

PART-II

(Subjective Written Examination)

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QUESTION 1 – Brief Preparation: This question requires the candidate to prepare a brief synopsis or precis of a case file not longer than 750 words. Parameters for judging this question include: (a) ability of the candidate to identify and marshal the relevant facts; (b) identification of legal issues before the High Court/Appellate Tribunal; (c) comprehensive analysis of the issues as done by the High Court in the impugned decision; (d) ratio of the impugned decision; (e) relevant grounds before the Supreme Court; (f) ability to condense information and structure the document logically; and (g) brevity. (150 marks)

QUESTION 2 – Preparation of a draft research memo: In this question, the candidate is required to formulate a draft reasoned memo not longer than 500-750 words on the dispute. Parameters for judging this question include: (a) ability to use relevant legal sources; (b) use of legal language; (c) exposition of the law; (d) analysis of the facts and applicability of the law to the facts; and (e) structure of the opinion. (75 marks)

QUESTION 3 – Analytical Question: In this question, a candidate shall be required to answer one out of five analytical questions in 350-500 words. (75 marks)

Please fill in the following details using ball point pen.

Roll No.

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Name _____

Signature _____

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PART-II

(Subjective Type Examination)

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of SECTION - First Part of the question paper. The question paper is divided into two parts. Part-I contains 10 questions for which 10 marks are allotted. Part-II contains 10 questions for which 20 marks are allotted. The total marks for the examination are 30. The duration of the examination is 1 hour. The question paper is to be attempted in the English language only. The candidate is to write the answers in the answer book provided. The candidate is to write the answers in the answer book provided. The candidate is to write the answers in the answer book provided.

of SECTION - First Part of the question paper. The question paper is divided into two parts. Part-I contains 10 questions for which 10 marks are allotted. Part-II contains 10 questions for which 20 marks are allotted. The total marks for the examination are 30. The duration of the examination is 1 hour. The question paper is to be attempted in the English language only. The candidate is to write the answers in the answer book provided. The candidate is to write the answers in the answer book provided. The candidate is to write the answers in the answer book provided.



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PART-II : QUESTION 1

IN THE SUPREME COURT OF INDIA

SCR XXI RULE 3(1)(A)

CIVIL APPELLATE JURISDICTION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (C) NO 12345 OF 2021

Against the impugned final judgement and order dated 17.11.2020 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Appeal no 1234 of 2013

In the matter of:

Skanda S.Bharadwaj **Petitioner**

versus

The Union of India & Ors. **Respondents**

PAPER BOOK

(For index kindly see inside)

ADVOCATE FOR THE PETITIONER ARCHANA KUMAR

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IN THE SUPREME COURT OF INDIA**SCR XXI RULE 3(1)(a)****CIVIL APPELLATE JURISDICTION****(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)****SPECIAL LEAVE PETITION (C) NO 12345 OF 2021**

In the matter of:

Skanda S. Bharadwaj..... Petitioner

versus

The Union of India & Ors..... Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time. ✓
2. The Petition is barred by time and there is delay of _____ days in filing the same against order dated and Petition for condonation of _____ days delay has been filed.
3. There is delay of _____ days in refiling the petitioner and petitioner for condonation of _____ days delay in refiling has been filed.

BRANCH OFFICER

Dated 15.2.2021

PROFORMA FOR FIRST LISTING

SEC: XII

The case pertains to (Please tick/check the correct box): -

- Central Act: (Title) **Civil Procedure code, 1908**
- Section: NA
- Central Rule: (Title) NA
- Rule No(s): NA
- State Act: (Title) NA
- Section: NA
- State Rule (Title): NA
- Rule No(s): NA
- Impugned interim order: (Date) NA
- Impugned Final Order: (Date): 17.11.2020
- High Court (Name): **Hon'ble High Court of Judicature at Karnataka**
- Name the Judges: **Hon'ble Mr. Justice Ravi Ahuja & Hon'ble Mr. Justice Ashok Huda**
- Tribunal / Authority; (Name) NA

1. Nature of matter: **Civil**
2. (a) Petitioner / Appellant No. 1: **Skanda S. Bharadwaj**
(b) E-mail ID: NA
(c) Mobile Phone Number: NA
3. (a) Respondent No.1: **Union of India & Ors.**
(b) Email ID: NA
(c) Mobile Phone Number: NA
4. (a) Main Category Classification: **18 Ordinary Civil Matter**
(b) Sub Classification: 1807 others
5. Not to be listed before: NA
6. (a) Similar disposed of matter with citation, if any & Case details: No
(b) Similar pending matter with Case details: No similar pending matter
7. Criminal Matters: NA
(a) Whether accused/Convict has surrendered: NA

- (b) FIR No. NA Date: NA
(c) Police Station: NA
(d) Sentence Awarded: NA
(e) Sentence Undergone: NA
8. Land Acquisition Matters:
(a) Date of Section 4 notification: NA
(b) Date of Section 6 Notification:
(c) Date of Section 17 Notification: NA
9. Tax Matters: State the tax Effect: NA
10. Special Category (first petitioner/appellant only) NA
Senior Citizen > 65 years, SC/ST, Woman/Child, Disabled, Legal Aid Case, In custody
11. Vehicle Number (in case of Motor Accident Claim Matters: NA

Filed by

(Archana Kumar)

AOR for Petitioner

Registration NO. 9542

Email ID: archanakumarsupremecourt@gmail.com

Date: 15.02.2021

SYNOPSIS

The petitioner was dismissed from service without following the principles of Natural Justice. It is submitted that the punishment imposed is disproportionate to the alleged offence. The punishment awarded shocks the consciousness of this Hon'ble Court. The petitioner was charged under following Articles of charges are:

ARTICLE - I

"Gross misconduct, indiscipline act and insubordination in that No.974500090 Constable Skanda Bharadwaj of CISF Unit BIOM Dep-14 on 12.01.2006 during evening Roll call un-necessarily argued with No.721240046/HC/GD Akash Rathore (CHM) for Monday parade to be held on 13.01.2006 on the issue of the death of constable Nikhil Arora and provoked other CISF personnel as a result the personnel created noisy scene in Roll Call.

ARTICLE - II

Gross misconduct, indiscipline act and Insubordination in that No. 97450090 Constable Skanda Bharadwaj of CISF unit BIOP Dep-14 on 12.01.2001 at about 18:30 hours abused and assaulted No. 933220021 SI/Exe AVG Ratti of CISF Unit BIOP Dep.14, along with others as a result SI/Exe (AVG Ratti sustained bleeding injury in his mouth and was admitted to project hospital of BIOP Dep.14 on 12.01.2006 and discharged on 16.01.2006"

The authorities passed an order of removal from service.

The Id Single Judge of the Hon'ble High Court allowed the Writ Petition in part, modifying the penalty to withholding of two increments with cumulative effect in place of 'Removal from service' and directed to the respondents to reinstate the appellant without any back wages. The Ld. Single was justified in modifying the punishment, since punishment was disproportionate and against the principle of natural justice. The petitioner has been acquitted after a full fledged criminal trial. It is not that petitioner is relying on the acquittal in the departmental enquiry proceedings. The High Court out to have considered that, petitioner having underwent the agony of full fledged trial, the petitioner's case ought to have been considered with sympathy. The Hon'ble High Court allowed the writ appeal and set side the order of the Ld. Single Judge.

Hence SLP.

List of Dates

- 3.4.1998** The Petitioner was appointed as a constable in Central Industrial Security Force (CISF) on 3.4.1998 and joined as a trainee for one year in Chennai
- 15.7.2003** After basic training, he was posted to CISF unit BCCL Dhanbad, Bihar, where he served for a period of 5 years and thereafter he was transferred to CISF Unit BOP Dep-14 at NMDC, Chhattisgarh on 15.7.2003. The petitioner worked as a constable to the utmost satisfaction to his seniors.
- 12.1.2006** When the petitioner was serving as Constable, one Constable named Nikhil Arora died on 12.1.2006 and due to the suspicious death there was a commotion, and all CISF Personnel were on strike to protest of the said death. This incident happened around 6.15 pm.

It is pertinent to mention here that, the petitioner was on "off duty" on the said date, and did not participate the protest. Infact he was in hospital due to his ill-health.

The petitioner joined the duty after treatment around 6.15 pm. The distance between the petitioner's work place and place of incident is around 15 kms.

- 17.1.2006** The respondents lodged a complaint against the petitioner and another two alleging that there was a pre fixed parade on 13.1.2006 by the authorities. Therefore, the authorities called a evening Roll Call on 12.1.2006 at Unit line Kirandal at 18:00 hrs. In that Roll call parade, it was alleged that the petitioner committed an indiscipline acts of arguing unnecessarily with superior and instigating his fellow men not to attend parade to be held on 13.1.2006. It was further alleged that the superior officer of the petitioner, Sub Inspector AVG Ratti advised the petitioner not to instigate the other constables, but the petitioner abused by using filthy language in the presence of all personnel and assaulted the Sub Inspector. It is also alleged that S.I. AVG Ratti sustained bleeding injuries on his mouth and nose and was admitted in hospital from 12.1.1006 to 16.1.2006.

After the investigation, the police filed a charge-sheet against the Petitioner for the offence punishable under sec 294, 323, 341, R/w 24 of I.P.C. to the Jurisdictional JMFC Court.

In view of the about incident the departmental enquiry was conducted only against the petitioner under Rule 36 of CISF Rules 2001 for having involved in unbecoming act of insubordination by abusing and assaulting his senior officer and exhibited highly indiscipline acts of instigating his fellow men not to attend parade on 13-1-2006. The petitioner was charged under the following Articles:

ARTICLE - I

"Gross misconduct, indiscipline act and insubordination in that No.974500090 Constable Skanda Bharadwaj of CISF Unit BIOM Dep-14 on 12.01.2006 during evening Roll call un-necessarily argued with No.721240046/HC/GD Akash Rathore (CHM) for Monday parade to be held on 13.01.2006 on the issue of the death of constable Nikhil Arora and provoked other CISF personnel as a result the personnel created noisy scene in Roll Call.

ARTICLE - II

Gross misconduct, indiscipline act and Insubordination in that No. 97450090 Constable Skanda Bharadwaj of CISF unit BIOP Dep-14 on 12.01.2001 at about 18:30 hours abused and assaulted No. 933220021 SI/Exe AVG Ratti of CISF Unit BIOP Dep.14, along with others as a result SI/Exe (AVG Ratti sustained bleeding injury in his mouth and was admitted to project hospital of BIOP Dep.14 on 12.01.2006 and discharged on 16.01.2006"

- 17.2.2006** The petitioner submitted his written reply on 17.02.2006. In his written reply he denied articles of charges framed against him.
- 29.5.2006** The disciplinary authority after its enquiry recorded awarded punishment of 'Removal from the service'. A true copy of the order passed by Disciplinary authority No.V-15014 (08)/CISF/L&R/NALCO(D)/ 2005-2033 dated 29.05.2006 is annexed at **Annexure P-1**.
The Petitioner being aggrieved with the order of 'Removal from service' dated 29-5-2006, preferred an appeal before the appellate authority.
- 3.1.2007** The Appellate Authority rejected the appeal stating that no cogent reason to interfere with the punishment awarded by the disciplinary authority. A true copy of the order passed by authority No.V-11014/EZ/Ad.II/ Appl.15/ 2005/98 dated 3.1.2007 is annexed at **Annexure P-2**.
Against the order of Appellate Authority, the petitioner preferred a Revision before the Revisional Authority.
- 18.1.2010** The Revisional Authority vide order dated 17/18.1.2010 rejected Revision Petition. A true copy of the order passed by the Office of the Deputy Inspector General No.V-11015/Pk/Vvn/Rv-49/2008-2129 dated Nil is annexed as **Annexure P-3**.
- 13.11.2012** Thereafter the petitioner filed a W.P. 12345/2012 before the Hon'ble High Court challenging the above order.
- 28.4.2013** The Id. Single Judge of the Hon'ble High Court allowed the Writ Petition in part, modified the penalty to withholding of two increments with cumulative effect in place of 'Removal from service' and directed to the respondents to reinstate the appellant without any back wages. A true copy of the Order passed in W.P. no. 12345/2012 dated 28.4.2013 is annexed as **Annexure P-4**.
- 4.8.2013** Being aggrieved of the same, the respondents preferred a writ appeal no. W.A. no 12345 of 2013 before the High Court. A true copy of the petition in writ appeal no. W.A. 12345 of 2013 dated 4.8.2013 is annexed as **Annexure P-5**.
- 17.11.2020** The Hon'ble High Court allowed the writ appeal and set aside the order of the Ld. Single Judge.
- 15.2.2021** Hence the SLP.



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 17TH DAY OF NOVEMBER 2020
BEFORE
THE HON'BLE MR. JUSTICE RAVI AHUJA
AND
THE HON'BLE MR. JUSTICE ASHOK HUDA
Writ Appeal No. 12345 of 2013 (S-DIS)

BETWEEN:

1. THE UNION OF INDIA
REPRESENTED BY ITS HOME SECRETARY,
IN THE GOVERNMENT OF INDIA, NEW DELHI
2. OFFICE OF THE SENIOR COMMANDANT / CISF
MINISTRY OF HOME AFFAIRS CISF UNIT,
NALCO DAMMANJODI, DISTRICT KORAPUT
ORISSA STATE.
3. THE DEPUTY INSPECTOR GENERAL OF CISF
EASTER ZONE, HQRS.PATNA, BIHAR
GOVERNMENT OF INDIA
(COMES UNDER MINISTRY OF HOME AFFAIRS)
4. INSPECTOR GENERAL / CISF
EAST SECTOR HEADQUARTERS,
BORING ROAD, NEAR PATALIPUTRA COLONY,
PATNA 13 BIHAR

(BY TRISHA RANA, ADVOCATE)

.....APPELLANTS

AND:

SKANDA BHARADWAJ
SON OF LATE NM BHARADWAJ
AGED ABOUT 42 YEARS
CONSTABLE CISF UNIT,
DEP NO. 14 NMDC KIRANDUL
(NOW REMOVED FROM SERVICE)
RESIDING AT 154 3RD CROSS, 3RD BLOCK,
8TH MAIN KORAMANGALA
BENGALURU 560034

.... RESPONDENT

(BY DEVYANI CHANDRAN, ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN WRIT PETITION NO 12345 OF 2012 (S-DIS) DATED 28.04.2013.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGEMENT ON 10.10.2020, COMING ON FOR PRONOUNCEMENT THIS DAY, ASHOK HUDA J. DELIVERED THE FOLLOWING:

JUDGEMENT

Appellants are the respondents in Writ Petition No. 12345 of 2012 and respondent in the writ petitioner. Parties are referred to as per their rank before the learned Single Judge.

Brief facts of the case are as under:

The petitioner was appointed as a constable in Central Industrial Security Force (CISF) on 4.4.1998. After basic training, he was posted at CISF Unit, BCCL Dhanbad, Bihar where he served for a period of five years and thereafter he was transferred to CISF Unit, BOP Dep-14 at NMDC, Kirandul, District Dhanbad, Chhattisgarh State on 15.08.2003. There was a pre fixed parade on 13.01.2006 by the authorities. In this connect, authorities had called evening Roll Call on 12.01.2006 at Unit line Kirandul at 18:00 hrs. In that Roll Call parade, the petitioner committed indiscipline acts of arguing unnecessarily with superiors and instigating his fellowmen not to attend parade to be held on 13.01.2006. The superior officer of the petitioner, Sub-Inspector AVG Ratti advised the petitioner not to instigate other constables, but the petitioner abused him by using filthy language in the presence of all personnel and assaulted the Sub-Inspector in the presence of all personnel. In view of the sudden attack by the petitioner, Sub-Inspector AVG Ratti sustained bleeding injuries on his mouth and nose he was admitted in the hospital from 12.01.2006 to 16.01.2006.

