(2010) 05 DEL CK 0289

Delhi High Court

Case No: Writ Petition (C) No. 236 of 2000

Ex. L/NK Vimal Kumar Singh	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision: May 31, 2010

Acts Referred:

- Army Rules, 1954 - Rule 115, 115(2), 115(2A), 125
- Border Security Force Act, 1968 - Section 117(2), 20, 26, 48, 70
- Border Security Force Rules, 1965 - Rule 48(3), 49(2), 49(3)
- Border Security Force Rules, 1969 - Rule 101, 101(3), 142, 142(2), 157
- Constitution of India, 1950 - Article 14

Citation: (2010) 171 DLT 261

Hon'ble Judges: Vipin Sanghi, J; Gita Mittal, J

Bench: Division Bench

Advocate: K.K. Jha, for the Appellant; Rajat Gaur and Yadhunath Singh, Deputy Commandant, for the Respondent

Judgement

Gita Mittal, J.

By this writ petition, the petitioner assails an order and sentence dated 17th February, 1999 passed by the Summary Security Force Court (hereinafter referred to "SSFC" for brevity) finding the petitioner guilty of an offence u/s 26 of the Border Security Force Act, 1968 (hereinafter referred to "BSF Act" for brevity) and the sentence of dismissal from service. The petitioner also assails the action of Deputy Inspector General, respondent No. 2 in countersigning the dismissal order on 8th April, 1999 and the order dated 13/16th August, 1999 whereby the petitioner''s revision petition u/s 117(2) of the BSF Act was rejected by the respondent No. 2.

2. The petitioner was enrolled on 1st April, 1986 into the Border Security Force. In 1995, he was promoted as a lance naik and finally posted to 130Bn B.S.F. located at Salbagan, Tripura in which position he was serving at the time of the incident

resulting in the passing of the impugned orders.

3. It is alleged that while returning from patrolling duty along with Inspector D.K. Das on 26th December, 1998 at about 1700 hours, the petitioner got down in Madhopur on the pretext that he wanted to buy meat. Thereafter, information was received by Inspector D.K. Das at about 1830 hours to the effect that the lance naik ''Ustad'' was going to die for the reason that he was moving towards a dangerous area in Deo Verma village in a state of intoxication carrying meat and was abusing everybody he met on his way. On receipt of this information, Inspector D.K. Das immediately reached the spot along with four other officials. Both the petitioner and a civilian were brought back to the headquarters for further proceedings. On a physical examination of the petitioner, a liquor bottle was found concealed inside the petitioner''s shirt which fell down and broke, besides packets of cigarette and two match boxes.

4. A written complaint dated 27th December, 1998 was made by Inspector D.K. Das in this regard to the Commandant and Sh. P.V. Eappen, D.C. In this complaint, Inspector D.K. Das had informed the Commandant, 130 Bn., BSF, Salbagan (Agartala) that the petitioner was a habitual drunkard and that instead of performing statutory duties, the force personnel were compelled to protect the petitioner because of his wayward behaviour. Reference was also made to an earlier incident of 24th December, 1998 involving the petitioner as well and it was submitted that proper action be initiated against him.

5. On this complaint, the Deputy Commandant, Shri P.V. Eappen, who was also adjutant of the company, endorsed the following remarks:

L/NK. Vimal Kumar Singh is a habitual drunkard and complaints against him have been continuously received. Recently he has been punished u/s 26. As he is not likely to improve nor is there any effect of minor punishment on him, a strict disciplinary action may kindly be initiated against him.

6. The commandant proceeded to hear the charge in accordance with Rule 45 of the Border Security Force Rules, 1969 (hereinafter referred to "BSF Rules" for brevity). An offence report dated 28th December, 1998 under Rule 43 was prepared alleging that on 26th December, 1998 at about 1700 hours, the petitioner was found in the state of intoxication at Madhopur Market. The list of witnesses was also mentioned in the offence report. So far as the documents relied upon were concerned, only the complaint dated 27th December, 1998 was referred to. The respondents have contended that the charges against the petitioner were read out and explained and the available documents furnished to him. Opportunity to cross-examine the five prosecution witnesses was given which was declined by the petitioner.

7. On completion of hearing of the charge, Shri Raj Singh, the Commandant, 130 Bn, BSF directed preparation of an Abstract of Evidence under Rule 49 of the BSF Rules and detailed the aforesaid Shri P.V. