

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 17193 of 2013

Navneet Kumar Singh

-Vs-

Union of India & Ors.

For the Petitioner	: Mr. Subhabrata Datta Mr. Debashis Sarkar
For the Union of India/ Respondents	: Mr. Avijit Majumdar Ms. Sarda Sha
Judgment on	: 22.05.2026

Ananya Bandyopadhyay, J.:-

1. The writ petitioner, a member of the Border Security Force enrolled as a Constable (General Duty) on October 21, 1999, invokes the jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India assailing the legality of the disciplinary proceedings initiated against him while posted at the 2nd Battalion Headquarters, National Disaster Response Force, Digberia, District Barasat, West Bengal. The petitioner asserted this Hon'ble Court possessed territorial jurisdiction over the present lis, since the entire disciplinary action, including the Court of Inquiry and the consequential Record of Evidence proceedings, originated within the territorial limits of this Court and the relevant records continued to remain in the custody of the respondent authorities stationed at Digberia, Barasat.

2. The respondents, being instrumentalities of the Union of India functioning under the administrative control of the Ministry of Home Affairs, are stated to be “State” within the meaning of Article 12 of the Constitution and amenable to the writ jurisdiction of this Hon’ble Court. The petitioner further contends that allegations of mala fide exercise of power have specifically been levelled against certain superior officers, necessitating their impleadment in the proceeding by name.
3. The petitioner places considerable emphasis upon his unblemished service career extending over more than a decade, during which he is stated to have rendered dedicated service to the nation and earned several commendations and awards from the respondent authorities. Against this backdrop, the petitioner narrates an incident alleged to have occurred on February 21, 2013 at the official residential quarters occupied by his wife at the Battalion campus. According to the petitioner, one Sub-Inspector Gulab Singh, accompanied by several other individuals, forcibly entered the petitioner’s residential premises in his absence, abused his wife in filthy language, physically assaulted her and outraged her modesty by applying criminal force upon her person. It was alleged that when the petitioner’s wife protested and pleaded for release, she was manhandled, dragged by her hair and thrown to the ground, causing humiliation and mental trauma.
4. Upon returning home and learning the incident, the petitioner immediately approached the local police station and lodged a criminal complaint against the said Gulab Singh and others, resulting in the registration of Barasat Police Station Case No. 290 dated February 21, 2013 under Sections 448, 323, 354, 506 and 34 of the Indian Penal Code.

The petitioner contended that the subsequent departmental proceedings instituted against him were nothing but a retaliatory mechanism designed to shield the erring superior officer from criminal prosecution and to wreak vengeance upon the petitioner for having invoked the ordinary process of criminal law.

5. It was the petitioner's case that immediately after the registration of the criminal case, a one-man Court of Inquiry was constituted by order dated February 22, 2013 under the authority of the Assistant Commandant of the unit to investigate allegations purportedly suggesting that the petitioner had himself assaulted Sub-Inspector Gulab Singh and thereafter absconded from the campus premises. The petitioner alleged that the entire inquiry was conceived with a predetermined objective of fabricating a counter-narrative so as to dilute and neutralise the criminal allegations already levelled against the superior officer concerned.
6. The petitioner contended the constitution and conduct of the Court of Inquiry were fundamentally contrary to the provisions of the Border Security Force Rules, 1969. It was specifically urged that Rule 172 was violated inasmuch as neither the time nor the place for assembly of the Court of Inquiry was properly disclosed. More gravely, the petitioner alleges complete non-compliance with Rule 173 of the Rules of 1969, since no effective opportunity was afforded to him to remain present during the proceedings, to cross-examine witnesses, or to place his defence version before the Inquiry Officer. Though the order constituting the Court of Inquiry formally recorded that Rule 173(8) would be complied with, the petitioner asserted such compliance existed only on paper and stood wholly absent in reality.

7. The writ petition proceeded to allege that the Court of Inquiry was conducted entirely in the absence of the petitioner and in patent breach of the principles of natural justice. Despite the statutory entitlement flowing from Rule 176 of the Border Security Force Rules, 1969, copies of the proceedings of the Court of Inquiry were allegedly withheld from the petitioner. The petitioner contended the denial of such material documents deprived him of any opportunity to defend himself and rendered the decision-making process opaque, arbitrary and devoid of jurisdictional legitimacy.
8. The petitioner further challenged the subsequent Record of Evidence proceedings initiated pursuant to order dated March 25, 2013. Although verbally informed about such proceedings, no formal copy of the order directing Record of Evidence was allegedly furnished to him. The petitioner contended as many as thirteen prosecution witnesses were examined, all of whom belonged to the same battalion and functioned under the command and influence of the respondent authorities. Even the purportedly independent witnesses and interpreters were stated to be attached to the same establishment, thereby eroding the independence and credibility of the process itself. According to the petitioner, favourable materials supporting his innocence were deliberately excluded from the record, and the depositions were not faithfully recorded in their entirety.
9. A further grievance has been articulated regarding violation of Rule 49(3) of the Border Security Force Rules, 1969. The petitioner contended before calling upon him to make a statement under Rule 48 (3), the respondents failed to furnish him copies of the abstract of evidence, thereby frustrating the very object of the procedural safeguards embodied in the statutory

framework. The proceedings, according to the petitioner, thus stood vitiated by procedural impropriety of a serious and incurable nature.

10. The petitioner emphatically asserted the Border Security Force Act, 1968 did not exclude the operation of the foundational principles of natural justice or the constitutional guarantee of fairness enshrined under Article 14 of the Constitution of India. Yet, according to the petitioner, he was denied equality of arms, denied access to relevant materials, denied a fair hearing, and denied a reasonable opportunity to defend himself, while the prosecution authorities enjoyed unrestricted access to the records and departmental machinery. Such unequal treatment, it is contended, constitutes a direct infraction of the constitutional mandate of fairness and equal protection of laws.
11. The petitioner also assailed the decision remanding him to face trial before the Summary Security Force Court pursuant to communication dated May 6, 2013, received by him on May 9, 2013. Although the communication enclosed a copy of the Record of Evidence and indicated that the petitioner might seek assistance from a legal practitioner, the petitioner contended the foundational illegality already infecting the Court of Inquiry and Record of Evidence proceedings rendered the consequential decision to initiate trial wholly unsustainable in law.
12. It had lastly been contended that the petitioner possessed no equally efficacious alternative remedy capable of addressing the immediacy and gravity of the prejudice caused to him. The writ petition asserted the existence of a strong prima facie case, overwhelming balance of convenience in favour of the petitioner, and the likelihood of irreparable injury in the event judicial protection was denied. Urgency is pleaded on

the ground that the petitioner had already been orally informed regarding the proposed date of trial before the Summary Security Force Court. The petitioner accordingly seeks intervention of this Hon'ble Court for setting aside the impugned proceedings as being procedurally *ultra vires*, arbitrary, *mala fide*, constitutionally infirm and unsustainable in the eye of law.