After discharge from the hospital, said Sub-Inspector lodged a complaint against the petitioner and two others before the jurisdictional police on 17.01.2006. After the investigation, the police filed charge-sheet against the petitioner for the offence punishable under Sections 294, 323, 341 read with Section 24 of the IPC. Having regard to the facts and circumstances of the case, the petitioner was dealt with under Rule 36 of CISF Rules 2001, for having involved in unbecoming act of insubordination by abusing and assaulting his senior officer and exhibiting highly indiscipline acts of instigating his fellowmen not to attend the parade on 13.01.2006.

During the pendency of the criminal proceedings, department initiated a departmental inquiry against the petitioner and issued a memorandum of articles of charges on 03.02.2006, which are as under:

ARTICLE - I

Gross misconduct, indiscipline act and insubordination in that No.974500090 Constable Skanda Bharadwaj of CISF Unit BIOM Dep-14 on 12.01.2006 during evening Roll call un-necessarily argued with No.721240046/HC/GD Akash Rathore (CHM) for Monday parade to be held on 13.01.2006 on the issue of the death of constable Nikhil Arora and provoked other CISF personnel as a result the personnel created noisy scene in Roll Call.

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Gross misconduct, indiscipline act and Insubordination in that No. 97450090 Constable Skanda Bharadwaj of CISF unit BIOP Dep-14 on 12.01.2001 at about 18:30 hours abused and assaulted No. 933220021 SI/Exe AVG Ratti of CISF Unit BIOP Dep.14, along with others as a result SI/Exe (AVG Ratti sustained bleeding injury in his mouth and was admitted to project hospital of BIOP Dep.14 on 12.01.2006 and discharged on 16.01.2006

On receipt of articles of charges, petitioner filed his reply. The respondents not being satisfied with the reply of the petitioner, proceeded to initiate departmental proceedings. An Inquiry Officer was appointed who recorded the evidence of petitioner and two witnesses. The Inquiry Officer submitted his report holding that the charges against the charged member as proved. After the receipt of the report, the Disciplinary Authority passed an order of punishment of removal from service with immediate effect, vide order dated 29.05.2006.

The petitioner aggrieved by the order dated 29.05.2006, preferred an appeal before the Appellate Authority. The Appellate Authority vide order dated 03.01.2007, dismissed the appeal. Petitioner as against the said order, filed a Revision Petition before the Revisional Authority on 29.10.2009. The Revisional Authority vide order dated 17/18.01.2010 rejected the revision petition.

Petitioner had filed a writ petition before this court in Writ Petition No. 12345 of 2007 against the order dated 29.05.2006, but had not challenged the order of the Appellate Authority and Revisional Authority. Subsequently, the petitioner withdrew the said writ petitioner.

The petitioner filed another writ petition in Writ Petition 12345 of 2012 against the order dated 29.05.2006 and the orders passed by the Appellate Authority as well as the Revisional Authority. The learned Single Judge vide order dated 28.04.2013, allowed the writ petition in part and set aside the order of penalty dated 29.05.2006, as per Annexure-A and modified the punishment to withholding two increments with cumulative effect in place of penalty of removal from service and respondents were directed to reinstate the petitioner without backwages and held that continuity of service and consequential benefit is only for the limited purpose of retrial benefits.

The respondents, aggrieved by the order passed in Writ Petition 12345 of 2012 dated 28.04.2013, have filed the present writ appeal.

Heard arguments of learned counsels.

The respondents have alleged charges against the petitioner in regard to gross misconduct, indiscipline act and insubordination. That on 12.01.2006, during the evening Roll Call, unnecessarily petitioner argued with HC/GD Akash Rathore (CHM) for parade to be held on 13.01.2006, on the issue of death of constable Nikhil Arora and provoked other CISF personnel. As a result, the personnel created a noisy scene in the Roll Call and he has also assaulted Sub-Inspector AVG Ratti of CISF Unit, BIOP-14, on 12.01.2006 at about 18:30 hrs. and all the charges leveled against the petitioner were proved in the departmental inquiry and was imposed a punishment of removal from service vide final Order No. 2033 dated 29.05.2006. The said order of punishment was confirmed by the Appellate Authority as well as by the Revisional Authority.

The learned Single Judge has modified the order of removal from service to that of withholding two increments with cumulative effect only on the ground that from a perusal of the records, the past history of the petitioner from 1998 to 2006 is unblemished. But, in fact the said observation is contrary to the records. The respondents in the statement of objections have stated regarding the past history of the petitioner. It is stated in the statement of objections that during his short service of 8 years, the petitioner was awarded three punishments for various omission and commission i.e., desertion from basic training for 28 days, overstaying from leave for 196 days and loss of trefoil copy of railway warrant. The said acts of the petitioner clearly establishes that the petitioner has not maintained an unblemished service record. The petitioner was dealt under Rule 36 of CISF Rules 2001, for having involved in unbecoming act of insubordination by abusing and assaulting his senior officers and exhibiting highly indiscipline acts of instigating his fellowmen not to attend the parade on 13.01.2006.

In the armed force of the Union, discipline is of paramount important and the petitioner by committing the above acts has exhibited breach of discipline which is detrimental to the good order and discipline of the force. The disciplinary authority, after examining the report of the inquiry officer, has rightly come to the conclusion that the charges levelled against the petitioner are grave in nature and order for removal from service. The Appellate Authority as well as Revisional Authority have affirmed the order of punishment.

The question is, whether the learned Single Judge was justified in interfering with the punishment imposed by the Disciplinary Authority. We would like to place reliance on the decision of the Constitution Bench of Hon'ble Supreme Court in the case of **STATE OF ORISSA VS. BIDYABHUJSHAN MOHAPATRA (AIR 1963 SC 779)** wherein it is held as under:

"xxxxx But the Court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanor established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. If the order of dismissal may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has not jurisdiction if the findings of the enquiry Officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there has been violation of the rules of natural justice."

It may be open for the Appellate Authority to interfere with it, but not to the High Court or Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article

226 of the Constitution of India. The power under Article 226 is one of judicial review. It is not an appeal for decision, but a review of the manner in which decision was made. The learned Single Judge in the impugned order, at paragraph 6 and 7, has held as under:

"6. Keeping in view the law declared by the Apex Court in the judgement supra, it is necessary to examine the fact situation in this case. The disciplinary authority and the enquiry officer by following the procedure and by providing a fair opportunity to the petitioner, conducted the enquiry and passed the impugned order of penalty. It is not shown to me what is the error or illegality committed by the respondents in the matter of decision making process. In the absence of any such error or illegality, this Court cannot sit as an Appellate Court and reassess the evidence on record. Therefore, I find no justifiable ground to interfere with the enquiry report stating that the charges against the petitioner as proved.

7. However, it is necessary to examine the proportionality of penalty. In the instant case it is seen from the record that the past history of the petitioner from 1998 to 2006 is unblemished. Further, it is seen that on account of death of Constable by name Nikhil Arora, the petitioner and others protested. Though nearly 50 Constables were involved in the protest, the criminal case was filed only against four persons including the petitioner herein and the same ended in acquittal. But the disciplinary proceedings are initiated only against the petitioner. Having regard to the length of service rendered by the petitioner, the age of the petitioner and the gravity of the misconduct, I am of the considered opinion that removal from service is on the higher side."

We find that the reasoning is wholly unresponsive. Punishment cannot be modified to "shorten the litigation and alleviate the misery of the petitioner." The reasons are neither relevant nor germane to modify the punishment. In view of the gravity of misconduct, the petitioner having been found guilty of misconduct of indiscipline and insubordination and assaulting seniors, the learned Single Judge, without considering the gravity of misconduct, that during his short service of 8 years, the petitioner was awarded three punishments for various omission and commission i.e., desertion from basic training for 28 days, overstaying from leave of 196 days and loss of trefoil copy of railway warrant, moulded the relief and passed the impugned order. We are of considered opinion that interference by the learned Single Judge with imposition of punishment, was wholly unwarranted.

The learned counsel for the respondents further submits that the petitioner has been acquitted in the course of criminal trial. Mere acquittal in the criminal trial cannot operate *ipso facto* as a ground for vitiating the finding of misconduct which has been arrived at during the course of disciplinary proceedings. It is no doubt true that the charge in the criminal trial arose from the petitioner abusing AVG Ratti with unparliamentary words and assaulted AVG Ratti with hands and fists which has resulted in lodging a criminal case. But the charge of misconduct is on the ground of abusing, assaulting and failure to comply the instructions given by his senior. Consequently, acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of disciplinary enquiry. Hence, having regard to the parameters that govern the exercise of judicial review in disciplinary matters, we are of the view that the judgement of the learned Single Judge is unsustainable. The said view is supported by the judgement of the Hon'ble Apex Court passed in Civil Appeal No 6163 of 2010 in the case of *Union of India and Others vs. Sitaram Mishra* dated 11.07.2019.

In view of the aforesaid discussion, we are inclined to interfere with the impugned order. Hence, we proceed to pass the following:

Order

The writ appeal is allowed.

The order of learned Single Judge dated 28.04.2013 passed in Writ Petition No. 12345 of 2012 is set aside. The writ petition is dismissed.

Sd/-

Judge

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(ORDER XXI, RULE 3(1)(A))
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
SPECIAL LEAVE PETITION NO 12345 OF 2021**

In the matter of:

Position of Parties

	In the High Court	In this Court
SKANDA S. BHARADWAJ SON OF LATE NM BHARADWAJ 154 3RD CROSS, 3RD BLOCK, 8TH MAIN KORAMANGALA BENGALURU 560034	Respondent	Petitioner

Versus

- | | | |
|---|-----------------|-----------------|
| 1. THE UNION OF INDIA,
REPRESENTED BY ITS HOME
SECRETARY,
IN THE GOVERNMENT OF INDIA,
NEW DELHI | Petitioner No.1 | Respondent No.1 |
| 2. OFFICE OF THE SENIOR
COMMANDANT/CISF,
MINISTRY OF HOME AFFAIRS,
CISF UNIT,
NALCO DAMMANJODI DIST.
KORAPUT, ORISSA STATE | Petitioner No.2 | Respondent No.2 |
| 3. DEPUTY INSPECTOR,
GENERAL OF CISF,
EASTER ZONE, HQRS,
PATNA, BIHAR | Petitioner No.3 | Respondent No.3 |
| 4. INSPECTOR GENERAL/
CISF, EAST SECTOR HQ,
BORING ROAD, NEW
PATALIPUTRA COLONY,
PATNA 13 BIHAR | Petitioner No.4 | Respondent No.4 |
- ALL ARE CONTESTING RESPONDENTS**

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICE OF THE HON'BLE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONERS ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the petitioner above named most respectfully submit the present petition seeking Special Leave to Appeal filed against the impugned final judgement and order dated 17.11.2020 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Appeal No. 12345 of 2013, wherein the High Court allowed the writ appeal.

2. **QUESTIONS OF LAW**

The following questions of law will arise from the facts of this case.

- 2.1 Whether the enquiry officer followed all the procedure of natural justice during the proceedings?
- 2.2 Whether the punishment imposed is disproportionate to the alleged offence? Does it not shocks the conscience of this Hon'ble Court?

3. **DECLARATION IN TERMS OF RULE 3(2):**

That the Petitioners state that no other petition seeking leave to appeal has been filed by the petitioner against the impugned final judgement and order dated 17.11.2020 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Appeal No 12345 of 2013.

4. **DECLARATION IN TERMS OF RULE 5:**

That Annexure P-1 to P-5 produced along with the special leave petition are true copies of the pleadings and documents, which form part of the records of the case of the Court below and against whose order, leave to appeal is sought for this petition.

5. **GROUND**

- A. It is submitted that the Division bench of Karnataka high Court ought to have considered that even though the Ld single Judge did not interfere with enquiry report, moulded the relief and ordered reinstatement without any back wages. The High court has arrived at this conclusion based on the facts of the case, that though criminal case was initiated against three persons and more than 50 personnel were present at the strike, it was only against the petitioner, the departmental enquiry was initiated and punished with removal of service.
- B. It is submitted that the entire case of the respondents are concocted and false. It is submitted that the punishment imposed is disproportionate to the alleged offence.
- C. It is submitted that the removal from service is against the principles of natural justice, unfair biased discriminatory malafide on the part of the respondents superior officers. It is submitted that out of 63 personnel present in the roll call statement of only 5 personnel who were favorites of the enquiry officer were recorded. The offence has not been proved conclusively and the petitioner was never involved in any ill creating a subordinate or creating unlawful actions.

- D. It is submitted that the officer who conducted the enquiry did not follow the rules and regulation on the subject. Ample opportunity was not given to the petitioner to defend the case. On 12.01.2006 the petitioner was never present in the Roll call. The authority has not been able to prove the allegations by way of any independent documentary evidence.
- E. It is submitted that the Ld single was justified in modifying the punishment, since punishment imposed is very severe in nature and amounts to disproportionate and against the principles of natural justice.
- F. It is submitted that the petitioner had maintained an unblemished service record and hails from a poor family. The learned Single Judge after considering all these facts had rightly modified the order of penalty to withholding of two increments with cumulative effect and with a direction to reinstate the petitioner without back wages and continuity of service and consequential benefits is only of the limited purpose of retrial benefits.
- G. It is submitted that high Court has relied on certain instances to hold that petitioner had adverse remarks in the Service book. It is submitted that the punishments awarded against the petitioner for over stay and other censure cannot be relied to hold that petitioner has not maintained an unblemished record.
- H. It is submitted that the petitioner has been acquitted after a full fledged criminal trial. It is not that petitioner is relying on the acquittal in the departmental enquiry proceedings. The High Court ought to have considered that, petitioner having undergone the agony of full fledged trial, the petitioner's case ought to have been considered with sympathy.

6. **GROUNDS FOR INTERIM RELIEF:**

Not for the present.

7. **MAIN PRAYER**

In the circumstances, it is, therefore, most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

- A. Grant Special Leave to appeal against the impugned final judgement and order dated 17.11.2020 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Appeal 12345 of 2013.
- B. Pass such further and other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF**

NOT FOR THE PRESENT

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVERY PRAY

Filed On: 15.2.2021

Filed by
(Archana Kumar)
Advocate for Petitioner

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. 12345 of 2021

Skanda S. Bharadwaj Petitioner

Versus

The Union of India & Ors. Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken herein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexure attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or make out grounds urged in the Special Leave Petition for consideration of this Honorable Court. The certificate is given on the basis of the instruction given by the petitioner whose affidavit is filed in support of the Special Leave Petition.

FILED ON
(Archana Kumar)
Advocate for Petitioner

NEW DELHI
DATED 15.02.2021

Adda247

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. 12345 of 2021

Skanda S. Bharadwaj

.... Petitioner

Versus

The Union of India & Ors.

.... Respondents

AFFIDAVIT

I Skanda S. Bharadwaj, S/O, Late NM Bharadwaj, Residing at 154 3rd Cross, 3rd Block, 8th Main Koromangala, Bengaluru 560034, do hereby solemnly affirm and sincerely state as follows:

1. That I am the petitioner in the above SLP and in that capacity fully conversant with the case and thus I am component to swear this affidavit.
2. I submit that I read and understood the contents of the SLP, List of Dates, Synopsis and other I.A.s has been drafted under my instructions. I state that I have gone through the contents of the same and which I have found true and correct to my knowledge and belief.
3. That I further state that the annexures filed along with the accompanying SLP are true copies of their respective originals.
4. That I further declare that no part of the same are false or nothing material has been concealed therefrom.

Deponent

Verified at Bengaluru on this day 12 February 2021 that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

NOTARY

Deponent



ANNEXURE P/I

OFFICE OF THE COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE
(MINISTRY OF HOME AFFAIRS)

CISF Unit MALCO, Damanjodi
Dist., Korapur, (Orissa)

No.V-15014(08)/CISF/L&R/NALCO(D)/2005-2033

Dated: 29 May 2006

FINAL ORDER

No. 974500090 Constable Skanda Bharadwaj of CISF Unit BIDM Dep.14 was Issued charge memorandum U/R.36 of CISF Rules 2001 vide memorandum No.V.15014(08)/CISF /L&R/NALCO(D)/2005/780 dated 03.02.2006 for the following charge:-

ARTICLE – I

"Gross misconduct, indiscipline act and insubordination in that No.974500090 Constable Skanda Bharadwaj of CISF Unit BIOM Dep-14 on 12.01.2006 during evening Roll call un-necessarily argued with No.721240046/HC/GD Akash Rathore (CHM) for Monday parade to be held on 13.01.2006 on the issue of the death of constable Nikhil Arora and provoked other CISF personnel as a result the personnel created noisy scene in Roll Call.

ARTICLE – II

Gross misconduct, indiscipline act and Insubordination in that No. 97450090 Constable Skanda Bharadwaj of CISF unit BIOP Dep-14 on 12.01.2001 at about 18:30 hours abused and assaulted No. 933220021 SI/Exe AVG Ratti of CISF Unit BIOP Dep.14, along with others as a result SI/Exe (AVG Ratti sustained bleeding injury in his mouth and was admitted to project hospital of BIOP Dep.14 on 12.01.2006 and discharged on 16.01.2006"

The charged member acknowledge the above said memorandum on 10.02.2006 and submitted his written reply on 17.02.2006. In his written reply he denied articles of charge framed against him. Hence, departmental enquiry was ordered under sub rule (5)(a) of Rule 36 of CISF Rules 2001 and Sri. P. Narasimha Inspector/Exe of CISF Unit BIOP Dep-5 was appointed as Enquiry officer and Shri Sanjiv Kant SI/Exe of CISF Unit BIOP Dep.14 as presenting officer vide order No.V.1014/06/L&R/NALCO(D)/05/8950 dated 21.02.2006. The Enquiry officer conducted the department enquiry as per the laid down procedure under CISF Rules. The charged member was afforded ample opportunity to defend his case himself or by getting appointed any member of the force as his defence assistant. The statement of the prosecution witnesses were recorded in the presence of the charged official. The charge member was also given opportunity to cross examine the PWs and he availed the same. After careful consideration of all the materials available in case file, the enquiry officer established the articles of charges framed against the charged member as proved.

A copy of enquiry report was supplied to the charged member vide officer memorandum No. (1628) dated 25.04.2006 asking him to submit is representation, if any, against the enquiry report within 15 days from the date of receipt or: the said memorandum. The charged official received the said memorandum on 30.04.2006 and submitted his representation on 9.05.2006. In his written reply to the enquiry report, the charged official has denied all the charged framed against him. He has stated that the special report prepared by Inspector/Exe P. Oka is baseless and fabricated. The charged official stated that since AVG Ratti was admitted in Hospital on 12.01.2006 in serious condition how could be give statement to Inspector/Exe P. Oka. He further has stated that SI/EXE AVG Ratti has given his statement by charging his version again and again. He has also stated that no statement has been taken from SI/Exe R.S. Nath who was the Roll Call officer. He has further stated that the GD entry SI.No551 at

1832 on 12.01.2006 was not really made by ASI/Exc. P. Naveen rather the same was made by other personnel where on ASI/Exc. P. Naveen had only put his signature. The charged official has also raised a point regarding misquoting of timing of giving information of incident by CHM Akash Rathore to ASI/Exc P. Naveen. The charged official has reflected the strength of Roll call register which is not tallied with the Roll Call GD No.(554) dated 12.01.2006. He has also denied Article of charge-II by stating that there was no misbehaviour any scuffle with SI/Exc AVG Ratti on 12.01.2006 after Roll Call. He has stated that P.O. Sh. K. Bopanna has proceeded the proceedings under the pressure of Assistant Commandant.

I have meticulously gone through the entire materials held on record, representation of charged member and report of the enquiry officer. I find that HC/GD Akash Rathore, CHM (P.W.1) has stated in his statement that on 12.01.2006 he had taken roll call and – informed about the regimental duty for next day i.e. 13.01.2006 in which parade was fixed. After listening this information Constable M. Vishwanathan, Constable T. Karol, Constable Skanda Bharadwaj (the charged officer), constable S. Ramachandran, and HC/GD Aniruddha Sen present in the roll call had made arguments with CHM and instigated all the personnel present in the roll call not to attend parade on 13.01.2006 on the ground that constable Nikhil expired on 11.01.2006. As a result all the personnel present in the roll call created noisy scenes. HC/GD Akash Rathore (PW.1) has also stated that even after dispersal of roll call by SI/Exc AVG Ratti the roll call personnel were standing here and there in which Constable T. Karol, Constable Skanda Bharadwaj and Constable S. Ramachandran were present. They were misbehaving with CHM Akash Rathore (PW4) advised HC/GD Akash Rathore to leave the place. At the time constable M. Vishwanathan instigated jawans by saying "MARO MARO". On this constable T. Karol had caught hold the neck of SI/Exc AVG Ratti and Constable Skanda Bharadwaj the charged official gave a blow by his fist on the face of SI/Exc AVG Ratti (PW4) as a result, SI/Exc AVG Ratti (PW4) fell down and sustained bleeding injury in his mouth and hence SI/Exc AVG Ratti was taken to the Kirandul hospital where he was admitted and remained there ill till 16.01.2006. ASI/Exc P. Naveen (PW.2) has stated in his statement that on 12.01.2006 he was detailed as shift I/C on 2nd shift at CISF Unit BIOP Dep-14 check post/Control Room. He had got the information from CHM Rajpal Singh (PW1) and SI/Exc AVG Ratti (PW4) over telephone that constable M. Vishwanathan, Constable T. Karol, Constable Skanda Bharadwaj the charged official and Constable S. Ramachandran without any reason had instigated all the CISF personnel present in the roll call not to attend morning parade on 13.01.2006 on the occasion of the death of constable Nikhil Arora of CISF Unit of BIOP Dept-14. They have also made a quarrel with CHM Akash Rathore (PW1) and also assaulted and abused SI/Exc AVG Ratti (PW4). As a result SI/Exc AVG Ratti was admitted in Kirandul Hospital on 12.01.2006. ASI/Exc P. Naveen on getting this information had made a GD entry at Sl. No (551) dated 12.01.2006 at 1832 hrs. (PW2 Exb.1). Inspector/Exc P. Oka has given his statement that the D.E. that on 12.01.2006 he had got the information from Assistant Commandant BIOP Dep-14 that there was a case of assaulting and misbehaving with SI/Exc AVG Ratti by some CISF personnel in evening roll call at CISF Unit BIOP Dep-14. On receipt of this report he along with Assistant Commandant BIOP Dep-14 rushed to the spot at about 2100 hrs and enquired about the incident from CHM and available members of the Force and also from SI/Exc AVG Ratti (PW4) who was in Kirandul Hospital as an indoor patient. Insp/Exc P. Oka (PW3) as also stated that he came to know from CHM and available members of the Force that there was an act of misbehaviour with CHM Akash Rathore (PW1) by constable T. Karol; Constable Skanda Bharadwaj, the charge official, Constable M. Vishwanathan and Constable S. Ramachandran on the issue of not to attend morning parade on 13.01.2006 on the ground of death of Constable Nikhil Arora. He (PW3) has also stated that there had also gone to the extent of beating and assaulting SI/Exc AVG Ratti (PW4) after roll call in front of Quarter Guard. As a result SI/Exc. AVG Ratti was admitted in hospital. Inspector/Exc P. Oka (PW3) has also prepared and sent a special report on these incidents which he has exhibited during SE as PW3/Exb.2. SI/Exc AVG Ratti (PW4) in his statement has stated that on 12.01.2006 he was performing duties as company I/C-II. During evening roll call HC/GD Akash Rathore (CHM) PW1 was briefing the jawans. At the time he (PW4) had listen noise (Hulla gulla) Constable M. Vishwanathan, Constable T. Karol, Skanda Bharadwaj the charged official and Constable S. Ramachandran were shouting and made a quarrel with HC/GD Akash Rathore CHM (PW1) and also with SI/Exc R.S. Nath on the issue of attending morning parade on 13.01.2006. On listening this, SI/Exc AVG Ratti (PW4) dispersed the roll call and went to this room. He (PW4) has further stated that from his room he was observing that all the above personnel were demanding for cancellation of parade and abused assistant Commandant and Inspector with filthy language.

They were also instigating the personnel who attended in roll call not to attend parade on 13.01.2006 on the issue of death of Constable Nikhil Arora. PW4 told CHM to inform them that if parade is cancelled the same would be informed to all. Inspire of dispersal of roll call by SI/Exe AVG Ratti, Const. T. Karol, Const. Skanda Bharadwaj, Const. M. Vishwanathan, and Const. S. Ramachandran had not left the place and continued to argue with CHM. In order to avoid any future consequences, he advised CHM Akash Rathore (PW1) to leave the place. On this Const. T. Karol said that "usi sale ko maro" and along with Const. M. Vishwanathan, Const. Skanda Bharadwaj charged official and Cons. S. Ramachandran were scolding him in unparliamentarily language and assaulted him Constable Skanda Bharadwaj had given a blow by his first on his (PW4) face as a result he sustained bleeding injury in his mouth. He tried to escape from this situation by running away towards quarter guard. Due to injury blood was oozing out from his face. HC/GD M. Ali had taken him to NMDC Hospital, Kirandul by scooter where he was admitted and taken treatment till 16.01.2006.

I have also carefully gone through the defence side of the proceeding and find that Cons. Siddhanth Shetty (DW1) has stated that on 12.01.2006 at 1800 hrs. HC/GD Akash Singh informed about the Monday parade on 13.01.2006 In evening roll call. One of the Jawans present in roll call asked about the death of Const. Nikhil Arora and Si.Exe R.S. Nath replied that he had such information. Then SI/Exe AVG Ratti came and dispersed to roll call. He (DW1) further stated that while he was going back to his quarter he met const. Skanda Bharadwaj in front of Dev Kumar who was coming from opposite side with a civilian at nearby Siv Mandir Const. Puru Parekh (DW2) has stated in his statement that on 12.01.2006 at 1800 hrs HC/GD Akash Rathore had informed about the programme of next day and given report to SI/Exe R.S. Nath, SI/Exe. R.S. Nath then dispersed the roll call. Thereafter he (DW2) left for his quarter on his way to meet Constable Skanda Bharadwaj near Dev Kumar who was coming from opposite side with a civilians. He has also stated that on his way back from Unit line to his quarter on 12.01.2006 after roll call he had not met anybody else except Const. Skanda Bharadwaj. He has also stated that he had not met Const. Siddhanth Shetty on his way back to quarter. Constable Skanda Bharadwaj, the charged official has stated in his defence statement that he was on weekly off on 12.01.2006 at Heroli magazine and due to his illness he had been to Hospital. After taking treatment from the hospital he went to his quarter at about 11:30 hrs. As there was no vehicle towards Heroli magazine at the that time. At about 18:30 hrs. he left his quarter for Heroli Magazine and boarded the vehicle for Heroli Magazine from unit line at about 19:45 hrs. He was also made a GD entry to this effect at SI.No.(221) dated 12.01.2006 at Heroli magazine. He has also stated on 12.01.2006 he neither attended roll call nor gone to unit line. The charged official Const. Skanda Bharadwaj in his reply to written brief at P.O. has stated that ruing P.E. Insp/Exe P.Oka had no recorded the statement of R.S. Nath and other Jawans present in roll call. He has stated that he has not been given natural justice during the D.E.

From the above statement deposited by PWs and DWs it is established that No. 974500090 Const. Skanda Bharadwaj of CISF Unit BIOP Dep-14, the charged official was on weekly off on 12.01.2006 at Heroli Magazine which has been confirmed from defence exhibits (D-Exb.04). In the pretext of taking treatment from Hospital he left Heroli Magazine on 12.01.2006 at about 06:12 hrs which has been established from the defence exhibits (D-Exhb.1). He has taken treatment from the Hospital as per the prescription (D-EB.2). But it is not established from the prescription that at what time he had been to Hospital and taken treatment. It is crystal clear from his defence statement that there at Unit Line he remained till 19:45 hrs. On 12.01.2006 at 18:00 hrs, the charged official had attended the roll . call which has been established from the statement of all PWs. On listening about the Monday parade on 13.01.2006 he himself got annoyed and argued unnecessarily with CHM HC/GD Akash Rathore and also instigated all the member present in roll call not to attend the Monday parade on the ground.' That Constable Nikhil Arora had expired on 11.01.2006. This fact has been corroborated with the statement of Insp/Exe P. Oka (PW3) ASI/Exe. P. Naveen (PW2) and SI,Exe AVG Ratti (PW4). The incident of misbehaving with CHM by constable Skanda Bharadwaj the charged official has further been established from the GD entry No. 551 dated 12.01.2006 (PE.2/Exb.1) and from the special report prepared by Inspector / Exe P. Oka which has been exhibited during D.E. as (PW.3/Exb.2).

TRUE COPY

ANNEXURE P/2

OFFICE OF THE COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE
(MINISTRY OF HOME AFFAIRS)

Easter Zone HQrs
Patna – 800013

No.V-11014/EZ/Ad.II/Apl.15/2005/98

Dated 03.01.2007

FINAL ORDER

No. 97450090 Ex-Constable Skanda Bharadwaj formerly of CISF Unit BIDM Dep.14 was dealt under rule 36 of CISF Rules 2001 by Commandant CISF Unit NALCO Damanjodi being the disciplinary authority vide memorandum No.780 dated 03.02.2006 on the following charges. On finalization of the proceedings penalty of Removal from Service was imposed vide final order No.2033 dated 29.05.2006. Aggrieved with the said punishment the individual preferred an appeal to the undersigned for consideration. The appeal is in time.

ARTICLE – I

“Gross misconduct, indiscipline act and insubordination in that No.974500090 Constable Skanda Bharadwaj of CISF Unit BIOM Dep-14 on 12.01.2006 during evening Roll call un-necessarily argued with No.721240046/HC/GD Akash Rathore (CHM) for Monday parade to be held on 13.01.2006 on the issue of the death of constable Nikhil Arora and provoked other CISF personnel as a result the personnel created noisy scene in Roll Call.

ARTICLE – II

Gross misconduct, indiscipline act and Insubordination in that No. 97450090 Constable Skanda Bharadwaj of CISF unit BIOP Dep-14 on 12.01.2006 at about 18:30 hours abused and assaulted No. 933220021 SI/Exe AVG Ratti of CISF Unit BIOP Dep.14, along with others as a result SI/Exe (AVG Ratti sustained bleeding injury in his mouth and was admitted to project hospital of BIOP Dep.14 on 12.01.2006 and discharged on 16.01.2006”

The appellant acknowledged the charge memo on 10.02.2006 and submitted his reply on 17.02.2006 since his reply to the charge memo was found unsatisfactory. Insp/Exe P. Narasimha was appointed as EO to conduct the departmental enquiry and SI/Exe Sanjiv Kant was appointed as PO. The EO conducted the enquiry as per rules and submitted the findings wherein he proved both the charges. Agreeing with the findings of the EO the disciplinary authority supplied a copy of the enquiry report to the appellant and the appellant had represented against it. Thereafter the disciplinary authority considering the evidences on record. Seriousness of the charges as well as the defense plea of the appellant awarded the aforesaid penalty.

