

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
JAMMU**

Reserved on: 06.08.2025

Pronounced on: 22.08.2025

CJ Court

LPA No.189/2023

Gautam Ray

...APPELLANTS(S)

Through: - Mr. Rakesh Sharma, Advocate.

Vs.

Union of India and others

...RESPONDENT(S)

Through: - Mr. Vishal Sharma, DSGI.

CORAM: HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

OSWAL 'J'

1) This intra-court appeal is directed against the judgment dated 11.08.2023 passed by the learned Writ Court in SWP No.148/2004, whereby the writ petition preferred by the appellant challenging the order dated 13.09.2003 issued by respondent No.3 in respect of his dismissal from service, has been dismissed.

2) The order dated 11.08.2023 has been impugned by the appellant on the ground that the learned Writ Court has not appreciated that the order dated 13.09.03 has been passed by the respondents in violation of Rule 27(ccc) of the Central Reserve Police Force Rules, 1955 (for short 'the Rules'), which provides that when a

member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this Rule on the same charge or on a similar charge upon the evidence cited in the criminal case whether actually led or not, except with the prior sanction of the Inspector General. It is further contended that the learned writ court has not appreciated the judgment dated 10.02.1998, whereby the appellant was acquitted on the ground of failure of the prosecution to prove that the SLR rifle was misused by the appellant for committing the offence. It is also urged that all the witnesses were examined at their respective residences and the appellant was made to accompany the Enquiry Officer but he was not allowed to take legal advice or legal opinion as to how to cross-examine the witnesses. It is also contended that the learned writ court has not appreciated that as per the established principle the appellant was never afforded an opportunity to make representation as to why proposed punishment should not be inflicted upon him.

3) Mr. Rakesh Sharma, learned counsel for the appellant, has argued that the appellant has been proceeded against by the respondents in utter disregard of Rule 27(ccc) of the Rules and that the Presenting

Officer was not appointed, as such, the whole proceedings conducted against the appellant got vitiated.

4) *Per contra*, Mr. Vishal Sharma, learned DSGI, has submitted that in the *de novo* departmental proceedings were conducted against the appellant, he was found to be guilty of misconduct and, accordingly, Commandant 5th Bn. CRPF, in exercise of power under Section 11(1) of the CRPF Act, 1949(for short 'the Act'), read with Rule 27 of the Rules, ordered the dismissal of the appellant and, as such, there is no illegality in the order of dismissal of the appellant from service.

5) Heard learned counsel for the parties and perused record of the case.

6) After examining the record, we find that the appellant was earlier dismissed from service but his dismissal was set aside by the learned writ court vide judgment dated 31.07.2001 passed in SWP No.1018/1999. The judgment dated 31.07.2001 was assailed by the respondents through the medium of *intra court* appeal bearing LPASW No.248/2002, which was disposed of vide judgment dated 29.07.2002, with liberty to the respondents to hold fresh inquiry in accordance with rules. Pursuant thereto, fresh departmental proceedings were initiated against the appellant vide

order dated 30.12.2002 with allegations that he misused the Govt. Arms and Ammunition which were issued to him to fight against the anti-national elements and protect himself as well as the Force personnel including his Superior Officers but he fired one round at 1700 hours on 31.05.1992 from SLR No.7.62 issued to him, which was in his possession, at Sh. Mohd. Israil, Assistant Commandant (A/C), OC F/5 which hit on his head resulting in his death. The act allegedly committed by the appellant was punishable under Section 11(1) of the Act. Shri Sukhjit Singh, Deputy Commandant of the Unit, was initially appointed as Enquiry Officer but was replaced by Shri A. Mani, Deputy Commandant on account of his attachment with the Office of IGP. The record produced by the respondents reveals that the statements of PWs LNK Uni, Constable P.V. Ratnam, Ex-Inspector Jagat Singh and Head Constable V. S. Madhavan were recorded. They were questioned by the Enquiry Officer as well. Besides, all these witnesses were cross-examined by the appellant also. Documents relied in support of charge were provided to appellant on 04.06.2003. Further, 15 days time was granted to the appellant to produce evidence in his defence. He was also asked to submit his written-statement. The appellant did not choose to produce any witness in his defence. After

thorough examination of the record, the Enquiry Officer came to the conclusion that the appellant has committed an offence of misconduct in his capacity as member of the Force punishable under Section 11(1) of the Act. The enquiry report was submitted before the Commandant, which was accepted by him and while acting upon the report of the Enquiry Officer, the Commandant in terms of order dated 13.09.2003, dismissed the appellant from service.