13. The learned Advocate appearing on behalf of the writ petitioner addressed a comprehensive challenge to the legality of the disciplinary architecture erected by the respondent authorities, contending that the entire decision-making process, commencing from the constitution of the Court of Inquiry and culminating in the order remanding the petitioner to face trial before the Summary Security Force Court, stood irretrievably vitiated by procedural impropriety, statutory infraction, *mala fide* exercise of authority and constitutional unfairness.

14. At the threshold, learned counsel assailed the order bearing No. ESTT/COI/2BN NDRF/13/3292-94 dated February 22, 2013 by which the Court of Inquiry came to be constituted. It was contended that the said order was issued in patent derogation of Rule 172 of the Border Security Force Rules, 1969, since neither the time nor the place of assembly of the Court of Inquiry had been specified therein. Such omission, according to the petitioner, was not a mere technical lapse but struck at the root of the jurisdictional validity of the proceeding itself, thereby rendering the very constitution of the Court of Inquiry unsustainable in the eye of law.

15. The Learned Advocate further submitted the procedure prescribed under Rule 173 of the Rules of 1969 was completely disregarded during the

conduct of the Court of Inquiry. Though the impugned order formally recorded that Rule 173(8) would be complied with, the petitioner was, in reality, denied any opportunity to place his defence, explain the factual circumstances, or participate in the proceedings. It was urged that the inquiry was conducted entirely in the absence of the petitioner depriving him of the right to cross-examine witnesses whose statements were subsequently relied upon against him. Such exclusion from participation, according to the petitioner, constituted a complete departure from the mandatory statutory safeguards embodied in the Rules and rendered the decision-making process procedurally ultra vires, opaque, arbitrary, mala fide and wholly devoid of jurisdictional legitimacy.

16. The Learned Counsel emphasised that Rule 176 of the Border Security Force Rules conferred upon the petitioner a statutory entitlement to obtain copies of the proceedings of the Court of Inquiry. Yet, despite repeated requests, no copy of such proceedings was supplied to him. The withholding of the records, it was argued, disabled the petitioner from effectively preparing his defence and demonstrated a culpable omission on the part of the respondent authorities, tainted by unfairness and lack of procedural transparency.
17. The petitioner also challenged the subsequent order dated March 25, 2013 bearing No. Estt/ROE/NKS/2Bn/13/5206-11 directing initiation of Record of Evidence proceedings. Learned Counsel for the petitioner submitted the said order rested entirely upon the findings of the Court of Inquiry, which itself suffered from foundational illegality and absence of jurisdiction. Consequently, the Record of Evidence proceeding, being

derivative in character, inherited the same procedural infirmities and could not survive independent judicial scrutiny.

18. On the merits of the Record of Evidence proceeding, Learned Counsel for the petitioner pointed out thirteen prosecution witnesses had been examined, all belonging to the 2nd Battalion, National Disaster Response Force and functioning under the administrative command of respondent no.6. Even the purported independent witnesses and interpreters were attached to the same battalion establishment. Accordingly, no witness functioning under the direct control of the commanding authority could reasonably be expected to depose with independence in a proceeding instituted at the instance of that very authority. It was further alleged the depositions were not discernibly recorded in toto and that materials favourable to the petitioner had deliberately been excluded from the proceedings. The entire process, therefore, was characterised as lacking institutional neutrality and bearing traces of *mala fide* exercise of power.
19. The Learned Counsel as aforesaid further contended before calling upon the petitioner to place a statement under Rule 48(3) as aforesaid, the respondents failed to furnish him with copies of the abstract of evidence as mandated under Rule 49(3) of the Border Security Force Rules, 1969. The denial of such material documents frustrated the purpose underlying the procedural safeguards contemplated by the statutory framework and rendered the Record of Evidence proceedings fundamentally defective. The resultant findings, according to the petitioner, were therefore perverse, procedurally infirm and incapable of being sustained in law.
20. The communication dated May 6, 2013 remanding the petitioner to face trial before the Summary Security Force Court was also assailed as being

illegal and *non est* in law. Learned Counsel for the petitioner argued the decision to remand the petitioner for trial had been founded entirely upon proceedings already vitiated by illegality and procedural impropriety. Since the very substratum upon which the order rested stood contaminated by jurisdictional defects, every consequential action flowing therefrom necessarily collapsed.

21. It was further urged although the Border Security Force Act, 1968 might constitute a self-contained statutory code governing disciplinary proceedings within the Force, the Act nowhere excluded the applicability of the foundational principles of natural justice and constitutional fairness. It was contended throughout the disciplinary process, the petitioner was denied an adequate opportunity of hearing, denied access to the abstract of evidence, and denied equality of procedural treatment vis-à-vis the departmental authorities. While the prosecution authorities enjoyed unrestricted access to the records and depositions, the petitioner was compelled to defend himself in ignorance of the material relied upon against him. Such unequal treatment, according to the Learned Counsel for the petitioner, amounted to a direct infraction of Article 14 of the Constitution of India.

22. The Learned Advocate for the petitioner also invited attention to the earlier "Orders" passed by this Hon'ble Court during the pendency of the writ proceeding. It was submitted that by Order dated June 27, 2013, this Hon'ble Court had called upon the respondents to explain why the petitioner's choice of a "friend of accused" to assist him in the trial had not been accepted and another individual, namely D.S. Kanchan, had instead been imposed upon him. Despite such judicial query, no

satisfactory explanation was furnished by the respondents in their affidavit-in-opposition. Subsequently, by order dated November 27, 2013, this Hon'ble Court directed that the petitioner be afforded full opportunity to represent his case before the Court, thereby acknowledging the apparent infirmities surrounding the disciplinary process. It was further submitted that by virtue of the interim protection granted by this Hon'ble Court, the petitioner had been able to continue in employment and sustain his livelihood.

23. The Learned Advocate for the petitioner laid particular emphasis upon Rule 157 of the Border Security Force Rules, 1969, which expressly permitted an accused person to take assistance of "any person", including a Legal Practitioner. Learned Counsel for the petitioner further argued despite the breadth of the statutory provision, the petitioner's chosen representative was arbitrarily denied acceptance, thereby further eroding the fairness of the proceedings.

24. Reliance was placed upon several judicial pronouncements in support of the petitioner's contentions, with specific reference to Dr. Ravichandran B.R. vs. Union of India & Ors. reported in 2018 SCC Online Tri 287 and Girnar Traders vs. State of Maharashtra & Ors. reported in (2011) 3 SCC 1 to contend that even within a self-contained statutory framework, procedural safeguards and statutory compliance could not be dispensed with. Reliance was also placed upon Balwinder Singh vs. Union of India & Ors. reported in 2010 SCC Online Del 2209, wherein the legislative intent underlying procedural fairness in disciplinary proceedings was elaborately considered. Further reliance was placed upon the celebrated decision in Ranjit Thakur vs. Union of India & Ors. reported in (1987) 4 SCC 611 on

the proposition that disciplinary proceedings within the armed forces remain subject to the discipline of fairness and procedural reasonableness.