The appellant in his appeal has mainly contended that the removal from service is against the principles of natural justice. Unfair biased discriminatory malafide on the part of the superior officers. The superior officer had a communal feeling towards the persons hailing from south India. Out of 63 personnel present in the roll call statement of only 5 personnel which were the favorites of the enquiry officer were recorded. The offence has not been proved conclusively and he was never involved in ill creating a subordinate or creating unlawful actions. The main two witnesses are defaulters another DE is still pending against SI/Exe AVG Ratti HC/GD Akash Rathore having grudge against him. On earlier occasions during the inspection he raised point to provide vehicle for the school going children therefore Shri Sandeep Mittal AC fixed him after departure of the inspecting officer. During

preliminary enquiry the Quarter Guard sentry and Guard Commander gave statement in his favour where as during regular enquiry their statements were not recorded. The witnesses were awarded pay fine for not co-operating in the ill decision proceeding. The statement of DWs were ignored. Leading question has been asked to fix him. The officer who conducted the enquiry did not follow the rules and regulation on the subject. Opportunity was not given to defend the case. The complete enquiry was one sided. There was manipulation of the document. On 12.01.2006 there are 42 constable were present but in the GD it was figured as 43. He was never present in the Roll call but to fix him the attendance of constables was increased. The authority has not been able to prove the allegations by way of any independent documentary evidence. The Doctor of NMDC hospital at Kirandul has issued the certificate as per wishes of the Astt. Commandant and based on such certificate he was implicated in the charge. The victim should have been referred to the nearby Govt. Hospital for fairness, GD No. 551 dated 12.01.2006 was made by SI/Fire VS Muralidhar while the signature of ASI/Exe P. Naveen with was on duty on that day was taken for the purpose. The entire enquiry has been managed with preconceived and predetermined idea to remove him from service. The punishment imposed on him is very sever in nature. Amounts to disproportionate and against the principles of natural justice. Finally the appellant had stated that he had maintained and unblemished service record and hails from a poor family therefore requested the appellate authority to call for the case records and to consider his case sympathetically.

On examination of the case files it transpires that on 12.01.2006 HC/GD Akash Rathore (CHM) of the unit was taking evening roll call and was informing about the next day's programme. The appellant who was in fact by that time was performing duty at Hiroli Magazine and came to the unit lines on his weekly off for taking treatment from the hospital was present in the roll call. On hearing the normal programme for 13.01.2006 he immediately argued with the said Head Constable about Monday parade and provoked others not to attend the parade on 13.01.2006 as a result the personnel present in the roll call created noisy scene in roll call. Seeing the situation, SI/Exe AVG Ratti who was present in the roll call came before the roll call dispersed it and tried to pacify the personnel. Noticing the acts of SI/Exe AVG Ratti the appellant abused the SI in filthy language and there after assaulted him along with others as a result the said SI fell down and sustained bleeding injury in his mouth and admitted in project hospital immediately. The SI was remained in the hospital and treatment taken as an indoor patient and discharged on 16.01.2006. The medical certificate issued by the concerned Doctor clearly depicts about the injury. Besides, on receipt of information about the incident Insp/Exe P. Oka (PW3) and the Asst. Commandant of the unit arrived at the spot enquired and prepared a detailed report over the incident. SI/Exe AVG Ratti in his statement has clearly stated that the appellant had given a blow by his (Appellant) fist his face as a result he sustained bleeding had injury in his mouth. The statement of PW1, PW2, PW3, and PW4 are corroborated to each other and the available evidences are enough to arrive at the conclusion that on 12.01.2006 during evening roll call the appellant had acted in a an only manner provoked other CISF personnel not to attend in the parade on 13.01.2006 and thereafter assaulted SI/Exe AVG Ratti who is senior in rank to the appellant. The averments of the appellant in his appeal are indicators. The departmental enquiry has been conducted as per rules and reasonable opportunity was given to the appellant to defend his case during the course of enquiry. The main contention of the appellant that on the day of incident he was not present in the roll call but according to the statement of HC/GD Akash Rathore (PW1) the appellant was present in the roll call and was standing in the middle of the front line. The statement of PW-1 in this regard is specific and clear. The two DWs produced by the appellant have gave baseless statement to protect the appellant as because other evidence about presence of the appellant in the roll call are very clear. As regards variation in strength i.e. 43 in the place of 42 present in the roll call. this claim in no way dilute the main charge. Besides, the appellant has incorporated irrelevant matters in his appeal which are in no way related to the present charge framed against the appellant. He has made some allegations on other matters against the unit personnel in his appeal which are seems to bean after thought and to escape from the present charge. As regards managed medical certificate, the hospital administration is not under the control of CISF, hence under the direction of the AC concerned the medical certificate was issued to SI/Exe AVG Ratti is not convincing. Further the appellant had not maintained an unblemished service record as he claimed in the appeal. He Was awarded 3 punishments on earlier occasion on different counts.

After careful examination of the case records, I am of the view that all reasonable opportunities were given to the petitioner and there is no denial of natural justice. The punishment awarded by the disciplinary authority the proven charge, commensurate with the gravity of charge. Therefore, I find no cogent reason to interfere with the punishment awarded by the disciplinary authority. Accordingly, the appeal petition submitted by No. 97450090 Ex.Cost Skanda Bharadwaj is considered and Rejected being devoid of merit.

This order shall be served in duplicate through registered post/AD to the last known address of the appellant which shall be acknowledged by him in duplicate copy and returned to his office for record.

Sd/-
Dy Inspector General/Ez

To,

No. 97450090 Const in duplicate through Commandant, CISF Unit NALCO Skanda Bharadwaj, CISF Damanjodi for service under acknowledgement.

1. The commandant CISF unit NALCO	The case file 'A' page 01 to 68 Case file 'B' page 01 to 47 vide your ltr. No. (2890) dated 29.07.2006 are returned herewith receipt of which may please acknowledge. SS.1PF page 03 to 171.
2. Personal file	
3. Case file	
4. Master file	

/TRUE COPY/

Adda247

ANNEXURE P/3
REGISTERED POST**OFFICE OF THE DEPUTY INSPECTOR GENERAL CENTRAL INDUSTRIAL SECURITY FORCE**
(MINISTRY OF HOME AFFAIRS)

No.V-110015/PK/VVN/RV-49/2008-2129

Eastern Zone 11 Ore
Patna-800013**ORDER**

This is revision petition dated 29.10.2009 of No. 947500090 Ex. Constable Skanda Bharadwaj Formerly of CISF Unit BIOP Dept. 14. He was dealt with under rule 36 of CISF Rule 2001 (Amended rule 2003) for the following allegations:

ARTICLE - I

"Gross misconduct, indiscipline act and insubordination in that No.974500090 Constable Skanda Bharadwaj of CISF Unit BIOM Dep-14 on 12.01.2006 during evening Roll call un-necessarily argued with No.721240046/HC/GD Akash Rathore (CHM) for Monday parade to be held on 13.01.2006 on the issue of the death of constable Nikhil Arora and provoked other CISF personnel as a result the personnel created noisy scene in Roll Call.

ARTICLE - II

Gross misconduct, indiscipline act and Insubordination in that No. 97450090 Constable Skanda Bharadwaj of CISF unit BIOP Dep-14 on 12.01.2001 at about 18:30 hours abused and assaulted No. 933220021 SI/Exe AVG Ratti of CISF Unit BIOP Dep.14, along with others as a result SI/Exe (AVG Ratti sustained bleeding injury in his mouth and was admitted to project hospital of BIOP Dep.14 on 12.01.2006 and discharged on 16.01.2006"

All the above charges levelled against the petitioner were conclusively proved during the departmental , enquiry and the Disciplinary Authority imposed punishment of "Removal from Service" vide final order No. (2033) dated 29.05.2006, being aggrieved with the order of the Disciplinary Authority, the petitioner has submitted appeal petition to the DIG. CISF EZ HQrs, Patna, which as rejected being devoid of merit vide order dated 03.01.2007. Now, the petitioner has preferred a revision petition dated 29.10.2009 to Inspector General CISF ES HQrs, Patna.

The version of the petitioner that he did not attend roll call, this version is totally wrong and misleading. The first on the record that the petitioner had attended roll cell and created nuisance and also assaulted SL/Exe AVG Ratti, the charges well established. His another version that he was not allowed to take the assistances of a defence counsel or a friend of his choice and to examine the listed documents is not tenable at this stage. He denied taking defence assistance. The departmental enquiry has been conducted fairly and as per rule & procedure giving him all reasonable opportunity to defend his case. His another plea that the statement of persecution witnesses. recorded during preliminary enquiry has not been supplied to him for cross examination. It is seen that records indicate he has received copy of statements of all witnesses -and he has signed with endorsement, his another plea is that the enquiry officer did not follow the rules and regulations. It is found that departmental enquiry was done as per laid down rules & procedure. His another version that NMDC hospital at Kirandul is under the direct control of the Management and will issue medical certification favour of prosecution as per the wishes of the Assist. Commandant, is wrong because medical examination and issuance of certificate are in the routine of Medical officer, the doctor who attended SL/Exe AVG Ratti for treatment has issued medical certificate incorporating details of injury. Moreover, business medical certificate there are other corroborate evidence which brought out

facts, establishing the allegations against the petitioner during enquiry. His other pleas carry no weight and he has not raised any fresh point in his favour.

The fact has been borne out from the records held in the case file that the petitioner had un-necessarily argued with HC/GD Akash Rathore (CHM) during evening roll call and also abused and assaulted SL/Exe AVG Ratti (CHM) during evening roll call and also abused one assaulted SL/Exe AVG Ratti who sustained bleeding injury on his mouth and was admitted to project hospital of BIOP Dep.14. The evidence recorded and findings of conducting officer clearly demonstrate the misconduct, indiscipline set of petitioner, such acts if not dealt severely as per rules of discipline would jeopardise the functioning of any force.

On analysis of documents and due application of mind, it is found that the punishment imposed upon the petitioner is legitimate and well commensurate with the gravity of charge. There appears no justified reason to interfere with the orders passed by the disciplinary authority and letter upheld by the appellate authority. Even this revision is time barred by more than 1 year and 10 months and the petitioner has not given any cogent reason for delay. The facts of the case have been examined and found that he had been given all opportunities to defend himself during departmental enquiry which was conducted as per rules and procedure, so, the revision petition is rejected being devoid of merit.

A copy of this order is supplied to the petitioner free of cost under proper receipt.

TRUE COPY



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF APRIL 2013

BEFORE

THE HON'BLE MR. JUSTICE DAVENDER CHAGLA

WRIT PETITION NO: 12345/2012 (S-DIS)

SKANDA S. BHARADWAJ
SON OF LATE NM BHARADWAJ
154 3RD CROSS, 3RD BLOCK,
8TH MAIN KORAMANGALA
BENGALURU 560034

...PETITIONER

(BY SMT. NIKITA MALAVIYA ADV.)

Versus

1. THE UNION OF INDIA,
REPRESENTED BY ITS HOME SECRETARY,
IN THE GOVERNMENT OF INDIA, NEW DELHI
2. OFFICE OF THE SENIOR COMMANDANT/CISF,
MINISTRY OF HOME AFFAIRS, CISF UNIT,
NALCO DAMMANJODI DIST.
KORAPUT, ORISSA STATE
3. DEPUTY INSPECTOR,
GENERAL OF CISF,
EASTER ZONE, HQRS,
PATNA, BIHAR
4. INSPECTOR GENERAL/ CISF, EAST SECTOR HQ,
BORING ROAD, NEW
PATALIPUTRA COLONY,
PATNA 13 BIHAR

...RESPONDENTS

BY SHRI. SARTHAK GUPTA, ADV. FOR R1 TO R4)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 29.05.2006 PASSED BY THE R2 VIDE ANNEX-E AND ORDER OF APPELLATE AUTHORITY I.E. R3 DATED 03.01.2007 IN ORDER VIDE ANNEX-F AND ORDER DATED 17/18.01.2010 PASSED BY REVISIONAL AUTHORITY VIDE ANNEX-H AND ETC.,

**THIS W.P. COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT
MADE THE FOLLOWING:**

ORDER

In this writ petition, the petitioner has prayed for a writ of certiorari to quash the order of penalty dated 29.05.2006 as per Annexure-E, the order of appellate authority dated 03.01.2007 as per Annexure-F and the order of Revisional Authority dated 17/18.02.2010 as per Annexure-H removing the petitioner from service.

The petitioner was appointed as a Constable on 03.04.1998. On 12.01.2006, a constable by name of Nikhil Arora died in suspicious circumstances. Provoked by the sudden demise of a constable, the petitioner and others protested and held a Dharana. In the process, a Sub-Inspector by name of AVG Ratti sustained bleeding injury and they further indulged in a unnecessary argument with another official by name Akash Rathore. Consequent to this incident criminal proceedings were initiated against the petitioner and three others by name of T. Karol, S. Ramachandran and Aniruddha Sen for the offences punishable under Sections 294, 323, 341 of IPC. On contest, the Criminal Court in CC.No43/2007 vide judgement dated 27.10.2007 acquitted the petitioner and three others.

When the matter stood at that stage, the respondents initiated disciplinary proceedings only against the petitioner by issuing Articles of Charge for misconduct of indiscipline and insubordination. Since the explanation of the petitioner was not satisfactory, the enquiry proceedings were initiated. Enquiry officer submitted a report stating that the charges as proved. The Disciplinary Authority by accepting the enquiry report, passed the impugned order dated 29.05.2006 as per Annexure-E levying penalty of removal of petitioner from service. Aggrieved by this order, the petitioner filed an appeal and the same came to be dismissed as per Annexure -F dated 03.01.2007. Further, the revision petition filed by the petitioner also came to be dismissed as per Annexure-H dated 17/18.01.2010. Hence, this writ petition.

Heard arguments and perused the entire writ papers.

The Supreme Court in the case of *State of Uttar Pradesh and another vs. Man Mohan Nath Sinha and another (2009) 2 SCC (L&S) 435* held as under:

"15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The court does not sit in judgement on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of matters suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court."

Keeping in view the law declared by the Apex Court in the judgement supra, it is necessary to examine the fact situation in this case. The disciplinary authority and the enquiry officer by following the procedure and by providing a fair opportunity to the petitioner, conducted the enquiry and passed the impugned order of penalty. It is not shown to me that is the error illegality committed by the respondents in the matter of decision making process. In the absence of any such error or illegality, this Court cannot sit as an Appellate Court and reassess the evidence on record. Therefore, I find no justifiable ground to interfere with the enquiry report stating that the charges against the petitioner as proved.

However, it is necessary to examine the proportionality of penalty. In the instant case it is seen from the record that the past history of the petitioner from between 1998 to 2006 is unblemished. Further, it is seen that on account of death of a constable by name of Nikhil Arora, the petitioner and others protested. Though nearly 50 Constables were involved in the protest, the criminal case was filed only against four persons including the petitioner herein

and the same ended in acquittal. But the disciplinary proceedings are initiated only against the petitioner. Having regard to the length of service rendered by the petitioner, the age of the petitioner and the gravity of the misconduct, I am of the considered opinion that removal from service is on the higher side.

The impugned order of penalty was passed on 29.05.2006, the order of Appellate Authority is dated 03.01.2007 and the order of Revisional Authority is dated 18.01.2010. There is a delay in filing this writ petition. Further, from the date of dismissal till today the petitioner has not worked in the respondents establishment, payment of Backwages is not a matter of right. In the circumstances, the petitioner is not entitled for any Backwages. The continuity of service and consequential benefit is only for the limited purpose of retiral benefits. In the instant case the charges are proved against the petitioner and he shall not go unpunished. In the fact and circumstances of this case, I am of the considered opinion that withholding of two increments with cumulative effect will meet the ends of justice.

For the reasons stated above the following order:

ORDER

- (i) The writ petition is partly allowed.
- (ii) The impugned order of penalty dated 29.05.2006 as per Annexure-E is hereby modified withholding two increments with cumulative effect in place of penalty of removal from service.
- (iii) The respondents are hereby directed to reinstate the petitioner without backwages.
- (iv) The continuity of services and consequential benefits is only for the limited purpose of retiral benefits.

Ordered accordingly.

SD/-
JUDGE

/TRUE COPY/

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(Appellate Jurisdiction)
Writ Appeal No. 12345/2013
In
Writ Petition No. 12345/2012

Memorandum of Writ Appeal under Sec. 4 of the Karnataka High Court Act

Rank of the parties

In
Writ Petition/Writ Appeal

1. UNION OF INDIA,
 REPRESENTED BY ITS HOME SECRETARY,
 IN THE GOVERNMENT OF INDIA,
 NEW DELHI
2. OFFICE OF THE SENIOR COMMANDANT/CISF,
 MINISTRY OF HOME AFFAIRS, CISF UNIT,
 NALCO DAMMANJODI DIST.
 KORAPUT, ORISSA STATE
3. DEPUTY INSPECTOR,
 GENERAL OF CISF, EASTER ZONE, HQRS,
 PATNA, BIHAR
4. INSPECTOR GENERAL/CISF, EAST SECTOR HQ,
 BORING ROAD, NEW PATALIPUTRA COLONY,
 PATNA 13 BIHAR

AND

1. SKANDA S. BHARADWAJ
 SON OF LATE NM BHARADWAJ
 154 3RD CROSS, 3RD BLOCK,
 8TH MAIN KORAMANGALA
 BENGALURU 560034

That the Appellants named above most respectfully submitted follows:

1. The Appellants feeling aggrieved by the order dated 28.04.2013 passed in Writ Petition No. 12345/2012 (S-DIS) on the file of the learned Single Judge by allowing the writ petition in partly has preferred this writ appeal on the following amongst other facts and grounds.

