Petitioner reported at the Composite Hospital at Guwahati at 9-00 hours on 16-7-2008. It is an indubitable position on record that the petitioner declined to avail treatment and left the hospital for his native place without informing the competent authority, much less applying for and securing the requisite permission.

(vi) A First Information Report was lodged at Police Station Zorabat, Guwahati on 17-7-2008 and the parent Unit of the petitioner was informed of the desertion. A warrant of arrest was issued which was addressed by the Commandant, 124 Battalion to the Superintendent of Police, Nagpur, Maharashtra. The warrant of arrest could not be executed, for reasons which are not clearly discernible from record.

(vii) The parent Unit addressed communications, sent by Registered

Post, at the residential address of the petitioner, directing him to report at the Unit or at the Group Centre, CRPF Hospital at Nagpur, which directives did not evoke response.

(viii) A Court of Enquiry was ordered by the Commandant, 124 Battalion to probe into the circumstances in which the petitioner deserted duty. Pursuant to the recommendations of the Court of Enquiry, order dated 13-1-2009 declaring the petitioner "DESERTER" with effect from 16-7-2008, was issued and charge-sheet dated 02-2-2009 was drawn. Assistant Commandant Mr. Anupam was appointed as the Enquiry Officer.

(ix) The Enquiry Officer issued communication dated 22-2-2009 by Registered Post directing the petitioner to appear and participate in the enquiry. Petitioner did not appear before the Enquiry Officer, who addressed another communication dated 07-3-2009, which was also sent by Registered Post, calling upon the petitioner to participate in the enquiry. Again, the petitioner did not respond and the Enquiry Officer proceeded with the enquiry *ex parte*.

(x) The enquiry report which was submitted to the Disciplinary

Authority, was forwarded to the petitioner by Registered Post, at his residential address, vide communication dated 18-6-2009, and the petitioner was given an opportunity to respond to the findings recorded in the enquiry. This opportunity was not availed.

(xi) The Disciplinary Authority, accepting the enquiry report, imposed punishment of dismissal from service, vide order dated 09-7-2009. The period of unauthorised absence from duty was treated as DIES-NON.

(xii) Aggrieved by the dismissal order, the petitioner preferred an appeal under Rule 28 of the Central Reserve Police Force Rules, 1955 (Rules) which came to be dismissed by the respondent-3 appellate authority vide order dated 11-7-2011.

(xiii) Petitioner approached this Court in Writ Petition 4709/2011, which was dismissed vide order dated 25-7-2012 on the ground of availability of alternative and equally efficacious statutory remedy of revision. Petitioner apparently preferred a second appeal, which was not entertained in view of the statutory remedy of revision. When the petitioner was asked to avail the revisional remedy vide communication dated

30-9-2016, he preferred a revision under Rule 29 of the Rules in April 2019, which came to be registered as Revision 2/2019.

(xiv) The respondent-1 revisional authority was pleased to dismiss the revision vide order dated 01-07-2019.

(xv) Petitioner is invoking writ jurisdiction on the premise that the punitive action falls foul of the principles of natural justice.

3. The thrust of the submissions canvassed by the learned Counsel for the petitioner Mr. A.D. Dangore is that the petitioner was not granted adequate and effective opportunity of participating in the departmental enquiry and that the statutory appeal and revision are dismissed without granting personal hearing. Mr. A.D. Dangore urged that right of oral hearing is an integral facet of the principles of natural justice and even in the absence of a specific provision in the Service Rules providing for grant of oral hearing, duty to afford oral hearing is implicit and will have to be read into the statutory provision.

4. As we have noted supra, it is an irrefutable position that the petitioner deserted duty with effect from 16-7-2008. The text and tenor of the memo of appeal and revision and the notice issued to the respondents by the petitioner's Counsel manifest that the desertion is

admitted and medical and psychological condition, *inter alia*, depression, is put forth as justification. We could have, perhaps, dismissed the petition on the premise that no prejudice is caused to the petitioner due to the alleged failure to grant oral hearing considering that retention of a Constable who deserts duty, in a paramilitary organisation predominantly engaged in counter-insurgency campaign is a recipe for disaster.