25. The Learned Advocate for the petitioner additionally criticised the written notes of argument supplied by the respondents on the ground that they referred to factual materials and pages allegedly not forming part of the pleadings or records before this Hon'ble Court. It was argued that several assertions advanced by the respondents lacked foundational support in the affidavit-in-opposition and therefore could not legitimately be relied upon in resisting the writ petition.

26. The Learned Counsel as aforesaid also sought to distinguish the judgments relied upon by the respondents concerning the maintainability of writ petitions in the presence of alternative statutory remedies. It was contended that even the decision reported in (2021) 6 SCC 771 recognises an exception where violation of natural justice is demonstrably established. Since the present writ petition was founded upon grave procedural irregularities and denial of natural justice from the inception of the disciplinary proceedings, the existence of an alternative remedy could not operate as a bar to the exercise of writ jurisdiction.

27. The submissions ultimately culminated in the plea that the cumulative procedural infirmities, statutory violations, denial of fair hearing, suppression of relevant materials and mala fide conduct attributable to the respondent authorities had irreversibly contaminated the disciplinary process. Consequently, the impugned proceedings, together with all consequential actions taken pursuant thereto, were urged to be quashed

and set aside as unconstitutional, procedurally ultra vires and unsustainable in the eye of law.

28. The Learned Advocate representing the respondents advanced a comprehensive and emphatic defence of the disciplinary action initiated against the writ petitioner, contending that every stage of the proceedings had been undertaken in strict conformity with the Border Security Force Act, 1968 and the Border Security Force Rules, 1969 and that the allegations of arbitrariness, *mala fide* conduct and denial of natural justice were wholly unfounded, exaggerated and contrary to the contemporaneous records.

29. At the threshold, the Learned Counsel submitted the writ petitioner had entered service as a Constable (General Duty) and was posted with the 2nd Battalion of the National Disaster Response Force at Digberia. Though functioning under the organisational framework of the National Disaster Response Force, the Battalion was manned by personnel of the Border Security Force and, consequently, remained governed by the provisions of the Border Security Force Act, 1968 and the Rules framed thereunder.

30. The respondents traced the origin of the disciplinary action to an incident dated February 20, 2013. It was submitted that with a view to maintain discipline amongst the troops of the 2nd Battalion NDRF, Inspector Vinod Choudhary, a Senior Subordinate Officer, directed Sub-Inspector Gulab Singh and Sub-Inspector Raghubir Singh to keep vigil over the conduct and activities of personnel visiting the local market areas adjoining the Battalion campus.

31. In pursuance of such direction, Sub-Inspector Gulab Singh submitted a detailed report dated February 20, 2013 alleging that at approximately 18:15 hours the petitioner, who was then on fifteen days' casual leave from February 18, 2013 to March 8, 2013 and residing outside the campus, had passed obscene and indecent remarks directed towards four girls near the camp premises. Upon receipt of the said report, the Commandant of the 2nd Battalion NDRF directed a discreet inquiry to be conducted by Shri Abhay Kumar, Deputy Commandant, by order dated February 21, 2013 for the purpose of ascertaining the factual position relating to the reported misconduct.
32. The Learned Counsel for the respondents further submitted on the evening of February 21, 2013, Sub-Inspector Gulab Singh informed the Senior Subordinate Officer and the Deputy Commandant telephonically that the petitioner had entered Room No. 65 of the Subordinate Officers' Mess where the said officer was staying and had physically assaulted him while simultaneously abusing and threatening him. It was alleged that immediately after the incident the petitioner fled from the campus. Upon receipt of such information, Shri Mukesh Kumar Verma, Deputy Commandant and Adjutant of the Battalion, directed a team of six constables to proceed to the petitioner's residence situated outside the campus. However, upon arrival, the petitioner's wife informed the visiting officials that the petitioner was absent from the residence. Thereafter, the Commandant ordered constitution of a Court of Inquiry vide order bearing No. Estt/COI/2BnNDRF/13/3292-94 dated February 22, 2013 to investigate the circumstances under which the petitioner allegedly

trespassed into the Subordinate Officers' Mess and assaulted Sub-Inspector Gulab Singh.

33. The Learned Advocate for the respondents simultaneously referred to the criminal complaint lodged by the petitioner. It was submitted at about 21:40 hours on February 21, 2013, Madhyamgram Police Station intimated the Battalion authorities that the petitioner had lodged a complaint at Barasat Police Station against Sub-Inspector Gulab Singh alleging outraging of the modesty of the petitioner's wife. The said case was registered under Sections 448, 323, 354, 506 and 34 of the Indian Penal Code. However, after completion of investigation, the police authorities submitted a closure report before the learned Additional Chief Judicial Magistrate, Barasat on the ground of "mistake of fact". It was contended the said development substantially discredited the retaliatory allegations levelled by the petitioner against the superior officer.
34. It was thereafter submitted during the course of the Court of Inquiry proceedings, statements of witnesses were duly recorded and the petitioner was afforded opportunities contemplated under Rule 173(8) of the Border Security Force Rules, 1969. Upon culmination of the inquiry, the competent authority arrived at a finding that the petitioner had threatened and assaulted Sub-Inspector Gulab Singh on February 21, 2013 within Room No. 65 of the Subordinate Officers' Mess. Since such conduct constituted use of criminal force against a superior officer, disciplinary action was directed to be initiated against the petitioner for commission of an offence punishable under Section 20(a) of the Border Security Force Act, 1968.

35. It was further submitted formal disciplinary action was thereafter initiated by the Commandant after personally hearing the petitioner under Rule 45 of the Rules of 1969 on March 25, 2013. Following such hearing, the petitioner was remanded for preparation of Record of Evidence under Rule 48 of the Rules by order bearing No. Estt/ROE(NKS)/2Bn/12/5206 dated March 25, 2013. The Learned Counsel for the respondents laid particular emphasis upon the submission that two subordinate officers wholly unconnected with the incident were specifically detailed to act as independent witnesses during the Record of Evidence proceedings so as to maintain impartiality and procedural sanctity.
36. The Learned Advocate for the respondents categorically disputed the petitioner's allegation that he had been excluded from participation in the proceedings. According to the respondents, the Record of Evidence was prepared in the petitioner's presence and he actively participated therein. It was submitted that he was afforded full opportunity to cross-examine prosecution witnesses, produce defence witnesses and place statements in his defence in accordance with Rule 48 of the Rules. Upon completion of the Record of Evidence, the Commandant, exercising discretion under Rule 51 and upon due application of mind to the materials collected, decided that the disciplinary case ought to be adjudicated by Summary Security Force Court.
37. The said decision was communicated to the petitioner by letter dated May 6, 2013 bearing No. Estt/SSFC(NKS)/2Bn/13/7343 together with copies of the Record of Evidence and charge-sheet in order to facilitate preparation of defence under Rule 63 of the Border Security Force Rules, 1969. Learned Counsel as aforesaid further submitted the petitioner was

specifically informed regarding his entitlement under Rule 157 to nominate any person, including a legal practitioner, to act as “Friend of Accused”.