BRIEF FACTS OF THE CASE

2. The Respondent was appointed as a constable in Central Industrial Security Force (CISF) on 04.04.1998. After basic training, he was posted to CISF unit BCCL Dhanbad, Bihar, where he served for a period of 5

- years and thereafter he was transferred to CISF Unit BIOP Dep-14 at NMDC, Kirandul, Dist. Dhanuwan, State Chhattisgarh on 15.07.2003.
3. There was pre-fixed parade on 13.02.2006 by the authorities. In this connection, the authorities had called evening Roll Call on 12.01.2006 at Unit line Kirandul at 18.00 hrs. In that Roll Call parade, the Respondent committed an indiscipline acts of arguing unnecessarily with superior and instigating his fellow men not to attend parade to be held on 13.01.2006. The superior officer of this Respondent, Sub-Inspector AVG Ratti advised to the Respondent not to instigate to the other constables but the Respondent abused by using filthy language in presence of all personnel and assaulted the Sub Inspector in the presence of all personnel. In view of the sudden attack of the Respondent, SI AVG Ratti sustained bleeding injuries on his mouth and nose and immediately after this incident, he remained admitted in hospital from 12.01.2006 to 16.01.2006. After discharge from the hospital, said SI AVG Ratti lodged a complaint against the Respondent and two others before the jurisdictional police on 17.01.2006. After the investigation, the police filed a charge-sheet against this Respondent for the offence punishable under sec 294, 323, 341, R/w 24 of IPC to the Jurisdictional JMFC.
 4. Having regard to the facts and circumstances of the case the Respondent was dealt with under Rule 36 of I CISF Rules 2001 for having involved in unbecoming act of insubordination by abusing and assaulting his senior officer and exhibited highly indiscipline acts of instigating his fellow men not to attend parade on 13.01.2006. Accordingly a full-fledged departmental enquiry was conducted into the charges levelled against the Respondent by appointing enquiry officer as well as presenting officer. The Respondent was given ample opportunities to defend his case and all the constitutional safeguards as well as proper procedure were observed during the course of the enquiry. The enquiry officer found the charges levelled against the respondent as proved. On the basis of enquiry report, the Respondent was awarded the punishment of 'Removal from the service' keeping in view of the gravity of offence and misconduct committed by him.
 5. In an Armed Force of the Union, discipline is of paramount importance. The Respondent had committed above acts thereby exhibited breach of indiscipline which is detrimental to the order and discipline of the force. The disciplinary authority considering the overall act and evidence on record awarded punishment of 'Removal from the service'. The Respondent involved in an act of insubordination by using filthy language and assaulting his senior officer. Therefore there is no violation of natural justice.
 6. The Respondent being aggrieved with the order of 'Removal from service' dated 29.05.2006, has preferred an appeal before the appellate authority and after considering, the same was dismissed by the appellate authority vide order dated 03.01.2007. Against the order of appellate authority this Respondent preferred a Revision before the Revisional Authority. The Revisional Authority vide order dated 17/18.01.2010 rejected Revision Petition. Thereafter the Respondent filed a W.P. No 12345/2007 before this Hon'ble Court challenging the order of 'Removal from the service'. The said Writ Petition is also withdrawn by the Respondent.
 7. Lastly, the Respondent filed this writ Petition and sought for Writ of Certiorari for quashing a order of dismissal and order passed by the Appellate Authority and also an order passed by the Revisional Authority.
 8. After hearing, the learned Single Judge of the Hon'ble Court allowed the Writ Petition in part, modified the penalty to withholding of two increments with cumulative effect in place of 'Removal from service' and directed to the Appellants to reinstate the Respondent without back wages. Being aggrieved of the same, these Appellants preferred this appeal against the order of the learned Single Judge in allowing the writ Petition in part. Hence this appeal on the following amongst other.

9. There is a delay in filing this appeal therefore a separate application is filed along with this appeal for condonation of the delay.

GROUND

10. The learned Single Judge has erred in allowing the Writ Petition in part vide judgement order dated 28.04.2013 that "the impugned order of penalty dated 29.05.2006 as per Annexure-E is hereby modified to withholding of two increments with cumulative effect in place of penalty of removal from service with direction to re-instate the petitioner without backwages and continuity of service and consequential benefits is only of the limited purpose of retrial benefits". It is well settled that the scope of judicial review is limited to the shortcomings in decision making process and not the decision. In this connection, we are fortified by the following observations of the Apex Court in *V. Ramana vs. A.P. SRTC and others* (2005) 7 SCC 338:

"To put 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 litigations it may, in exceptional and rare cases, In a 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."

It would appear from the above settled principles of law that the High Court may itself impose appropriate punishment in exception and rare cases with cogent reason in support thereof and that in normal course it would be appropriate to direct the Disciplinary authority or Appellate authority to reconsider the penalty imposed. The Learned Single Judge has chosen to modify the penalty instead of remitting the matter to Disciplinary authority/Appellate Authority to reconsider penalty without any cogent reasons in support thereof. Hence the order of learned single judge is liable to be set aside.

11. The learned Single has erred in allowing the Writ Petition holding that the Respondent's service record from 1998 to 2006 is unblemished. The findings of the learned single judge are contrary to the material evidences on record. It is relevant to state that before order of "Removal from the service" the authority had already awarded 2 minor and 1 major punishments to the Respondent. (1) The Respondent was deserted from Unit HQrs from 10.01.1999 to 09.02.1999 total 30 days for which minor punishment of '03 days pay fine' was awarded to him by the Assistant Commandant BCCL Dhanbad vide final order dated 23.05.1999, (2) he was awarded the punishment of reduction of pay to minimum stage for a period of 2 years' vide Commandant BCCL Dhanbad final order dated 21.11.2000 for 196 days over stay from leave (Major Punishment) and (3) Awarded 'Censure' (Minor punishment) vide Assistant Commandant BCCL Dhanbad final order dated 18.8.2001 for loss of railway warrant. During the service span of 8 years, various authorities had imposed above punishments to Respondent but he had not improved upon and on 12.01.2006 he had abused and assaulted his superior officer and thus after the full fledged enquiry, the Respondent has been awarded -the punishment of "Removed from the service". Therefore there are no illegalities or violating principles of natural justice in issuance of order of removal. The above facts were also mentioned by the appellant vide para-5 of the statement of objections filed in the WP. Hence the order of learned single judge is liable to be set aside.
12. It is admitted fact that a parade was to be held on 13.01.2006 and in that connection controlling authority called roll call on 12.01.2006 at 6 pm at unit line. In that roll call parade, Respondent abused and assaulted No. 9333220021 S.I./Exe AVG Ratti at CISF Unit BIOP (Dep-14) Kirandul along with others as a result, S.I. AVG Ratti sustained bleeding injury in his mouth and he was admitted to hospital for a period of 5 days. Thereafter S.I. AVG Ratti lodged a complaint to the Jurisdictional police on 17.01.2006 and after the investigation the police filed a charge sheet before the Dhantewada JMFC Court and same is registered at CC No. 43/2006. When this is the position, how Respondent's service record become unblemished and thereafter the learned Single Judge's findings is contrary to the material evidence on record.

13. As per the rule 36 of CISF Rules 2001 the enquiry has been initiated against the Respondent and in terms of the enquiry report the Respondent was awarded a punishment of "Removal from service". There is no any illegality in passing such Removal order against the Respondent.
14. The act committed by the Respondent for having involved in un-becoming act of insubordination by abusing and assaulting a senior officer which is highly indiscipline acts and instigating his fellow men not to attend parade on 13.01.2006 it is inexcusable act of Respondent. Therefore the Respondent had rightly been removed from service.
15. The Respondent being a member of Armed Force of the Union involved in un-becoming acts of insubordination by abusing and assaulting his senior officer in presence of his fellow men consequently the act of the indiscipline spread over the Force for which the controlling of the Force became vain. Thereby the award of punishment of Removal from service is justifiable.
16. Vied from any angle the order passed by, the learned Single Judge does not sustain in the eye of law. Therefore be set aside.
17. Apart from transgression of judicial scope, the penalty supplemented vide judgment order is not in consonance with the Penalties provided in Rule-34 of CISF Rules 2001 as no period for withholding of increment has been stipulated.

PRAYER

WHEREFORE, this Hon'ble Court may Kindly be pleased to allow the Writ Appeal and set aside the order dated 28.04.2013 passed in Writ Petition No. 12345/2012 and grant such other and further reliefs as this Hon'ble Court deems fit in these circumstances of this case including order of cost.

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PART-II : QUESTION-2

Ms. Archana Patil is 30 years old and holds an M.Sc. (Botany) from the University of Phoolpur in the State of Maharashtra. Ms. Patil finished her M.Sc. in the year 2015 with a gold medal. She then joined Vanaspati Adhyayan Kendra ("V.A.K") in 2016 as a contractual employee. V.A.K is a Public Sector undertaking, under the aegis of Department of Science and Technologies, State of Maharashtra, which aims to study, market, sell, and spread awareness about plants and plant derivatives used in traditional medicine systems.

Ms. Archana Patil married Mr. Vikas Gorwadkar in the year 2015. In 2017, she gave birth to twin daughters. She lives with her spouse, his aged parents, and their two daughters.

One of the key features that led Ms. Patil to join V.A.K was the fact that the V.A.K. employees had flexible working hours. Since there were only two labs on the V.A.K. premises, researchers would often work in batches, and coordinate with each other to ensure flexibility in shifts. The work also required field visits twice a week, and V.A.K had a policy that on the day of field visits, the researchers could work from home for the second half of the day. These provisions were included in an Office O.M issued by the Director, V.A.K on 12 January 2012.

Ms. Archana Patil would usually come in to office at 10 am and use the lab in the second shift at 12:30 pm. This enabled her to complete her child and elder care duties at home before joining work.

In 2019, the labs at V.A.K began to be refurbished and expanded. By 2021 this process was complete, and the labs had increased capacity. This coupled with change of leadership in the organization led to the O.M dated 15 December 2021 being issued which stated that:

1. All employees must mandatorily report at 8:00 am and henceforth the lab will operate only in the morning batch of 9:00 am – 12:00 pm. They will thereafter spend time in their offices completing administrative tasks and other paperwork and be permitted to leave at 5:00 pm, unless there was a family or medical emergency.
2. A bio-metric attendance tracker will be installed in the labs, which will track when the employees clock in, and anyone entering after 8:15 am would be considered absent for the day.
3. On days with field visits, the second half of the day would have to be spent working from office.

The impact of the O.M dated 15 December 2021 on the women employees at V.A.K. was immediate. One of Ms. Archana Patil's colleagues was forced to look for other employment since the new schedule at her workplace, and the need to leave home by 7 am to reach the workplace on time, met with stiff opposition in her home. Ms. Archana Patil herself had to make alternative arrangements for child and elder care and found the change disruptive and expensive. In February 2022, some women employees of V.A.K, including Ms. Archana Patil, sent a request that V.A.K provide a fully functional creche or revert to the earlier system of flexible working hours, given the large number of women in its workforce and the social reality of women being saddled with a disproportionate burden of care work.

This request remained 'pending consideration' and no steps were taken by the V.A.K management to provide a creche or revert to the flexible hours system.

Ms. Archana Patil came across the concept of indirect discrimination and substantive equality in a magazine issue on women in the workplace. She approaches a firm where you are a first-year associate.

Prepare a small research memo (500-750 words) discussing the legal remedies available to Ms. Archana Patil and the women working at V.A.K. and the potential grounds for a legal challenge, including your opinion (with reasons) on the feasibility thereof using the legal sources extracted below.

CONSTITUTION OF INDIA, 1950

PART III

FUNDAMENTAL RIGHTS

General

12. Definition.— In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

13. Laws inconsistent with or in derogation of the fundamental rights.— (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

¹[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

Right to Equality

14. Equality before law.— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.— (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

²[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

³[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission

¹ Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 2 (w.e.f. 5-11-1971).

² Added by the Constitution (First Amendment) Act, 1951, s. 2 (w.e.f. 18-6-1951).

³ Ins. by the Constitution (Ninety-third Amendment) Act, 2005, s. 2 (w.e.f. 20-1-2006).

to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

⁴[(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office ⁵[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

⁶[(4A) Nothing in this article shall prevent the State from making any provision for reservation ³ [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

⁷[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

⁴ Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, s. 2 (w.e.f. 14-1-2019)

⁵ Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State" (w.e.f. 1-11-1956).

⁶ Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, s. 2 (w.e.f. 17-6-1995).

⁷ Ins. by the Constitution (Eighty-first Amendment) Act, 2000, s. 2 (w.e.f. 9-6-2000).

³[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]

17. Abolition of Untouchability.— “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

18. Abolition of titles.— (1) No title, not being a military or academic distinction, shall be conferred by the State. (2) No citizen of India shall accept any title from any foreign State. (3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State. (4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

[...]

21. Protection of life and personal liberty.— No person shall be deprived of his life or personal liberty except according to procedure established by law.

[...]

⁹[**226. Power of High Courts to issue certain writs.**— (1) Notwithstanding anything in article 32^{10***}, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including¹¹ [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

¹²[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

- (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
- (b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]

⁸ Ins. by the Constitution (One Hundred and Third Amendment) Act, 2019, s. 3 (w.e.f. 14-1-2019).

⁹ Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 38 for art. 226 (w.e.f. 1-2-1977).

¹⁰ The words, figures and letters “but subject to the provisions of article 131A and article 226A” omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 7 (w.e.f. 13-4-1978).

¹¹ Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, s. 30, for the portion beginning with “writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them” and ending with “such illegality has resulted in substantial failure of justice.” (w.e.f. 1-8-1979).

¹² Subs. by s.30, ibid., for cls. (3), (4), (5) and (6) (w.e.f. 1-8-1979).

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[...]

49. Indirect discrimination is closely tied to the substantive conception of equality outlined above. The doctrine of substantive equality and anti-stereotyping has been a critical evolution of the Indian constitutional jurisprudence on Articles 14 and 15(1). The spirit of these tenets have been endorsed in a consistent line of authority by this Court. To illustrate, in *Arunj Garg v. Hotel Assn. of India*,¹³ this Court held that laws premised on sex-based stereotypes are constitutionally impermissible, in that they are outmoded in content and stifling in means. The Court further held that no law that ends up perpetuating the oppression of women could pass scrutiny. Barriers that prevent women from enjoying full and equal citizenship, it was held, must be dismantled, as opposed to being cited to validate an unjust status quo. In *National Legal Services Authority v. Union of India*,¹⁴ this Court recognised how the patterns of discrimination and disadvantage faced by the transgender community and enumerated a series of remedial measures that can be taken for their empowerment. In *Jeeja Ghosh v. Union of India*¹⁵ and *Vikash Kumar v. UPSC*¹⁶ this Court recognised reasonable accommodation as a substantive equality facilitator.
50. The jurisprudence relating to indirect discrimination in India is still at a nascent stage. Having said that, indirect discrimination has found its place in the jurisprudence of this Court in *Navtej Singh Johar v. Union of India*,¹⁷ where one of us (Chandrachud, J.), in holding Section 377 of the Penal Code, 1860 as unconstitutional insofar as it decriminalises homosexual intercourse amongst consenting adults, drew on the doctrine of indirect discrimination. This was in arriving at the conclusion that this facially neutral provision disproportionately affected members of the LGBT community. This reliance was in affirmation of the decision of the Delhi High Court in *Naz Foundation v. State (NCT of Delhi)*¹⁸ which had relied on the “Declaration of Principles of Equality” issued by the Equal Rights Trust Act, in 2008 in recognising that indirect discrimination occurs,

“when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.” [Id, para 93.]