5. However, since, at first blush, the submission that oral hearing is an integral facet of principles of natural justice appeared attractive, albeit found fallacious on a more profound analysis, we appointed the learned Counsel Mr. A.J. Gilda as Amicus. We have heard the learned Counsel for the petitioner Mr. A.D. Dangore, the learned Counsel for the respondents Mr. V.A. Bramhe and the learned Amicus Mr. A.J. Gilda at length, and with their able assistance, we have scrutinized the reasons recorded by the disciplinary, appellate and revisional authorities.

6. It would be apposite to note the relevant statutory provisions, before proceeding to appreciate the submissions canvassed.

(i) Section 9 of the Central Reserve Police Force Act, 1949 (Act) enumerates, more heinous offences, and desertion is covered by entry (f). Section 11 of the Act provides that the Commandant or any

rules made under the Act, award in lieu of, or in addition to, suspension or dismissal, any one or more punishments to any member of the CRPF who is guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct.

(ii) Rule 27 of the Rules deals with the procedure for the award of punishments. Rule 28 of the Rules provides for appeal and further remedy is revision under Rule 29 of the Rules. In the context of the submissions canvassed by the learned Counsel Mr. A.D. Dangore, it would be apposite to consider Rules 28 and 29 of the Rules, which are reproduced verbatim.

> "***28. Appeal -*** *(a) Every subordinate officer or personal of any other rank below him against whom an order under serial numbers 1 to 7 of the table in rule 27 or under clauses (d) and (e) of section 13 is passed is entitled to prefer an appeal against such order to the Director-General, if the original order was passed by the Special Director-General or Additional Director-General heading Zone and to the Special Director-General or Additional Director-General heading Zone, if the original order was passed by the Inspector-General and to the Inspector-General, if the original order was passed by the Deputy Inspector-General and to the Deputy Inspector-General, if the original order was passed by the Commandant.*
>
> *(b) No appeal shall lie against an order by the competent authority inflicting any of the punishments mentioned in-*
>
> *(1) Serial Nos. 8 to 11 of the Table in rule 27:*
> *(2) Clauses (a), (b) and (c) of section 13:*
> *(3) Against an order discharging recruit before the termination of his period of training.*
>
> *(c) Every appeal preferred under these rules shall contain all material statements and arguments relied upon by the*

person preferring the appeal. It shall contain no disrespectful or improper language or irrelevant allegations and it shall be complete in itself. Petitions or appeals filed by members of the Force are not chargeable with stamp duty. Copies of other documents filed with the appeal shall be stamped under section 6 of the Court Fees Act, 1870, unless they have to be stamped under article 24 of Schedule I of the Indian Stamp Act, 1899.)

(d) Every appeal, whether the appellant is still in the Force or not, shall be preferred through the Commandant and shall not be sent direct to the appellate authority.

(e) An appeal which is not filed within 30 days of the date of the original order, exclusive of the time taken to obtain a copy of the order or record, shall be barred by limitation:

Provided the appellate authority may entertain time barred appeal if deemed fit.

(f) The Commandant may withhold an appeal to the appellate authority senior to him in cases -

(1) where under these rules no appeal lies:

(2) where the appeal does not comply with the provisions of sub-rules (c), (d) or (e) above:

(3) where it is a further appeal presented after a final decision has been given by the competent appellate authority and no new facts have been brought out necessitating reconsideration of the case:

Provided that in every case in which an appeal is withheld the person preferring the appeal shall be informed of the fact together with brief reasons there for:

(g) No appeal shall lie against an order withholding of an appeal by a competent authority:

Provided that in cases of failure to comply with the conditions stated in sub-rules (c) or (d) above, the appeal shall not be withheld if it is preferred again in the prescribed form in conformity with the rules and is not time barred.

(h) A quarterly statement of all appeals withheld with brief reasons in respect of each appeal shall be furnished by the Commandant to the Deputy Inspector-General.

29. Revision - *(a) A member of the Force whose appeal has been rejected by a competent authority may prefer petition for revision to the next Superior Authority. The power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed.*

(b) The procedure prescribed for appeals under sub-rules (c) to (g) of rule 28 shall apply mutatis mutandis to petitions for revision.

(c) The next superior authority while passing orders on a revision petition may at its discretion enhance punishment;

Provided that before enhancing the punishment the accused shall be given an opportunity to show cause why his punishment should not be enhanced:

Provided further that an order enhancing the punishment shall, for the purpose of appeal, be treated as an original order except when the same has been passed by the Government in which case no further appeal shall lie, and an appeal against such an order shall lie.