7) The first contention of the appellant is in respect of violation of Rule 27(ccc) of the Rules. As already mentioned above, the appellant was proceeded against afresh pursuant to the judgment passed by the learned Writ Court which was upheld by the Division Bench in the earlier round of litigation, whereby the respondents were given liberty to proceed afresh against the appellant in accordance with law. Further the appellant was put to criminal trial for commission of offence under Section 302 RPC for causing death of Assistant Commandant Mohd. Israil. A perusal of the article of the charge reveals that the allegation against the appellant is in respect of misuse of the Government Arms and Ammunition which were issued to him to fight against the anti-national elements and to protect himself as well as the Force

Personnel. The appellant, no doubt, has been acquitted by the court but in respect of the allegations regarding commission of offence under Section 302 RPC. So far as the conclusion of the Enquiry Officer is concerned, it is stated by him that the appellant has misused the Government Arms and Ammunition which were issued to him. The respondents have proceeded against the appellant on the different set of allegations, as such, Rule 27(ccc) of the Rules, shall have no application in the present case.

8) The Hon'ble Supreme Court of India in the case of **Southern Railway Officers Association vs. Union of India**, (2009) 9 SCC 24, has held as under:

“37.Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.”

9) It was next contended by the appellant that no Presenting Officer was appointed by the respondents which has caused prejudice to him, and as such order of his dismissal from service is bad in law.

10) It goes without saying that Rule 27(c) of the Rules, stipulating the procedure for conducting enquiry, does

not provide for appointment of any Presenting Officer. After examining the record, we find that after the witnesses made their statements, certain questions were put by the Enquiry Officer and thereafter, they were cross-examined by the appellant. The appellant has not been able to demonstrate that questions put forth by the Enquiry Officer were leading questions, causing prejudice to the appellant. In this context it would be appropriate to take note of the judgment of the Supreme Court of India in the case of “**Union of India vs. Ram Lakhan Sharma**”, 2018(7)SCC670, wherein the Hon’ble Supreme Court quoted with approval the principles culled out by the Division Bench of Madhya Pradesh High Court while considering the issue of vitiation of enquiry when the Enquiry Officer starts himself acting as Prosecutor. The relevant paras are extracted as under:

33. The Division Bench after elaborately considering the issue summarised the principles in para 16 which is to the following effect:

“16. We may summarise the principles thus:

(i) The Enquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.

(ii) **It is not necessary for the disciplinary authority to appoint a Presenting Officer in each and every inquiry. Non-appointment of a Presenting Officer, by itself will not vitiate the inquiry.**

(iii) **The Enquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Enquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should**

thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.

(iv) If the Enquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Enquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Enquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Enquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Enquiry Officer has merely acted only as an Enquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.”

34. We fully endorse the principles as enumerated above, however, the principles have to be carefully applied in fact situation of a particular case. There is no requirement of appointment of Presenting Officer in each and every case, whether statutory rules enable the authorities to make an appointment or are silent. When the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. When there is no express exclusion of particular principle of natural justice, the said principle shall be applicable in a given case to advance the cause of justice.--

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36. Thus, the question as to whether the Enquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of a particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that the Enquiry Officer himself led the examination-in-chief of the prosecution witness by putting questions. The High Court further held that the Enquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paras 9 and 10 of the judgment of the High Court giving rise to Civil Appeal No. 2608 of 2012.

(emphasis added)

11) After examining the record, we find that the appellant was provided with memorandum and articles of charge and was afforded due opportunity to cross-examine the witnesses and even to submit his statement of defence which was submitted by him and, as such, we are of the considered view that the enquiry was conducted by the respondents in accordance with law and the order dated 13.09.2003 in respect of dismissal of the appellant from service does not call for any interference.

12) We have also examined the judgment rendered by the learned Writ Court and we do not find any illegality or impropriety whatsoever therein which would warrant interference at our end.

13) Viewed thus, we do not find any merit in this appeal and the same is dismissed accordingly.

14) The record be returned to learned counsel for the respondents.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
22.08.2025
"Bhat Altaf"

Whether the Judgment is speaking:	YES
Whether the judgment is reportable:	YES