Similarly, this Court has recognised the fashion in which discrimination operates by dint of “structures of oppression and domination” which prevent certain groups from enjoying the full panoply of entitlements.¹⁹ The focus in anti-discrimination enquiry, has switched from looking at the intentions or motive of the discriminator to examining whether a rule, formally or substantively, “contributes to the subordination of a disadvantaged group of individuals”.²⁰

51. Indirect discrimination has also been recognised by the High Courts in India.²¹ For instance, in the matters of public sector employment, the Delhi High Court in *Ravina v. Union of India*²² and in *Madhu v. Northern*

¹³ *Arunj Garg v. Hotel Assn. of India*, (2008) 3 SCC 1

¹⁴ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

¹⁵ *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761:(2016) 3 SCC (Civ) 551

¹⁶ *Vikash Kumar v. UPSC*, (2021) 5 SCC 370 : (2021) 2 SCC (L&S) 1

¹⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, paras 442-446 : (2019) 1 SCC (Cri) 1

¹⁸ *Naz Foundation v. State (NCT of Delhi)*, 2009 SCC OnLine Del 1762 : (2009) 111 DRJ 1

¹⁹ *Young Lawyers Assn. (Sabarimala Temple-SJ.) v. State of Kerala*, (2019) 11 SCC 1, (Chandrachud, J., concurring opinion, para 420); *Joseph Shine v. Union of India*, (2019) 3 SCC 39 : (2019) 2 SCC (Cri) 84, (Chandrachud, J., concurring opinion, paras 113-114) (“Joseph Shine”)

²⁰ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 : (2019) 2 SCC (Cri) 84

²¹ *Patel Saleman Gaibi v. State of Maharashtra*, 2014 SCC OnLine Bom 4639 : (2015) 3 Mah LJ 855

²² *Ravina v. Union of India*, 2015 SCC OnLine Del 14619

*Railway*²³ has upheld challenges to conditions of employment, which though appear to be neutral, have an adverse effect on one section of the society. Bhat, J., while analysing the principles of indirect discrimination in *Madhu*, held:²⁴

"20. This Court itself has recognised that actions taken on a seemingly innocent ground can in fact have discriminatory effects due to the structural inequalities that exist between classes. When the CRPF denied promotion to an officer on the ground that she did not take the requisite course to secure promotion, because she was pregnant, the Delhi High Court struck down the action as discriminatory. Such actions would inherently affect women more than men. The Court in Ravina v. Union of India [Ravina v. Union of India, 2015 SCC OnLine Del 14619] stated : (SCC OnLine Del para 12)

'12. ... A seemingly "neutral" reason such as inability of the employee, or unwillingness, if not probed closely, would act in a discriminatory manner, directly impacting her service rights. That is exactly what has happened here : though CRPF asserts that seniority benefit at par with the petitioner's colleagues and batchmates (who were able to clear Course No. 85) cannot be given to her because she did not attend that course, in truth, her "unwillingness" stemmed from her inability due to her pregnancy.'

52. We must clarify here that the use of the term "indirect discrimination" is not to refer to discrimination which is remote, but is, instead, as real as any other form of discrimination. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion.²⁵
53. The facts of this case present an opportune moment for evaluating the practices of the respondents in evaluation for the grant of PC. In this segment of the judgment, we will first outline the theoretical foundations of the doctrine of indirect discrimination. We will then survey comparative jurisprudence concerning the doctrine, with a view to understand its key constituents and the legal questions surrounding its application, namely, the evidentiary burden to be discharged to invoke the doctrine and the standards of justification to be applied. We will then offer a roadmap for understanding and operationalising indirect discrimination in Indian anti-discrimination law.
54. In evaluating direct and indirect discrimination, it is important to underscore that these tests, when applied in strict disjunction from one another, may end up producing narrow conceptions of equality which may not account for systemic flaws that embody discrimination. Therefore, we will conclude this section with an understanding of a systemic frame of analysis, in order to adequately redress the full extent of harm that certain groups suffer, merely on account of them possessing characteristics that are prohibited axes of discrimination.

²³ *Madhu v. Northern Railway*, 2018 SCC OnLine Del 6660. A challenge to conditions of employment/promotion in the Army Dental Corps was also made before the Delhi High Court in *Jacqueline Jacinta Dias v. Union of India* (2018 SCC OnLine Del 12426). However, the challenge could not succeed as the Court failed to discern any manifest bias. In doing so however, the High Court pointed out to the lack of clear norms regarding indirect discrimination in India and noted:

"35. This Court is conscious of the fact that indirect discrimination is harder to prove or establish. Hidden biases, where establishments or individuals do not overtly show bias, but operate within a discriminatory environment therefore, is hard to establish. Yet, to show such bias ... there should have been something in the record—such as pattern of marking, or predominance of some element, manifesting itself in the results declared. This Court is unable to discern any; Nor is there any per se startling consequence apparent from the granular analysis of the results carried out. Furthermore, equality jurisprudence in India has not yet advanced as to indicate clear norms (unlike legislative rules in the EU and the UK) which guide the courts. Consequently, it is held that the complaint of gender discrimination or arbitrariness is not made out from the record."

²⁴ *Madhu v. Northern Railway*, 2018 SCC OnLine Del 6660

²⁵ Interchangeably referred as "PCP".

F.1. Theoretical foundations of indirect discrimination

55. Hugh Collins and Tarunabh Khaitan explain the concept of indirect discrimination using Aesop's Fable of The Fox and the Stork. They note:

"Aesop's Fable of The Fox and the Stork invokes the idea of indirect discrimination. The story tells how the fox invited the stork for a meal. For a mean joke, the fox served soup in a shallow dish, which the fox could lap up easily, but the stork could only wet the end of her long bill on the plate and departed still hungry. The stork invited the fox for a return visit and served soup in a long-necked jar with a narrow mouth, into which the fox could not insert his snout. Whilst several moral lessons might be drawn from this tale, it is often regarded as supporting the principle that one should have regard to the needs of others, so that everyone may be given fair opportunities in life. Though formally giving each animal an equal opportunity to enjoy the dinner, in practice the vessels for the serving of the soup inevitably excluded the guest on account of their particular characteristics." [Foundations of Indirect Discrimination Law (Hugh Collins and Tarunabh Khaitan (Eds), Hart Publishing, 2018) at p.1.]

56. Another excellent formulation of the doctrine can be found in the opinion of Advocate General Maduro of the Court of Justice of the European Union ("CJEU"). He notes that the distinctive attribute of direct discrimination is that the discriminator explicitly relies on a suspect classification (prohibited ground of discrimination) to act in a certain way. Such classification serves as an essential premise of the discriminator's reasoning. On the other hand, in indirect discrimination, the intention of the discriminator, and the reasons for his actions are irrelevant. He pertinently observes:

"In fact, this is the whole point of the prohibition of indirect discrimination : even neutral, innocent or good faith measures and policies adopted with no discriminatory intent whatsoever will be caught if their impact on persons who have a particular characteristic is greater than their impact on other persons."²⁶

57. Thus, as long as a court's focus is on the mental state underlying the impugned action that is allegedly discriminatory, we are in the territory of direct discrimination. However, when the focus switches to the effects of the action concerned, we enter the territory of indirect discrimination. An enquiry as to indirect discrimination looks, not at the form of the impugned conduct, but at its consequences. In a case of direct discrimination, the judicial enquiry is confined to the act or conduct at issue, abstracted from the social setting or background fact situation in which the act or conduct takes place. In indirect discrimination, on the other hand, the subject-matter of the enquiry is the institutional or societal framework within which the impugned conduct occurs. The doctrine seeks to broaden the scope of anti-discrimination law to equip the law to remedy patterns of discrimination that are not as easily discernible.

[...]

F.5. Position in Canada

68. In *Ontario Human Rights Commission v. Simpsons Sears Ltd.*,²⁷ the Canadian Supreme Court expounded the doctrine of indirect discrimination (what it called adverse effects discrimination), while entertaining a challenge under Section 4(1)(g) of the Ontario Human Rights Code.²⁸ In analysing whether a work policy mandating inflexible working hours on Friday evenings and Saturdays indirectly discriminated against the appellant on the basis of her creed, in that her religion required her to strictly observe the Sabbath, the Court noted :

²⁶ *Coleman v. Attridge Law*, 2008 IRLR 722 (ECJ)

²⁷ *Ontario Human Rights Commission v. Simpsons Sears Ltd.*, 1985 SCC OnLine Can SC 75 : (1985) 2 SCR 536

²⁸ Section 4(1)(g) of the Ontario Human Rights Code prohibited discrimination against an employee with regard to any term or condition of employment on the basis of race, creed, colour, sex, age, etc.

"18. A distinction must be made between what I would describe as direct discrimination and the concept already referred to as adverse effect discrimination in connection with employment. Direct discrimination occurs in this connection where an employer adopts a practice or rule which on its face discriminates on a prohibited ground. For example, 'No Catholics or no women or no blacks employed here.' There is, of course, no disagreement in the case at Bar that direct discrimination of that nature would contravene the Act. On the other hand, there is the concept of adverse effect discrimination. It arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force. For essentially the same reasons that led to the conclusion that an intent to discriminate was not required as an element of discrimination contravening the Code I am of the opinion that this Court may consider adverse effect discrimination as described in these reasons a contradiction of the terms of the Code. An employment rule honestly made for sound economic or business reasons, equally applicable to all to whom it is intended to apply, may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply. From the foregoing I therefore conclude that the appellant showed a prima facie case of discrimination based on creed before the Board of Inquiry."

It was further noted that the aim of the guarantee against discrimination is "not to punish the discriminator, but rather to provide relief for the victims of discrimination. It is the result or the effect of the action complained of which is significant." Thus if the impugned action has the effect to "impose on one person or group of persons obligations, penalties, or restrictive conditions not imposed on other members of the community, it is discriminatory".

69. The principles laid down in *Ontario HRC*²⁹ were consistently applied by the courts in Canada to protect indirect discrimination. In a recent judgment in *Joanne Fraser v. Attorney General of Canada*,³⁰ the Canadian Supreme Court was called on to determine the constitutionality of a rule categorising job-sharing positions as "part-time work" for which participants could not receive full-time pension. Under the job-sharing programme, optees for the programme could split the duties and responsibilities of one full-time position. A large majority of the optees for the job-sharing programme were women, who found it burdensome to carry out the responsibilities of work and domestic work and were particularly hit by the new rule as they would lose out on pension benefits. The Court recognised indirect discrimination as a legal response to the fact that discrimination is "frequently a product of continuing to do things the way they have always been done", as opposed to intentionally discriminatory actions.³¹ Pertinently, the Court outlined a 2-step test for conducting an indirect discrimination enquiry. First, the Court has to enquire whether the impugned rule disproportionately affects a particular group. As an evidentiary matter, this entails a consideration of material that demonstrates that "membership in the claimant group is associated with certain characteristics that have disadvantaged members of the group". However, as such evidence might be hard to come by, reliance can be placed on evidence generated by the claimant group itself. Further, while statistical evidence can serve as concrete proof of disproportionate impact, there is no clear quantitative threshold as to the quantum of disproportionality to be established for a charge of indirect discrimination to be brought home. Equally, recognising the importance of applying a robust judicial common sense, the Court held:

"In some cases, evidence about a group will show such a strong association with certain traits—such as pregnancy with gender—that the disproportionate impact on members of that group will be apparent and immediate."

²⁹ *Ontario Human Rights Commission v. Simpsons Sears Ltd.*, 1985 SCC OnLine Can SC 75 : (1985) 2 SCR 536

³⁰ *Joanne Fraser v. Attorney General of Canada*, 2020 SCC 28 (Can SC)] ("Fraser").

³¹ *Id.*, para 31

Second, the Court has to look at whether the law has the effect of reinforcing, perpetuating, or exacerbating disadvantage. Such disadvantage could be in the shape of:

"[e]conomic exclusion or disadvantage, [s]ocial exclusion...[p]sychological harms...[p]hysical harms...[or] [p]olitical exclusion, and must be viewed in light of any systemic or historical disadvantages faced by the claimant group."

F.6. Evolving an analytical framework for indirect discrimination in India

70. A study of the above cases and scholarly works gives rise to the following key learnings. First, the doctrine of indirect discrimination is founded on the compelling insight that discrimination can often be a function, not of conscious design or malicious intent, but unconscious/implicit biases or an inability to recognise how existing structures/institutions, and ways of doing things, have the consequence of freezing an unjust status quo. In order to achieve substantive equality prescribed under the Constitution, indirect discrimination, even sans discriminatory intent, must be prohibited.
71. Second, and as a related point, the distinction between direct and indirect discrimination can broadly be drawn on the basis of the former being predicated on intent, while the latter is based on effect (US, South Africa, Canada). Alternatively, it can be based on the fact that the former cannot be justified, while the latter can (UK). We are of the considered view that the intention effects distinction is a sound jurisprudential basis on which to distinguish direct from indirect discrimination. This is for the reason that the most compelling feature of indirect discrimination, in our view, is the fact that it prohibits conduct, which though not intended to be discriminatory, has that effect. As the Canadian Supreme Court put it in *Ontario HRC*,³² requiring proof of intention to establish discrimination puts an *"insuperable barrier in the way of a complainant seeking a remedy"*.³³ It is this barrier that a robust conception of indirect discrimination can enable us to counteract.
72. Third, on the nature of evidence required to prove indirect discrimination, statistical evidence that can establish how the impugned provision, criteria or practice is the cause for the disproportionately disadvantageous outcome can be one of the ways to establish the play of indirect discrimination. As Professor Sandra Fredman notes: *"Aptitude tests, interview and selection processes, and other apparently scientific and neutral measures might never invite scrutiny unless data is available to dislodge these assumptions."*³⁴ Consistent with the Canadian Supreme Court's approach in *Fraser*,³⁵ we do not think that it would be wise to lay down any quantitative thresholds for the nature of statistical disparity that must be established for a claimant to succeed. Equally, we do not think that an absolutist position can be adopted as to the nature of evidence that must be brought forth to succeed in a case of indirect discrimination. The absence of any statistical evidence or inability to statistically demonstrate exclusion cannot be the sole ground for debunking claims of indirect discrimination. This was clarified by the European Court of Human Rights in a case concerning fifteen Croatians of Roma origin claiming racial discrimination and segregation in schools with Roma-only classes. In assessing the claims of the fifteen Croatians, the court observed that indirect discrimination can be proved without statistical evidence.³⁶ Therefore, statistical evidence demonstrating patterns of exclusion, can be one of the ways to prove indirect discrimination.
73. Fourth, insofar as the fashion in which the indirect discrimination enquiry must be conducted, we think that the two-stage test laid down by the Canadian Supreme Court in *Fraser*³⁷ offers a well-structured framework of analysis as it accounts for both the disproportionate impact of the impugned provision, criteria or practice

³² *Ontario Human Rights Commission v. Simpsons Sears Ltd.*, 1985 SCC OnLine Can SC 75 : (1985) 2 SCR 536

³³ *Ontario Human Rights Commission v. Simpsons Sears Ltd.*, 1985 SCC OnLine Can SC 75, para 14 : (1985) 2 SCR 536, para 14

³⁴ Sandra Fredman, *Discrimination Law* at p. 187

³⁵ *Joanne Fraser v. Attorney General of Canada*, 2020 SCC 28 (Can SC)

³⁶ *Orsus v. Croatia*, 2010 ECHR 337, para 153

³⁷ *Joanne Fraser v. Attorney General of Canada*, 2020 SCC 28 (Can SC)

on the relevant group, as well as the harm caused by such impact. It foregrounds an examination of the ills that indirect discrimination seeks to remedy.