(i) to the Inspector-General, if the same has been passed by the Deputy Inspector-General: and

(ii) to the Special Director-General or Additional Director-General heading Zone, if the same has been passed by the Inspector-General; and

(iii) to the Director-General, if the same has been passed by the Special Director-General or Additional Director-General heading Zone; and

(iv) to the Central Government, if the same has been passed by the Director-General.

(d) The Director-General or Special Director-General or the Additional Director-General heading the Zone or the Inspector-General or the Deputy Inspector-General may call for the records of award of any punishment and confirm, enhance, modify or annul the same, or make or direct further investigation to be made before passing such orders:

Provided that in a case in which it is proposed to enhance punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced."

7. Neither Rule 28 nor Rule 29 of the Rules which envisages appellate and revisional remedy respectively specifically provide for personal or oral hearing. Mr. A.J. Gilda would urge, relying on certain decisions of the Apex Court, that right of personal or oral hearing cannot be read into a statutory provision providing for an appellate remedy and is not an integral facet of the principles of natural justice. Mr. A.J. Gilda would submit that since neither Rule 28 nor Rule 29 of the Rules provides for personal hearing, the appellate and the revisional authorities were not obligated to grant personal hearing to the petitioner, particularly since the petitioner did not even ask for personal hearing. Mr. A.J. Gilda would emphasize, that right of appeal is not an inherent right nor is the right a facet of natural justice. In essence, the submission is that the provision which creates such right is the only repository of the powers and duties of the appellate authority and reading into the provision the requirement of granting personal hearing, would be impermissible in law and subversive of the legislative mandate.

8. Dismissal visits an employee with serious civil consequences bordering on economic death. The employer is axiomatically obligated to follow the principles of natural justice. The Bible speaks that even God gave Eve and Adam an opportunity of justifying the eating of the forbidden fruit. The issue is not whether principles of natural justice

were required to be followed, rather, the seminal issue is whether the petitioner ought to have been granted an opportunity of personal hearing which is not envisaged by the relevant statutory provisions, and which opportunity was not even sought.

9. The requirements of natural justice cannot be fettered by an in perpetuum straitjacket formula. The extent and contours of the requirements depend upon the rules which create the offence or misconduct and provide for the substantive and procedural aspects of the appellate or revisional remedy, the subject matter and the nature of the enquiry and other attending factors and circumstances. Right of appeal inhers in no employee *de hors* of the statute creating such right. Right to challenge a decision is not recognized as a facet of natural justice and the consistent judicial view is that the mode and manner of the exercise of right of appeal and the powers and obligations of the appellate authority can be legislatively provided in the statutory provision creating such right. The relevant rules, which are extracted supra, do not envisage personal or oral hearing. We would be loath to read into the statutory provision the requirement of personal or oral hearing, since the right of appeal is not rendered illusory in the absence of personal or oral hearing to the delinquent employee. We may hasten to observe that one exception judicially recognized is the appellate authority proposing to review or modify the punishment to

the detriment of the employee, in which case the appellate authority will necessarily have to issue notice and hear the delinquent employee.

10. We are fortified in the view supra by several authoritative pronouncements of the Hon'ble Supreme Court, and we may notice only few decisions lest the judgment is unnecessarily burdened. In ***F.N. Roy vs. Collector of Customs, Calcutta and others, AIR 1957 SC 648***, the Constitution Bench of the Hon'ble Supreme Court held that there is no rule of natural justice that at every stage a person is entitled to a personal hearing. In ***Madhya Pradesh Industries Ltd. vs. Union of India and others, AIR 1966 SC 671***, in the context of the remedy of revision provided under Rule 55 of the Mineral (Concession) Rules, 1960, the Hon'ble Supreme Court negatived the contention that the appellant or revisionist is entitled as of right, to a personal hearing. The Hon'ble Supreme Court observed that effective opportunity of responding to allegations need not necessarily be by personal hearing, and it can be by written representation. In ***P.N. Eswara Iyer and others vs. Registrar, Supreme Court of India, (1980) 4 SCC 680,*** which is a decision of the Constitution Bench of the Hon'ble Supreme Court, His Lordship Justice Mr. R.S. Pathak (as His Lordship was then) and His Lordship Justice Mr. A.D. Koshal, in their concurring opinion articulated thus :