38. The Learned Advocate representing the respondents submitted the petitioner thereafter filed applications dated May 7 and May 8, 2013 expressing his intention to engage a legal practitioner and sought five days’ earned leave for the said purpose. However, since no effective nomination for appointment of “Friend of Accused” was received from the petitioner till June 6, 2013, the Commandant, in the interest of justice and fairness, detailed Shri D.S. Kanchan, Deputy Commandant, to act as “Friend of Accused”. Though the order was served upon the petitioner on proper receipt, he allegedly refused to accept the same in the presence of colleagues and other officials.

39. The Learned Counsel as aforesaid then adverted to the procedural history before this Hon’ble Court. It was submitted that the petitioner instituted the writ petition challenging the disciplinary proceedings on the ground of alleged procedural improprieties and denial of opportunity. By order dated June 7, 2013 this Hon’ble Court granted an ad interim order restraining further continuation of the Summary Security Force Court trial without leave of the Court. Subsequently, by order dated November 27, 2013 passed by the Hon’ble Justice Dipankar Datta, liberty was granted to the respondents to proceed with the Summary Security Force Court trial and pass final orders in accordance with law, though such orders were directed not to be given effect without obtaining leave of the Court.

40. Acting upon the liberty so granted, the respondents submitted that the Summary Security Force Court trial commenced on February 18, 2014

and concluded on February 22, 2014 strictly in accordance with Chapter XI of the Border Security Force Rules, 1969. During the course of the trial, all opportunities were afforded to the petitioner to defend himself. He was permitted to cross-examine prosecution witnesses, produce defence witnesses and depose in his defence. The respondents further pointed out that by letter dated February 16, 2014 the petitioner was ultimately provided the officer whom he had nominated to act as “Friend of Accused”.

41. Upon due consideration of the evidence on record, the Summary Security Force Court found the petitioner guilty of the charge under Section 20(a) of the Border Security Force Act, 1968 and imposed the sentence of dismissal from service. However, in respectful compliance with the interim order passed by this Hon’ble Court on November 27, 2013, the final order had not been given effect to nor had the sentence been promulgated. The respondents consequently filed C.A.N. No. 3003 of 2018 seeking vacation of the interim protection so that the sentence could be promulgated in terms of Rule 159 of the Border Security Force Rules, 1969.
42. The Learned Advocate for the respondents thereafter proceeded to answer each of the procedural objections raised by the petitioner.
43. In relation to the alleged violation of Rule 172, it was contended that the Court of Inquiry records themselves demonstrated compliance with Rules 171 and 172. Reference was drawn to pages 85 and 91 of the proceedings. It was further submitted that the petitioner’s name appeared in the list of witnesses at page 79 of the Court of Inquiry proceedings, thereby disproving his assertion that the assembly order had never been communicated to him. Learned Counsel further stressed a Court of

Enquiry was fundamentally a fact-finding exercise and that the petitioner had not initially been arraigned as an accused. Only upon emergence of incriminating material during the inquiry did invocation of Rule 173(8) become necessary.

44. In response to the allegation that the petitioner had not been afforded opportunity to cross-examine witnesses or adduce defence evidence, the Learned Counsel as aforesaid referred to pages 28 and 35 of the inquiry proceedings to demonstrate that the petitioner had indeed been examined as witness No. 27 and had been specifically afforded opportunity to cross-examine witnesses, file statements in defence and summon defence witnesses. It was submitted that the petitioner declined to append his signature upon the proceedings and such refusal was duly recorded by the Presiding Officer in the presence of independent witnesses.
45. As regards Rule 176 concerning supply of copies of Court of Inquiry proceedings, the respondents submitted though the petitioner was statutorily entitled to seek copies of the proceedings, he had never submitted any formal application before the competent authority seeking such documents. Consequently, the grievance that copies had been withheld was characterised as an afterthought unsupported by any documentary material.
46. With regard to Rule 157 and the grievance concerning "Friend of Accused", the Learned Counsel for the respondents submitted the petitioner had been specifically informed regarding his right to nominate any person, including a legal practitioner, to assist him during trial. Since the petitioner failed to cite any effective nomination within the stipulated period, the Commandant appropriately detailed Shri D.S. Kanchan as

“Friend of Accused” so as to ensure fairness of the proceedings. It was further contended the petitioner was deliberately attempting to mislead the Court by suppressing the fact that he was eventually provided the exact officer whom he had nominated.

47. The respondents then raised a preliminary objection regarding maintainability of the writ petition on the ground of existence of an efficacious alternative remedy under Section 117 of the Border Security Force Act, 1968 against the findings and sentence of the Security Force Court. Placing reliance upon the decision of the Hon’ble Supreme Court in *Radha Krishan Industries vs. State of Himachal Pradesh* reported in (2021) 6 SCC 771, the Learned Counsel as aforesaid submitted that the extraordinary jurisdiction under Article 226 ought ordinarily not to be exercised where a statutory remedy exists. Reference was specifically made to paragraphs 27.2, 27.3 and 27.5 of the said judgment wherein the Apex Court reiterated that exhaustion of statutory remedies constitutes a rule of policy, convenience and judicial discipline, save in exceptional situations involving violation of natural justice, absence of jurisdiction or infringement of fundamental rights.

48. It was further argued that none of the recognised exceptions applied to the present case, since there had been no violation whatsoever of the principles of natural justice during any stage of the proceedings. Rather, according to the respondents, the petitioner had been afforded repeated and reasonable opportunities to defend himself.

49. It was also contended the reliefs sought in the writ petition had substantially become infructuous. It was submitted that the prayers in the writ petition were directed principally against the initiation of the

Court of Enquiry, Record of Evidence proceedings and the charge-sheet dated May 6, 2013. However, subsequent to the liberty granted by this Hon'ble Court on November 27, 2013, the disciplinary proceedings had culminated in a final sentence passed by the Summary Security Force Court. Since the petitioner had not specifically challenged the final sentence, the writ petition could no longer survive in its original form.

50. Reliance was further placed upon the judgment of the Hon'ble Supreme Court in *Bharat Singh & Others vs. State of Haryana & Others* reported in (1988) 4 SCC 534 for the proposition that questions of fact must be specifically pleaded and supported by evidence in the writ pleadings. Learned Counsel as aforesaid argued many of the allegations advanced by the petitioner lacked foundational pleadings and supporting materials and were therefore liable to be discarded.