74. Fifth and finally, while assessing the justifiability of measures that are alleged to have the effect of indirect discrimination, the Court needs to return a finding on whether the narrow provision, criteria or practice is necessary for successful job performance. In this regard, some amount of deference to the employer/defendant's view is warranted. Equally, the Court must resist the temptation to accept generalisations by defendants under the garb of deference and must closely scrutinise the proffered justification. Further, the Court must also examine if it is possible to substitute the measures with less discriminatory alternatives. Only by exercising such close scrutiny and exhibiting attentiveness to the possibility of alternatives can a court ensure that the full potential of the doctrine of indirect discrimination is realised and not lost in its application.³⁸

Inspector (Mahila) Ravina v. Union of India W.P.(C) 4525 of 2014 (High Court of Delhi)

1. The Writ Petitioner invokes this court's jurisdiction under Article 226 of the Constitution, aggrieved by the Respondents' order dated 20.02.2014 which omitted to list her name as a promoted candidate, but promoted her juniors to the post of Asst. Commandant.
2. The facts of this Petition shall briefly be summarised. The Petitioner is an (Mahila) Inspector GD in the Central Reserve Police Force (CRPF), governed by the Central Reserve Police Force Act, 1949 (the Act) and Rules framed thereunder. When the Petitioner was a Sub Inspector she had been denied promotion to Inspector on account of non-fulfilment of the Mandatory Field Service criteria i.e. two years' service in a duty battalion (or operational post) in the promotion list dated 06.09.2007. Subsequently, on 03.02.2009, a special promotion list was released promoting her to rank of Inspector (GD) without protecting her seniority. Aggrieved at that stage, she filed a Petition being Ravina Malik v. UOI and Ors [W.P. (C) No. 617/2011] before this Court. This Court, by an order on 01.02.2011 directed the CRPF to treat the Petitioner's case as a representation requiring consideration of the decision dated 27.10.2009 in Ashok Kumar v. Union of India [W.P. (C) No. 21900/2005]. Ultimately, by signal No. P.VII-10/2011- Est. dated 11.04.2011, the Petitioner's seniority was restored with consequential benefits w.e.f. 06.09.2007.
3. In the interim, two pre-promotional courses for upward movement to the cadre of Assistant Commandant, (Senior Inspector Cadre Course SL. Nos.83 and 84) were conducted between 03.05.2010 to 10.07.2010 and 19.09.2010 to 27.11.2010 respectively. However, Petitioner could not attend the same because the re-assignment of her seniority occurred only on 11.04.2011- consequent to the directions of this court, in W.P. (C) 617/2011. Subsequently, she was eligible for SICC SL. No. 85 conducted from 04.07.2011 to 13.09.2011. However, she was unable to attend that course owing to her pregnancy at that time and was declared SHAPE-III.
4. The petitioner attempted the next pre-promotional course (now renamed as Assistant Commandant Promotion Course SL. No. 1) conducted from 02.07.2012 to 15.09.2012 and qualified it, fulfilling the eligibility criterion for promotion to Asst. Commandant. However, the promotion list which was released on 20.02.2014, did not include the Petitioner's name and consequently she lost her seniority vis-à-vis her batch mates and juniors. In this respect, she filed a representation on 21.02.2014 requesting restoration of her seniority which was denied through office order dated 07.04.2014, on the ground that she „had shown unwillingness to attend the promotional course" SICC SL No.85 to maintain her seniority. The CRPF order also clarified that her seniority was protected for SICC SL Nos. 83 and 84, whereas only her chance was protected with respect to SICC No. 85 and not her seniority.
5. The petitioner urges that her seniority must be reinstated w.e.f. SICC SL No. 83 on compassionate grounds of her pregnancy considering that she had passed the required course subsequently. Counsel on behalf of the Petitioner has brought this Court's attention to the case of Insp. Navin Kumar Jha as a similar case, wherein

³⁸ Sandra Fredman, Discrimination Law at p. 194

he was notionally promoted and seniority was protected w.e.f. from SICC SL No. 83. It was argued that concededly when the respondents denied the petitioner her chance to participate in the pre-promotional course on the ground of her pregnancy, she could not have been discriminated against. It was argued that her colleagues and batchmates, who were unable to attend Course Nos. 83 and 84 but attended course No. 85 and qualified, were given due seniority, because the CRPF recognised that their deployment for that course was involuntary and for circumstances outside their control. Thus, upon her completion of the Assistant Commandant Promotion Course SL. No.1 on 15.09.2012 her seniority should be calculated as if she had completed promotion course SICC SL. No. 83 on 10.07.2010. In this regard, it is argued that the petitioner's seniority and chance was protected for her appearance in SICC SL. No. 85 in lieu of batch/course Nos. 83 and 84 due to an administrative lapse i.e. fixing her seniority and post as Inspector w.e.f. 06.09.2007. Her unwillingness in this regard with respect to her seniority in light of the Standing Order, would be untenable.

6. The CRPF submits that the present issue stands squarely decided by the Standing Order No. 6/99 dated 19.03.1999. Clause (J) deals with situations where candidates show unwillingness to perform the course. It categorically states that in case unwillingness shown by a candidate is accepted on compassionate grounds, only the chance shall be preserved but seniority shall be forfeited. In this regard, learned counsel relied upon letter P.VII-35/2011- Estt-85 dated 21.10.2011, wherein it is noted that the Petitioner was SHAPE-III owing to her pregnancy and that her chance was preserved in accordance to the Standing Order, but not her seniority.

Analysis and Conclusions

7. The main question which this court has to decide is whether the Petitioner's pregnancy would amount to unwillingness or signify her inability to attend a required promotional course and if she is entitled to a relaxation of rules to claim seniority at par with her batchmates.
8. The facts are not in controversy; the petitioner had to approach this court, on an earlier occasion, along with her colleagues, due to the CRPF's stand that she lacked two years' experience in an operational post. The promotion list dated 06.09.2007 omitted her name. This was set right pursuant to W.P. (C) No. 617/2011 and the CRPF restored the Petitioner's seniority and consequential benefits w.e.f. 06.09.2007. In the meanwhile, the pre-promotional courses were conducted; the petitioner could not attend those, on account of pendency of dispute. Her colleagues/batchmates got the first opportunity to do so, when Batch No. 85 was sent for the course. She could not attend the course - not on account of her volition, but for medical reasons (she was declared Shape III as she was pregnant). She ultimately cleared the course in the next batch.
9. To conclude that pregnancy amounts to mere unwillingness - as the respondents did in this case- was an indefensible. The choice to bear a child is not only a deeply personal one for a family but is also a physically taxing time for the mother. This right to reproduction and child rearing is an essential facet of Article 21 of the Constitution; it is underscored by the commitment of the Constitution framers to ensure that circumstances conducive to the exercise of this choice are created and maintained by the State at all times. This commitment is signified by Article 42 ("Provision for just and humane conditions of work and maternity relief- The State shall provide conditions for securing just and humane conditions of work and for maternity relief") and Article 45 ("Provision for early childhood care and education to children below the age of six years- The State shall endeavour to provide for early childhood care... "). The Maternity Benefits Act, 1976 protects the expecting mother's interests in employment. Provisions of the Factories Act, 1948 and the Central Civil Service (Leave) Rules, 1972 provide for post-natal care leave enabling mothers to spend time with infants who need early childhood care.
10. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by India, spells out in greater detail the various facets of the broad right to health. Article 10 of ICESCR which is relevant, reads as under:

"Article 10

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and

while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits..."

11. The ruling of the Supreme Court in *Suchita Srivastava v Chandigarh Administration*, AIR 2010 SC 235 upholds the autonomy of a woman's right to make a choice of parenting. The Court held that:

"11. ... There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children..."

12. It would be a travesty of justice if a female public employee were forced to choose between having a child and her career. This is exactly what the CRPF's position entails. Pregnancy is a departure from an employee's "normal" condition and to equate both sets of public employees- i.e. those who do not have to make such choice and those who do (like the petitioner) and apply the same standards mechanically is discriminatory. Unlike plain unwillingness- on the part of an officer to undertake the course, which can possibly entail loss of seniority- the choice exercised by a female employee to become a parent stands on an entirely different footing. If the latter is treated as expressing unwillingness, CRPF would clearly violate Article 21. As between a male official and female official, there is no distinction, in regard to promotional avenues; none was asserted. In fact, there is a common pre-promotional programme which both have to undergo; both belong to a common cadre. In these circumstances, the denial of seniority benefit to the petitioner amounts to an infraction of Article 16 (1) and (2) of the Constitution, which guarantee equality to all in matters of public employment, regardless of religion, caste, sex, descent, place of birth, residence etc. A seemingly "neutral" reason such as inability of the employee, or unwillingness, if not probed closely, would act in a discriminatory manner, directly impacting her service rights. That is exactly what has happened here: though CRPF asserts that seniority benefit at par with the petitioner's colleagues and batchmates (who were able to clear course No. 85) cannot be given to her because she did not attend that course, in truth, her "unwillingness" stemmed from her inability due to her pregnancy. In this present situation the course was in Coimbatore. Travelling and living in an alien area without support was not a feasible proposition for an expecting mother; besides, the CRPF had determined that her medical category was SHAPE III. Mercifully, the CRPF does not contend that its regulations imposed any restrictions on a female employee's pregnancy at the stage of the Petitioner's career. That the petitioner exercised her right therefore to become a parent should not operate to penalise her, and her "choice" to do so was irrelevant, in the circumstances of the case; the CRPF should have taken the reasons for the unwillingness into account given the admitted fact that she was pregnant.
13. Standing Order dated 19.03.1999, by clause (J), clothes the Director General, CRPF with discretion – through non-obstante and overriding power. This case was eminently suitable for the Director General to exercise his powers on a compassionate basis, enabling the petitioner to catch up on lost opportunity due to her involuntary condition (on account of her exercise of reproductive rights) and regain her seniority with her batchmates who cleared the 85th course. The omission to exercise this power has led to the present dispute. The lack of an express plea of pregnancy based discrimination does not in any way stop this court from doing

complete justice, to further the rights of the petitioner under Articles 14, 15 (1), 16 (2) and 21 of the Constitution of India.

14. For the foregoing reasons, this Court hereby directs the Respondents to restore seniority of the Petitioner from 10.07.2010, the completion date of SICC SL. No. 83- as in the case of her other batchmates who completed that course, and consequently promote as well as assign her consequential seniority. Consequential seniority and all pay benefits including fixation of pay and arrears of pay shall also be disbursed to the petitioner within twelve weeks. The writ petition is allowed in the above terms. No costs.

Madhu v. Northern Railways LPA 640 of 2017 (High Court of Delhi)

1. The appellants challenge an order by the Single Judge dismissing their writ petition. They sought directions to include their names in the medical card and privilege passes of Om Prakash Gorawara (hereafter, "Gorawara") and to issue them separate cards. The appellants were Gorawara's wife and daughter; neither are employed, and the first appellant, wife (hereafter "Madhu") is suffering from various chronic ailments. The present proceedings were preceded by a series of litigation between the appellants and second respondent. One of these resulted in applications of maintenance under Section 125 of the Code of Criminal Procedure, 1973. The other cases include proceedings alleging commission of offences under Sections 498A and 406 of the Indian Penal Code, 1860 (IPC). At the end of these litigations, the second respondent started paying maintenance to the appellants.
2. Gorawara is a former employee of Indian Railways, the third respondent. The Indian Railways Medical Manual and the Railway Servant Pass Rules allows for the issue of a REHLS card and establishes the "wife" and "unmarried daughter" as "family" for the purposes of extending medical card and privilege pass facilities to them. The families of current and former railway servants and officers are thus entitled to avail of medical services from railway hospitals so long as they are carrying the REHLS card. Before 2010 the appellants were listed as family/dependents on the medical card of the second respondent. In 2010 the appellants applied for and were denied separate medical cards by the first respondent, Northern Railways (referred to hereafter by name). Before his retirement in 2012, Gorawara removed the appellants' names from his medical card, disentitling them to free medical services that are otherwise available to the dependents of railway employees.
3. A writ petition, W.P.(C)No.6535/ 2015, against the decision of Northern Railways taken in 2010 to deny the Appellants the medical card was filed before this court. The court directed the General Manager, Northern Railways to decide the matter expeditiously. On 23.11.2015 the General Manager, Northern Railways issued the speaking order denying the appellants the medical cards and privilege passes, and consequently the use of the free medical facilities. It is against this order of Northern Railways that a writ petition was filed before this court, resulting in the impugned judgment. The Learned Single Judge, rejected the appellants' writ petition, holding that the issue involved a personal dispute and in the absence of nomination of the appellants as family members, by Gorawara, they could not claim the medical and pass benefits.
4. The Appellants argue that Gorawara had initially declared them as eligible to secure medical facilities from the railways and nominated them as such, but subsequently removed their names. This was done by allegedly applying for a duplicate medical card and omitting the appellants' name in the „dependants" column of the new medical card. The appellants urge that there is no separation of marital ties between Gorawara and his wife, and thus he cannot disown the Appellants. The Appellants bring to the Court's notice that the Appellants have filed a Criminal Revision Petition to enhance the amount of maintenance. Considering these facts the Appellants contend that the speaking order of 23.11.2015 is arbitrary, discriminatory, and hence unconstitutional.
5. The Appellants also allege a violation of Section 602(2) of the Indian Railway Establishment Code Volume, which states, "Medical attendance and treatment facilities shall be available, free of charge, to all „Railway employees" and their „family members and dependent relatives, irrespective of whether they are in Group A, Group B, Group C, Group D, whether they are permanent or temporary, in accordance with the detailed

rules as given in Section „C” of this Chapter.” Thus, the Appellants claim that they are entitled to free medical services as the „family” of Respondent No.2, a retired railway employee.

6. The Appellants also rely upon the Railway Board Letter No.2004/H/28/1 RELHS/Card (dated 22.03.2005) wherein provisions were made for eligible family members to procure a RELHS card. The letter notes, “For Long Term Duration: the original medical card may be deposited with the issuing authority who may issue split medical card to the beneficiaries as requested by them”. Thus, the Appellants contend that it is within Northern Railway’s power to issue to the Appellants a separate medical card. It is submitted that the understanding of the Single Judge, in the impugned order that the dispute related to personal issues, is incorrect; it is rather the Railway authorities’ omission in ignoring material circumstances and denying them what legitimately ought to be given to them.
7. It is argued besides, that the first appellants’ age and medical ailments render her vulnerable because in the absence of any medical card, health and medical facilities would become so expensive as to become inaccessible. Counsel submitted that the official respondents’ inability to consider these - as well as the fact that over two decades the appellants are recipients of the medical benefits and railway passes provided by the Railways rules and orders and further ignoring that the behaviour of Gorwara has resulted in direction of competent courts to pay them maintenance, renders the refusal to give them (the appellants) such benefits arbitrary; it also violates their right to life under Article 21 of the Constitution. It is underlined that the status of the appellants as wife and daughter of Gorwara could not have been ignored by the official respondents; therefore, the latter’s order was made without application of mind.
8. The primary contention of the Northern Railways is that the facilities of the Medical Card and Privilege Passes are for the use of the railway officers/servants, and have been extended to the family of the railway officer/servant only on their declaration. Northern Railways argues that there is no provision in the existing policy that allows for separate medical cards and passes to be provided to the mother and daughter, as these documents cannot be individually requested. Thus, absent a declaration by Gorwara, no medical card can be issued to the Appellants.
9. The contesting private respondent, Gorwara alleges that he is living separately from the Appellants and has no semblance of a family life with them. It is also alleged that the duplicate medical card was issued because the original medical card was lost by him. Gorwara claims that he has completely disowned the Appellants and does not wish for them to secure the free medical services based on his medical card.