> *"42. A written submission is capable of careful drafting and explicit expression, and is amenable to such arrangement in its written content that it pointedly brings to the notice of the*

> *believe that a written submission in a review application cannot do adequate justice in the matter of setting forth the case of the litigant. If there is need for an oral hearing it is for the reason mentioned earlier, that counsel come to know of the doubts in the mind of the Court and the court has an opportunity of having its doubts resolved. It is this feature of an oral hearing which gives to it its primary value and relevance. But that an oral hearing is mandatory in all classes of cases and at every stage of every case is a proposition to which we find ourselves unable to accede."*

11. In ***Union of India and another vs. Jesus Sales Corporation, (1996) 4 SCC 69,*** the Hon'ble Supreme Court articulated thus :

> *"5. ---------- When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded."*

12. Provisions, which are broadly *pari materia* with the provisions in the CRPF Rules, are considered by the Hon'ble Supreme Court in ***Oriental Bank of Commerce and another vs. R.K. Uppal, (2011) 8 SCC 695***. Regulation 17 of the Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982 did not envisage personal hearing in departmental appeal. The contention that personal

hearing is a facet of the principles of natural justice, is rejected by the Hon'ble Supreme Court observing thus :

> *"24. The appeal provision in regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the provision? We think not. In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing. It is so because the appellate authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. Although there are no positive words in regulation 17, requiring that the appellant shall be heard before the enhancement of the penalty, the fairness and natural justice require him to be heard.*
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> *25. It is true that in Ganesh Santa Ram Sirur, this Court did not accept the contention of the delinquent relating to non-grant of personal hearing to him by the appellate authority before the enhancement of the punishment. But it was so in the peculiar fact- situation of the case. First, this Court observed that Charge 5 of granting loan to the spouse under SEEUY Scheme in violation of Rule 34(3) of the State Bank of India (Supervising Staff) Service Rules was found by the appellate authority more serious and grave in nature. Secondly and more importantly, the Court noticed that delinquent in his appeal before the appellate authority admitted that he had committed misconduct of disbursing the loan to his wife in a Scheme which was meant for educated unemployed youth. To our mind, thus, there is no inconsistency in the judgment of this Court in Ganesh Santa Ram Sirur and our statement above that where the appellate authority proposes to enhance the penalty, the appellate authority must issue notice to the delinquent and give him personal hearing.*
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> *26. However, personal hearing may not be required where the appellate authority, on consideration of the entire*

> *material placed before it, confirms, reduces or sets aside the order appealed against. Regulation 17 of the 1982 Regulations does not require that in all situations personal hearing must be afforded to the delinquent by the appellate authority. The view taken by the Full Bench of Punjab and Haryana High Court in Ram Niwas Bansal is too expansive and wide and cannot be held to be laying down correct law particularly in the light of the judgment of this Court in Mahendra Kumar Singhal. We answer this question accordingly.*"

13. In view of the authoritative and unambiguous enunciation of law by the Hon'ble Supreme Court, we reject the submission that the appellate or revisional authority was obligated to afford an opportunity of personal hearing. We are further satisfied, that in the teeth of the irrefutable, nay admitted, position on record that the petitioner abandoned duty or post without even informing the competent authority, much less availing prior permission, the petitioner, in any event, has suffered no prejudice since in the glaring facts, opportunity of personal hearing would have been a ritualistic formality. We are satisfied that the authorities have given due consideration to the material on record and have recorded cogent reasons for their conclusions. We further note from record, that the petitioner stubbornly refused or failed to avail the opportunities granted by the Enquiry Officer to participate in the enquiry. At every stage of the disciplinary proceedings, the principles of natural justice, to the extent applicable, are duly followed and the finding of guilt suffers from no infirmity, much less an infirmity warranting interference in writ

jurisdiction. Considering that CRPF is a front-line paramilitary force, the punishment of dismissal for proven misconduct of desertion, is neither harsh nor otherwise arbitrary.

14. We see no reason to interfere with the orders impugned, in exercise of writ jurisdiction. The petition is sans merit and is dismissed. No costs.

15. We place on record our gratitude to the able assistance rendered by the learned Amicus Mr. A.J. Gilda.

(ROHIT B. DEO, J.) **(DIPANKAR DATTA, C.J.)**

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