51. The Learned Advocate for the respondents also sought to portray the petitioner as a habitual offender lacking discipline expected of a member of a uniformed force. It was submitted that the petitioner had earlier been subjected to summary trials on several occasions for offences including absence without leave, insubordination and obstruction. Such antecedents, according to the respondents, disclosed a pattern of incorrigible conduct inconsistent with the discipline and ethos of the Force. Learned Counsel further asserted that persons exhibiting such repeated misconduct posed a serious threat to morale and discipline within the organisation and did not deserve to be retained in service.

52. Ultimately, the Learned Advocate representing the respondents urged that the entire disciplinary mechanism — beginning from the Court of Inquiry, followed by the Record of Evidence proceedings and culminating in the

Summary Security Force Court trial — had been conducted in a fair, transparent and statutorily compliant manner. According to the respondents, there had not been a single instance of violation of the principles of natural justice. The allegations levelled by the petitioner were described as false, frivolous, baseless and calculated to mislead the Court. It was therefore fervently prayed that the writ petition be dismissed and the respondents be permitted to give effect to the sentence imposed by the Summary Security Force Court by vacating the interim protection operating in favour of the petitioner under Rule 159 of the Border Security Force Rules, 1969.

53. In the conspectus of the instant writ petition, the provisions to which the respondent authorities had been subservient to, require basic interpretation for determining the intent and the purport of the application of the same as enumerated below in sequence:-

i. **“Section 20. Striking or threatening superior officers.**—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to or assaults his superior officer; or

(b)

(c)

shall, on conviction by a Security Force Court,—

(A) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of any offence specified in clause (c), the imprisonment shall not exceed five years.

ii. Section 117. Remedy against order, finding or sentence of Security Force Court.—

(1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or authority empowered to confirm any finding or sentence of such Security Force Court, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit.

iii. Rule 48. Record of evidence.-

(1)

(2)

(3) After all the witnesses against the accused have been examined, he shall be cautioned in the following terms; “You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence.” After having been cautioned in the aforesaid manner whatever the accused states shall be taken down in writing.

iv. Rule 49. Abstract of evidence.-

(1)

(2)(a)

(i)

(3) A copy of the abstract of evidence shall be given by the officer making the same to the accused and the accused shall be given an opportunity to make a statement if he so desires after he has been cautioned in the manner laid down in sub-rule (3) of Rule 48:

Provided that the accused shall be given such time as may be reasonable in the circumstances but in no case less than twenty four hours after receiving the abstract of evidence to make his statement.

- v. Rule 157. Friend of the accused.-** *During a trial at a Summary Security Force Court an accused may take the assistance of any person, including a legal practitioner as he may consider necessary.*

Provided that such person shall not examine or cross examine witnesses or address the Court.

- vi. Rule 159. Promulgation.-** *The sentence of a Summary Security Force Court shall be promulgated in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall subject to the provisions of the Act be carried out without delay after promulgation*

- vii. Rule 171. Assembly.-** *A court of inquiry may be assembled by order of a Commandant or any officer or authority superior to the Commandant.*

- viii. Rule 172. Assembly Order.-** *The order assembling the court of inquiry shall state the composition of the court, the time and place for its assembly and clearly state the matters which the court will investigate. It will also provide for the administrative requirements of the Court.*

- ix. Rule 173. Procedure of Courts of Inquiry.-**

(1) The proceedings of a court of inquiry shall not be open to the public. Only such persons may attend the proceedings as are permitted by the court to do so.

(2) The evidence of all witnesses shall be taken on oath or affirmation.

(3) Evidence given by witnesses shall be recorded in narrative form unless the court considers that any questions and answers may be recorded as such.

(4) The court may take into consideration any documents even though they are not formally proved.

(5) The court may ask witnesses any questions, in any form, that they consider necessary to elicit the truth and may take into

consideration any evidence, whether the same is admissible under the Indian Evidence Act, 1872 (1 of 1872) or not.

(6) No counsel or legal practitioner shall be permitted to appear before a court of inquiry.

(7) Provisions of section 89 shall apply for procuring the attendance of witnesses before the court of inquiry.

(8) Before giving an opinion against any person subject to the Act, the court will afford that person the opportunity to know all that has been stated against him, cross examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.

(9) The answers given by a witness to any question asked before the court shall not be admissible against such a witness on any charge at any subsequent occasion except a charge of giving false evidence before such court.

*x. **Rule 176. Copies of Court of Inquiry Proceedings.**- A person subject to the Act against whom the court of inquiry has given an opinion or who is being tried by a Security Force Court on a charge relating to matter investigated by the court of inquiry, shall be entitled to copies of the proceedings of the court of inquiry unless the Director General orders otherwise.”*

54. The writ petition, viewed in its proper constitutional setting, does not merely invite judicial scrutiny of a disciplinary proceeding conducted within a uniformed force. It compels the Court to balance two equally weighty considerations which frequently converge in service jurisprudence involving disciplined organisations — the imperative necessity of preserving institutional discipline on one hand, and the constitutional obligation to ensure fairness, proportionality and measured exercise of statutory power on the other. He became embroiled in a sequence of incidents commencing on February 20, 2023.

55. The petitioner was serving as a Constable (General Duty) in the 2nd Battalion of the National Disaster Response Force stationed at Digberia, functioning under the administrative command structure of the Border Security Force and consequently governed by the provisions of the Border Security Force Act, 1968 and the Rules framed thereunder.
56. The sequence of events commenced on 20th February, 2013 when, according to the respondents, instructions were issued by the Senior Subordinate Officer to maintain surveillance over the conduct and movement of personnel frequenting the local market areas adjoining the Battalion campus. It was thereafter reported by Sub-Inspector Gulab Singh that the petitioner, who at the relevant point of time was on casual leave and residing outside the camp premises, had allegedly passed obscene and indecent remarks towards certain girls outside the campus area.
57. The matter, however, assumed far greater seriousness on the following day when allegations surfaced that the petitioner had entered the Subordinate Officers' Mess, confronted Sub-Inspector Gulab Singh inside Room No. 65, physically assaulted him, abused him in offensive language and threatened him. The respondents portray the incident as a grave act of insubordination involving use of criminal force against a superior officer — an act striking directly at the discipline and command structure of the Force.
58. The petitioner, on the other hand, sought to place the occurrence within an entirely different factual background by drawing attention to a criminal complaint lodged by him alleging misconduct towards his wife on the part of the said superior officer. Though the investigating authorities

eventually submitted a closure report in the said criminal case, the existence of such allegations could not altogether be erased from the surrounding factual circumstances in which the altercation took place.

59. The respondents thereafter initiated a discreet inquiry, followed by a Court of Inquiry, preparation of Record of Evidence and ultimately a Summary Security Force Court trial under the provisions of the Border Security Force Act, 1968 and the Rules of 1969. The disciplinary process culminated in a finding of guilt under Section 20(a) of the Border Security Force Act for use of criminal force against a superior officer and the sentence imposed was dismissal from service.