Analysis and Reasoning

10. Before analyzing the rival submissions of the parties, it is necessary to extract the relevant provisions of the Railway servants’ manual. It reads as follows:

“603. Section ‘C’-Scope of medical attendance and treatment

Sub-section I:

General Medical attendance and treatment. –

The Railway employees, their family members and dependent relatives are entitled free of charge medical attendance and treatment;

Family includes:-

- i. spouse of a railway servant whether earning or not;*
- ii. son or sons who have not attained the age of 21 years and are wholly dependent on the railway servant;*
- iii. son or sons of the age of 21 and above who are;*
 - a. bonafide students of any recognized educational Institution;*
 - b. engaged in any research work and do not get any scholarship/stipend;*
 - c. working as an articled clerk under the Chartered Accountant;*
 - d. invalid, on appropriate certificate from Railway Doctor;*
- iv. unmarried daughters of any age whether earning or not;*
- v. widowed daughters provided they are dependent on the railway servant;*

vi. legally divorced daughter who is dependent on the railway servant;”

11. The speaking order, issued pursuant to the order of this court, in the previous writ proceeding, brought by the appellants, reads as follows:

“A personal hearing was given by me to Ms Madhu and Shri O P Gorawara on 30.10.2015. I have gone through the facts of the case as well as personally heard the grievance of both the affected parties. The Indian Railways Medical Manual Vol-I (third edition 2000) for the reason of RELHS and the Railway Servant Pass Rules establish the ‘wife’ and the ‘unmarried daughter’ as ‘Family’ for the purpose of extending the medical and pass facilities to them, irrespective of their earning status/ age. However, these facilities are primarily provided to the Railway servant/ officer and by virtue of his being employed under the Ministry of Railways. These facilities have further been extended to the family of the Railway servant on his declaration only. There is no provision in the existing frame of policy for providing separate medical card or pass facility to the mother and daughter since the benefit is extended to ‘family’ of Railway servant/ retired servant and cannot be given individually as requested. Hence this request of the petitioner/ applicant cannot be acceded to.”

12. A plain and textual reading of the provision (Para 603, quoted previously) clearly shows that spouses and unmarried daughters, dependent upon the income of the spouse/father, fall in the category of “family”. The reasoning adopted by the Northern Railways, on the other hand, in this case, is simple - that a declaration is necessary by the railway officer/servant, and it is based on this declaration that the dependents of the railway officer/servant will be given the benefit of free medical services. The Northern Railways’ understanding, in the opinion of this court, is utterly flawed. The provision which entitles the railway servant and his dependents, i.e. family members, clearly says “Railway employees, their family members and dependent relatives are entitled free of charge medical attendance and treatment”. The corollary is that those answering the description of “family members”, like the railway servants, enjoy the benefits she or he is assured. The declaration to be given, in the opinion of the court, by the railway servant, is a mere intimation, and thus facilitative or procedural. No one can argue - and mercifully the Railways is not arguing - that the status of the family members depends on the declaration. To accept that submission would be startling, because it would empower a spouse or father, upon caprice, with the blink of an eyelid, without any rhyme or reason, to decide to deprive what his family members would otherwise be entitled to. By way of illustration, if a dependent, unmarried daughter suffering from a chronic ailment such as tuberculosis or acute diabetes, for some reason has a difference of opinion with her father, or a young college going dependent son similarly has differences with his father, but needs urgent surgery and in both cases, are estranged from their father, the father in either case (if he is capricious) can cut off medical aid. Plainly, the interpretation given by the railways, empowering the railway servant to ignore existing status of his family members through unilateral exclusionary declaration, is untenable.
13. This court is of the opinion that the structure of Para 603 is such that the status of spouse, is recognized as long as the relationship of matrimony subsists. In the case of an unmarried and dependent daughter, there is no question of changing the status; by its very nature it is unalterable. Thus, the mere circumstance that one or the other party to a matrimonial bond, is disgruntled or involved in litigation against the other, would not alter the factum of relationship, which is per se a matter of status.
14. Madhu is suffering from various chronic ailments that have rendered her unemployable. Her daughter has chosen not to secure employment in order to care for her ailing mother. The Constitution of India establishes a welfare state whose duties include the providing of medical care for its citizens. This right is firmly protected within the right to live with dignity under Article 21. Additionally, as an employer, the government must ensure (as Section 603 of the Railway Servants Manual clearly notes) the health of its employees. This reasoning has been laid down by the Supreme Court in *State of Punjab v Ram Lubhaya Bagga* (1998) 4 SCC 117, where the Court stated,

"Right of one person correlates to a duty upon another, individual, employer, Government or authority. The right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts an obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizens as its primary duty. No doubt Government is rendering this obligation by opening Government hospitals and centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks at another hospital.

[...] The State can neither urge nor say it has no obligation to provide medical facility. If that were so, it would be ex facie violative of Article 21."

15. Thus, by denying the medical facilities to Madhu, Northern Railways is in effect, violating the mandate enshrined in Article 21 of the Constitution.

16. This Court must also keep in mind that the Appellants, under the Constitution, fall within a particular group, i.e. that of "women". The Constitution in Articles 15 and 16 recognises the principle that certain groups have been historically disadvantaged and that post the enactment of the Constitution, actions of the State that discriminate against women (not falling within the exceptions of Article 15(4) and Article 16(4) are constitutionally untenable. Thus, while affirmative action to secure the interests of women is allowed, the Constitution, irreproachably, does not permit discrimination against women. This understanding has been articulated by the Supreme Court in *Jeeja Ghosh v Union of India* (2016) 7 SCC 761 where the court stated,

"The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society."

17. Since the actions of Northern Railways result in denial of benefits and rights to this special class, it must be closely examined to see if the actions, or their effect, are discriminatory. The Northern Railways contends that the Appellants are not denied the medical card because they are women, but rather because their husband and father had not made the requisite declaration. However, this explanation is not enough. It is not sufficient to say that the reasoning of Northern Railways did not intentionally discriminate against the Appellants because they were women. Law does not operate in a vacuum and the reasoning and consequent decision of Northern Railways must be examined in the social context that it operates and the effects that it creates in the real world. Even a facially neutral decision can have disproportionate impact on a constitutionally protected class. This has been recognised by the Supreme Court in *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1 where the Court stated,

"Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects [...] 51. No law in its ultimate effect should end up perpetuating the oppression of women."

18. Similar observations were made by the Supreme Court in the landmark case of *R.C. Cooper v Union of India* 1970 SCR (3) 530. The Court stated,

"[...] To hold that the extent of, and the circumstances in which, the guarantee of protection is available depends upon the object of the State action, is to seriously erode its effectiveness. Examining the problem not merely in semantics but in the broader and more appropriate context of the constitutional scheme which aims at affording the Individual the

fullest protection of his basic rights and on that foundation to erect a structure of a truly democratic polity, the conclusion, in our judgment, is inevitable that the validity of the State action must be adjudged in the light of its operation upon the rights of the individual and groups of individuals in all their dimensions.

[...] it is not the object of the authority making the law impairing the right of a citizen, nor the form of action that determines the protection he can claim: it is the effect of the law and of the action upon the right which attract the jurisdiction of the Court to grant relief. If this be the true view, and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's rights."

19. Thus, the touchstone of validity for State action is not the intention behind the action, but rather the actual impact and effect on a citizen's life. This is clearly seen by the observations by the Supreme Court in *Maneka Gandhi v Union of India* 1978 SCR (2) 621 where the Court noted,

"[...] In testing the validity of the state action with reference to fundamental rights, what the Courts must consider is the direct and inevitable consequence of the State action."

20. This Court itself has recognised that actions taken on a seemingly innocent ground can in fact have discriminatory effects due to the structural inequalities that exist between classes. When the CRPF denied promotion to an officer on the ground that she did not take the requisite course to secure promotion, because she was pregnant, the Delhi High Court struck down the action as discriminatory. Such actions would inherently affect women more than men. The Court in *Inspector (Mahila) Ravina v Union of India W.P.(C) 4525/2014* stated,

"A seemingly "neutral" reason such as inability of the employee, or unwillingness, if not probed closely, would act in a discriminatory manner, directly impacting her service rights. That is exactly what has happened here: though CRPF asserts that seniority benefit at par with the petitioner's colleagues and batchmates (who were able to clear course No. 85) cannot be given to her because she did not attend that course, in truth, her "unwillingness" stemmed from her inability due to her pregnancy."

21. The principle that a facially neutral action by the State may disproportionately affect a particular class is accepted across jurisdictions in the world. In Europe for instance, the principle has received statutory recognition. Council Directive 76/207 (9 February, 1976) states,

"the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly by reference in particular to marital or family status..."

22. Council Directive 2000/78/EC (27 February, 2000) defines the concept of „indirect discrimination“ as,

"indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."

23. It is also worth paying attention to the case of *Bilka-Kaufhaus GmbH v Webber von Hartz* (1986) ECR 1607. Bilka was a supermarket that paid all employees who had worked full-time for more than 15 years a pension. Mrs. Webber worked part-time at Bilka for over 15 years, but was denied the pension because she was only a part-time employee. Mrs. Webber alleged that the requirement to be a full-time employee before securing the pension was discriminatory against women, since women were far more likely than men to take up part-time work, so as to take care of family and children. The Court noted,

"Article 119 of the EEC Treaty is infringed by a department store company which excludes part-time employees from its occupational pension scheme, where that exclusion affects a far greater number of women than men, unless the undertaking shows that the exclusion is based on objectively justified factors unrelated to any discrimination on grounds of sex."

24. The Canadian Supreme Court has also espoused an understanding of "disparate impact", where the touchstone to examine the validity of an allegedly discriminatory action is whether or not the effect of the action has a disproportionate impact on a class of citizens. The Court in *Andrews v Law Society of British Columbia* [1989] 1 S.C.R. 143 noted,

"Discrimination is a distinction which, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed. [...] The words "without discrimination" require more than a mere finding of distinction between the treatment of groups or individuals. These words are a form of qualifier built into s. 15 itself and limit those distinctions which are forbidden by the section to those which involve prejudice or disadvantage. The effect of the impugned distinction or classification on the complainant must be considered.

[...] I would say then that discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society."

25. The Canadian Supreme Court had similar observations in *Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536 where the court noted that discrimination arises when:

"It arises where an employer [...] adopts a rule or standard [...] which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force."

26. Thus, the Court concluded there was no requirement to show that the employer had the intention to discriminate against the complainants because of a constitutional prohibited ground, merely that the effect on the constitutionally protected class of people was adverse. The Court also stated,

"The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to provide relief for the victims of discrimination. It is the result or the effect of the action complained of which is significant. If it does, in fact, cause discrimination; if its effect is to impose on one person or group of persons obligations, penalties, or restrictive conditions not imposed on other members of the community, it is discriminatory

[...] On the other hand, there is the concept of adverse effect discrimination. It arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited grounds on one employee or a group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force.

[...] An employment rule honestly made for sound economic or business reasons, equally applicable to all whom it is intended to apply may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply."

27. The Supreme Court of South Africa made analogous observations regarding discrimination. In *The City Council of Pretoria v Walker* Case CCT 8/97 the Court noted,

"The concept of indirect discrimination, as I understand it, was developed precisely to deal with situations where discrimination lay disguised behind apparently neutral criteria or where persons already adversely hit by patterns of historic subordination had their disadvantage entrenched or intensified by the impact of measures not overtly intended to prejudice them.

In many cases, particularly those in which indirect discrimination is alleged, the protective purpose would be defeated if the persons complaining of discrimination had to prove not only that they were unfairly discriminated against but also that the unfair discrimination was intentional. This problem would be particularly acute in cases of indirect discrimination where there is almost always some purpose other than a discriminatory purpose involved in the conduct or action to which objection is taken."

28. The origin of the idea of "disparate impact" originated in the landmark case of *Griggs v Duke Power Co.* 401 U.S. 424. The Court was faced with the case of an employer who required employees to pass an aptitude test as a condition of employment. The work in question was manual work. Although the same test was applied to all candidates, the Court noted that African-American applicants had long received sub-standard education due to segregated schools. Thus, the employer's requirement disproportionately affects African-American candidates. The Court held in the context of the Civil Rights Act,

"The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."

29. The reason that the drafters of the Constitution included Article 15 and 16 was because women (inter alia) have been subjected to historic discrimination that makes a classification which disproportionately affects them as a class constitutionally untenable. The Northern Railways' decision to not grant the Appellants medical cards clearly has such a disproportionate effect. By leaving an essential benefit such as medical services subject to a declaration by the railway officer/servant, the dependents are subject to the whims and fancies of such employee. The large majority of dependents are likely to be women and children, and by insisting that the railway officer/servant makes a declaration, the Railway authorities place these women and children at risk of being denied medical services.
30. It is irrelevant that the Railways did not deny them the medical card because the Appellants were women, or that it is potentially possible that a male dependent may also be denied benefits under decision made by the Railways. The ultimate effect of its decision has a disparate impact on women by perpetuating the historic denial of agency that women have faced in India, and deny them benefits as dependents.
31. In light of these facts and the observations made above, we are of the conclusion that the speaking order passed by the Northern Railways on 23.11.2015 is arbitrary, discriminatory and made without application of mind. This court hereby quashes the order dated 23.11.2015 and directs the Northern Railways to include both the appellants' names on the medical card of the second respondent and issue a separate medical card and privilege pass to the Appellants. These directions shall be complied with, within four weeks. The appeal, and consequently, the writ petition is allowed in the above terms; there shall be no order on costs.

1. The following text is a part of a letter written by a student to his friend. Read it and answer the questions that follow.

Dear Anshu,

I am writing to you because I have a problem. I am feeling very sad and lonely. I have no one to talk to. I am always thinking about you and how much I miss you. I hope you are doing well and happy. I would love to hear from you soon.

Love,
Ravi



Adda247

PART-II : QUESTION-3

Answer any one of the following questions (350-500 words):

- (1) Discuss how the Supreme Court's interpretation of Article 21 has evolved from the decision in *R.C. Cooper v. Union of India* to the decision in *Maneka Gandhi v. Union of India*.
- (2) Discuss the constitutionality of *Jallikattu* considering the decisions of the Supreme Court on the subject.
- (3) How has the Supreme Court in *Subhash Desai v. Principal Secy. Government of Maharashtra* viewed the role of the Governor in an issue concerning the potential loss of confidence in the government of the day?
- (4) What is the important doctrinal shift made by *S.R. Bommai v. Union of India* concerning the exercise of powers under Article 356 of the Constitution and how has this impacted subsequent invocations of Article 356?
- (5) What are the remedies in Constitutional law for inter-faith couples? How can reliefs be meaningfully moulded by courts in these situations?



TO THE REGISTRAR ON COMPLETION OF THE TEST
ANSWER BOOKLET SHOULD BE HANDED OVER

INSTRUCTIONS TO CANDIDATE

1. Please do not open this Question Booklet until asked to do so.
2. **Do not leave the Examination Hall until the test is over and permitted by the Invigilator.**
3. Fill up the necessary information in the space provided on the cover of Question Booklet and the Answer Booklets before commencement of the test.
4. Please check for completeness of the Question Booklet immediately after opening.
5. **The duration of the test is 3½ hours (including reading time of 30 minutes). There are 3 questions.**
6. Answers to the subjective questions are to be attempted in respective answer booklets only meant for each question. No additional sheets will be provided to answer the questions.
7. Use only **Blue/Black Ball Point Pen** for writing the answer.
8. **Question No. 1 carries 150 marks. Question Nos. 2 and 3 carry 75 marks each (Total 300 marks).**
9. Rough work, if any, is to be done on the Question Booklet only. No separate sheet will be provided/used for rough work.
10. **Calculator, Mobile and other electronic devices etc., are not permitted inside the Examination Hall.**
11. Candidates seeking, receiving and/or giving assistance from / to other candidates during the test will be disqualified.
12. Candidate is allowed to take the Question Booklet after completion of the test.
13. Appropriate civil/criminal proceedings will be instituted against the candidate taking or attempting to take this Question Booklet or part of it outside the Examination Hall before completion of examination.
14. The right to exclude any question(s) from final evaluation rests with the testing authority.
15. Do not seek clarification on any item in the Question Booklet from the Test Invigilator. Use your best judgment.

**ANSWER BOOKLET SHOULD BE HANDED OVER
TO THE INVIGILATOR ON COMPLETION OF THE TEST.**