60. The petitioner assailed the disciplinary action on several grounds. It had been argued that the statutory safeguards embodied in the BSF Rules were not faithfully observed; that copies of proceedings were not adequately furnished; that effective opportunity to cross-examine witnesses and produce defence evidence was illusory; that the petitioner was not initially treated as an accused during the Court of Inquiry despite the proceedings gradually assuming an accusatory character; and that the proceedings were conducted in a manner inconsistent with the principles of natural justice.

61. The respondents, with equal emphasis, contend that every procedural requirement contemplated under the statutory framework stood complied with. According to them, the petitioner participated in the proceedings, was afforded opportunities to cross-examine witnesses, was informed regarding his right to engage a "Friend of Accused", and thereafter fully participated in the SSFC trial conducted pursuant to liberty granted earlier by this Hon'ble Court. The respondents further contend that a

member of a disciplined force who assaults a superior officer cannot seek equitable indulgence from a Constitutional Court.

62. At the outset, it becomes necessary to delineate the limits of judicial review in matters arising out of departmental and disciplinary adjudication. The jurisdiction of the High Court under Article 226 of the Constitution does not constitute an appellate forum over findings rendered by disciplinary authorities. Re-appreciation of evidence as if sitting in appeal, substitution of factual conclusions merely because another view may appear plausible, or microscopic dissection of departmental records for inconsequential irregularities, do not ordinarily fall within the province of constitutional review.

63. Interference becomes warranted only where the decision-making process stands vitiated by patent procedural illegality, manifest perversity, violation of natural justice, absence of jurisdiction, mala fide exercise of power or where the punishment imposed shocks the conscience of the Court by reason of its glaring disproportionality to the misconduct established.

64. This restraint assumes heightened significance in matters concerning armed and paramilitary organisations. Discipline within such forces cannot be approached as an abstract administrative expectation; it forms the structural foundation upon which operational efficiency, collective command and institutional integrity rest. An act involving physical assault upon a superior officer has ramifications extending beyond a private quarrel between two individuals. It affects morale, weakens hierarchical discipline and threatens the command structure indispensable to the functioning of such organisations.

65. Thus limitation upon judicial intervention assumes even greater significance in cases involving members of armed or paramilitary forces where discipline constitutes the very structural foundation upon which institutional efficacy rests. A force entrusted with matters encompassing national safety, emergency response and operational command cannot function upon fractured discipline or diminished respect for hierarchy. Courts have repeatedly recognised that misconduct involving insubordination or assault upon superior officers cannot be approached with the same degree of leniency applicable to ordinary civil employment.

66. Yet, the doctrine of institutional discipline cannot eclipse the constitutional mandate that punishment must retain rational proportion to the nature, context and cumulative circumstances of the misconduct proved. The authority to punish, though wide, is not unbridled. Administrative discretion does not acquire immunity merely because it operates within a disciplined force. The doctrine of proportionality, now firmly embedded within Indian administrative law, obligates the Court to examine whether the punishment imposed bears a reasonable nexus with the gravity of the misconduct and whether the disciplinary authority has maintained a balanced and judicious approach while inflicting the ultimate civil consequence of dismissal from service. Statutory power, even within a disciplined force, must retain fidelity to fairness, reason and proportionality. The doctrine of proportionality constitutes an inseparable component of modern administrative law and obligates the Court to examine whether the punishment inflicted maintains a rational relationship with the nature of misconduct proved.

67. Upon comprehensive assessment of the rival submissions and the materials placed before the Court, this Court finds no sufficient reason to invalidate the disciplinary proceedings in its entirety.
68. The records reveal that a Court of Inquiry was convened; statements of witnesses were recorded; the petitioner participated in the proceedings; opportunities were afforded to cross-examine witnesses and adduce defence evidence; Record of Evidence was prepared in terms of the Rules; the petitioner was informed regarding his entitlement to nominate a "Friend of Accused"; and thereafter the Summary Security Force Court trial proceeded pursuant to liberty granted earlier by this Hon'ble Court. The contention of total denial of opportunity does not appear borne out from the records placed before the Court.
69. The respondents have also satisfactorily demonstrated that the petitioner was aware of the proceedings at every material stage. Merely because the petitioner disputes the adequacy or efficacy of the opportunities extended to him cannot automatically render the entire process void. Constitutional review concerns itself not with perfection of procedure but with fairness of procedure.
70. Certain procedural objections raised by the petitioner appear to concern irregularities relating to supply of copies or alleged inadequacy of opportunities. However, the law is equally settled that every procedural deviation does not automatically vitiate disciplinary proceedings. Judicial review proceeds upon the doctrine of prejudice. Unless it is demonstrated that the alleged irregularity occasioned substantial failure of justice or effectively deprived the delinquent employee of a meaningful defence, the entire proceeding cannot be annulled merely upon technical objections.

The materials on record do not disclose such overwhelming procedural unfairness as would justify complete nullification of the proceedings.

71. Equally unconvincing is the submission that the proceedings stood vitiated merely because copies of certain documents were allegedly not furnished. The petitioner has been unable to demonstrate any substantial prejudice occasioned thereby. Judicial review does not invalidate disciplinary proceedings for technical omissions unless failure of justice is demonstrably established. The findings of guilt recorded by the disciplinary authority and the Summary Security Force Court cannot be characterised as wholly unsupported by evidence. The respondents relied upon oral testimonies and contemporaneous materials indicating that the petitioner had entered the Mess premises and physically assaulted the superior officer. The writ court cannot re-evaluate the evidentiary sufficiency as though exercising criminal appellate jurisdiction over a conviction. This Court, exercising writ jurisdiction, cannot substitute its own appreciation of evidence merely because another factual interpretation may also be conceivable.

72. Nevertheless, the matter does not conclude with affirmation of the finding of guilt. The true constitutional concern in the present proceedings arises from the nature and severity of the punishment imposed.

73. The Hon'ble Supreme Court, in the case of ***Punjab & Sind Bank vs. Raj Kumar***¹, has made the following observations: -

“7. In light of the facts and circumstances of the present case, we are reminded of the consistent line of decisions of this Court delineating the circumstances in which judicial interference is warranted in

¹2026 INSC 313

matters concerning imposition of punishment by disciplinary authorities.

8. *We consider it apt to note the relevant passages from a few of these decisions, hereunder:*

a. Bhagat Ram v. State of Himachal Pradesh MANU/SC/0322/1983 : (1983) 2 SCC 442:

15....It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution....

b. Ranjit Thakur v. Union of India MANU/SC/0691/1987 :1987:INSC:285 : (1987) 4 SCC 611:

25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review....

(emphasis ours)

c. B.C. Chaturvedi v. Union of India MANU/SC/0118/1996 :1995:INSC:661 : (1995) 6 SCC 749 (three-Judge Bench):

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence

with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

d. Union of India v. G. Ganayutham MANU/SC/0834/1997 :1997:INSC:622 : (1997) 7 SCC 463 (three-Judge Bench):

Punishment in disciplinary matters: Wednesbury and CCSU tests

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of "proportionality". There is no contention that the punishment imposed is illegal or vitiated by procedural impropriety. As to "irrationality", there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain "Ranjit Thakur [MANU/SC/0691/1987 :1987:INSC:285 : (1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113] ".

33. In Ranjit Thakur [MANU/SC/0691/1987 :1987:INSC:285 : (1987) 4 SCC 611 : 1987 SCC (L&S) 1 : (1987) 5 ATC 113] this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, Wednesbury and CCSU tests were satisfied. In another case, in B.C. Chaturvedi v. Union of India

[MANU/SC/0118/1996 :1995:INSC:661 : (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] a three-Judge Bench said the same thing as follows.....

34. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury* [MANU/UKWA/0001/1947 : (1948) 1 KB 223 : (1947) 2 All ER 680] or CCSU [MANU/UKHL/0045/1984 : 1985 AC 374 : (1984) 3 All ER 935] norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi* case [AIR 1961 SC 418 : (1961) 2 SCR 343] that the Court might - to shorten litigation - think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In *B.C. Chaturvedi* [AIR 1961 SC 418 : (1961) 2 SCR 343] and other cases referred to therein it has however been made clear that the power of this Court Under Article 136 is different.) For the reasons given above, the case cited for the Respondent, namely, *State of Maharashtra v. M.H. Mazumdar* [MANU/SC/0485/1988 :1988:INSC:52 : (1988) 2 SCC 52: 1988 SCC (L&S) 436 : (1988) 6 ATC 876] cannot be of any help.

(emphasis ours)

e. *Om Kumar v. Union of India* MANU/SC/0704/2000 :2000:INSC:532 : (2001) 2 SCC 386:

67. But where an administrative action is challenged as "arbitrary" Under Article 14 on the basis of *Royappa* [MANU/SC/0380/1973 : 1973:INSC:213 : (1974) 4 SCC 3 : 1974 SCC (L&S) 165] (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the *Wednesbury* test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or

has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. [In *G.B. Mahajan v. Jalgaon Municipal Council* [MANU/SC/0284/1991 :1990:INSC:277 : (1991) 3 SCC 91] (SCC at p. 111).] Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator Under Article 14 in the context of administrative law has to be judged from the stand point of *Wednesbury* rules. In *Tata Cellular v. Union of India* [MANU/SC/0002/1996 : 1994:INSC:283 : (1994) 6 SCC 651] (SCC at pp. 679-80), *Indian Express Newspapers Bombay (P) Ltd. v. Union of India* [MANU/SC/0406/1984 : 1984:INSC:231 : (1985) 1 SCC 641 : 1985 SCC (Tax) 121] (SCC at p. 691), *Supreme Court Employees' Welfare Assn. v. Union of India* [MANU/SC/0582/1989 : 1989:INSC:210 : (1989) 4 SCC 187 : 1989 SCC (L&S) 569] (SCC at p. 241) and *U.P. Financial Corpn. v. Gem Cap (India) (P). Ltd.* [MANU/SC/0481/1993 :1993:INSC:75 : (1993) 2 SCC 299] (SCC at p. 307) while judging whether the administrative action is "arbitrary" Under Article 14 (i.e. otherwise than being discriminatory), this Court has confined itself to a *Wednesbury* review always.

68. Thus, when administrative action is attacked as discriminatory Under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" Under Article 14, the principle of secondary review based on *Wednesbury* principles applies.

Proportionality and punishments in service law

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

70. In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of India* [MANU/SC/0691/1987 :1987:INSC:285 : (1987) 4 SCC 611 : 1988 SCC (L&S) 1] this Court referred to "proportionality" in the quantum of punishment but the Court observed that the

punishment was "shockingly" disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India [MANU/SC/0118/1996 :1995:INSC:661 : (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham[MANU/SC/0834/1997 :1997:INSC:622 : (1997) 7 SCC 463 : 1997 SCC (L&S) 1806].

(emphasis ours)

g. Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar MANU/SC/0110/2003 :2003:INSC:76 : (2003) 4 SCC 364:

11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn, MANU/UKWA/0001/1947 : (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

(emphasis ours)

h. State of Gujarat v. Anand Acharya MANU/SC/7147/2007 : (2007) 9 SCC 310:

15. The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof (see Bhagat Ram v. State of H.P. [MANU/SC/0322/1983 : (1983) 2 SCC 442 : 1983 SCC (L&S) 342], Ranjit Thakur v. Union of India [MANU/SC/0691/1987 : 1987:INSC:285 : (1987) 4 SCC 611 : 1988 SCC (L&S) 1] and U.P. SRTC v. Mahesh Kumar Mishra [MANU/SC/0187/2000 : 2000:INSC:143 : (2000) 3 SCC 450 : 2000 SCC (L&S) 356]).

i. S.R. Tewari v. Union of India MANU/SC/0566/2013 :2013:INSC:361 : (2013) 6 SCC 602:

28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice....

(emphasis ours)

9. *What follows from the precedents noted above is that courts should exercise restraint while interdicting orders of punishment. Normally, no court in exercise of its power of judicial review should interfere with an order of punishment imposed on a delinquent as a measure of disciplinary action by the competent authority and substitute its own judgment for that of the former. This is premised on the reason that the disciplinary authority is the best judge of the situation, and the requirements of maintaining discipline within the work force. While it is not the law that the courts should invariably stay at a distance when legality and/or propriety of a particular punishment is questioned, judicial scrutiny of the disciplinary action by way of punishment could arise only if the circumstances are such that no reasonable person would impose the punishment which is questioned and/or such punishment has the effect of shocking the conscience of the court. To put in simpler words, interference could be warranted if it appeals to the court that the disciplinary authority has 'used a sledgehammer for cracking a nut'. A punishment, which is strikingly or shockingly disproportionate and is not commensurate with the gravity of misconduct, proved to have been committed in course of inquiry or otherwise, would border on arbitrariness and offend Article 14 of the Constitution.*

10. *Where a court, upon due consideration, arrives at the conclusion that the punishment imposed is disproportionate, its intervention is circumscribed in nature. Judicial scrutiny and interference, if at all, has to be based on reasons in support of the court's ultimate satisfaction that the disciplinary authority has faltered in the exercise of his discretion. In such a situation, the court may adopt one of two courses: it may remit the matter to the competent authority for reconsideration of the punishment; or, in the rarest of cases, it may substitute the punishment while supporting such a course with cogent reasons.”*

74. The Hon'ble Supreme Court, in the case of ***The Life Insurance Corporation Of India vs. S. Vasanthi***², has made the following observations: -

"11. The scope and power of judicial review of the courts while dealing with the validity of quantum of punishment imposed by the disciplinary authority is now well settled. In the case of Deputy Commissioner, KVS and Ors. v. J. Hussain MANU/SC/1015/2013 : (2013) 10 SCC 106, the law on this subject, is recapitulated in the following manner:

"6. When the charge proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Appellate Authority departmentally is ordinarily not available to the Court or a Tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts. (See: Union Territory of Dadra and Nagar Haveli v. Gulabhia M. Lad MANU/SC/0304/2010 : (2010) 5 SCC 775) In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more

²2014 INSC 546

appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.

7. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is, however, to be borne in mind that this principle would be attracted, which is in tune with doctrine of Wednesbury Rule of reasonableness, only when in the facts and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the Court and the Court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in Council of Civil Service Unions v. Minister for Civil Service in the following words:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads of the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality."

75. The Hon'ble Supreme Court, in the case of **CHENNAI METROPOLITAN WATER SUPPLY & SEWERAGE BOARD vs. T.T. MURALI BABU**³, has made the following observation:

"28. Presently, we shall proceed to scrutinise whether the High Court is justified in applying the doctrine of proportionality. The doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court. In this regard a passage from Indian Oil Corpn. Ltd. v. Ashok Kumar Arora [(1997) 3 SCC 72 : 1997 SCC (L&S) 636] is worth reproducing:

³(2014) 4 SCC 108

“20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee.”

30. *In Coal India Ltd. v. Mukul Kumar Choudhuri [Coal India Ltd. v. Mukul Kumar Choudhuri, (2009) 15 SCC 620 : (2010) 2 SCC (L&S) 499], the Court, after analysing the doctrine of proportionality at length, ruled thus:*

“19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: Would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not

have intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.”

After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment.”

76. The misconduct attributed to the petitioner undoubtedly constitutes serious indiscipline. Assault or use of criminal force against a superior officer within a uniformed organisation strikes at the chain of command and cannot be treated lightly. The Court cannot overlook the institutional consequences flowing from such conduct. Simultaneously, however, the materials on record disclose circumstances which persuade this Court to conclude that the extreme penalty of dismissal from service travels beyond the bounds of reasonable proportionality.

77. Firstly, the incident does not appear to have arisen in the context of operational sabotage, desertion, mutiny, espionage, corruption or conduct imperilling national security. The allegation concerns a personal altercation escalating into physical misconduct within the campus. Though reprehensible and wholly unacceptable, it does not disclose an

act calculated to undermine operational integrity of the Force in a manner warranting civil death through permanent dismissal.

78. Secondly, the allegations concerning indecent remarks allegedly passed at local girls were never transformed into an independent criminal prosecution or established through any independent adjudicatory mechanism. The disciplinary culmination substantially rests upon the alleged assault upon the superior officer, however which is deprecating related to a personal difference.

79. Thirdly, the records themselves indicate the existence of a counter-allegation lodged by the petitioner against Sub-Inspector Gulab Singh relating to outrage the modesty of the petitioner's wife. Though the police ultimately submitted a closure report, the existence of such allegations indicated that interpersonal hostility and heightened emotional circumstances surrounded the episode. The incident, therefore, cannot be viewed entirely in isolation from the surrounding tensions existing between the parties.

80. Fourthly, the punishment of dismissal from service carries devastating and irreversible civil consequences. It extinguishes livelihood, social security, retiral prospects and future economic stability not merely of the employee but of the family dependent upon him. In matters involving proportionality, the Court cannot adopt an abstract or mechanical approach divorced from human consequences.

81. The doctrine of proportionality obliges the disciplinary authority to distinguish between misconduct that renders continuance in service wholly impossible and misconduct which, though serious, may still be

adequately addressed through lesser but substantial penalties capable of preserving discipline without annihilating service existence altogether.

82. This Court is conscious that the petitioner had previous instances of indiscipline reflected in the records. However, past misconducts had already been dealt with departmentally. Those antecedents undoubtedly entitled the respondents to adopt a stricter disciplinary approach. Nevertheless, previous misconducts, already dealt with departmentally, cannot operate as an inexhaustible justification for imposing the harshest conceivable penalty in every subsequent proceeding irrespective of contextual gradation.

83. The doctrine of proportionality requires the disciplinary authority to distinguish between misconduct rendering an employee wholly unfit for retention in service and misconduct which, though grave, may still admit of correction through substantial but lesser penalties.

84. A constitutional court, while exercising judicial review, is not expected to exhibit misplaced sympathy towards indiscipline within armed forces. Equally, the Court cannot remain indifferent where punishment assumes a degree of severity disproportionate to the factual complexion of the misconduct established.

85. The Court must therefore examine whether the punishment imposed falls within the range of reasonable administrative responses. In the opinion of this Court, dismissal from service, in the peculiar facts of the present case, crosses the threshold of proportionality and assumes an unduly excessive character.

86. The present case presents precisely such a situation. The misconduct proved against the petitioner certainly justifies imposition of a major

penalty. However, permanent dismissal from service appears to travel beyond what was necessary for preservation of discipline. A punishment of such irreversible severity, in the factual circumstances of the present case, disrupts the balance which administrative law seeks to preserve between deterrence and fairness.

87. The ends of discipline would not stand defeated if the disciplinary authority is directed to reconsider the quantum of punishment and impose another substantial penalty short of dismissal or removal from service. Institutional authority can still be vindicated without extinguishing the petitioner's entire service career.

88. The constitutional power of judicial review includes the authority to interfere where punishment appears outrageously disproportionate to the misconduct proved. Such intervention does not amount to dilution of discipline. Rather, it preserves the balance between administrative authority and constitutional fairness. This Court is therefore unable to sustain the punishment of dismissal from service.

89. At the same time, the petitioner cannot be exonerated of responsibility nor can the misconduct be trivialized. The proven act of assault and threatening behaviour towards a superior officer within the precincts of a disciplined force warrants serious penal consequences. Any direction of reinstatement simpliciter without departmental consequence would send an entirely erroneous signal inconsistent with institutional discipline.

90. The finding of guilt recorded against the petitioner under Section 20(a) of the Border Security Force Act is not interfered with. The disciplinary proceedings and the adjudicatory process conducted by the Summary

Security Force Court are also sustained. The interference of this Court remains confined exclusively to the punishment imposed.

91. The sentence of dismissal from service is set aside on the ground of disproportionality. The matter is remitted to the competent disciplinary authority for fresh consideration limited to the quantum of punishment, considering the mitigating punishments as elicited in provisions of Rule 48 and Rule 49 of the Border Security Forces Rules, 1969 as aforesaid. The authority shall be at liberty to impose any other penalty permissible under the Border Security Force Act, 1968 and the Rules framed thereunder, except dismissal or removal from service, after taking into account the nature of misconduct proved, the petitioner's past service record, the requirements of institutional discipline. Such exercise shall be completed within twelve weeks from the date of communication of this order.
92. It is clarified that this Court has not interfered with the findings of guilt recorded during the disciplinary proceedings. The interference is confined exclusively to the punishment imposed.
93. The writ petition thus succeeds in part.
94. In view of the aforesaid discussions, the instant writ petition being WPA 17193 of 2013 stands disposed of.
95. There is no order as to costs.
96. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)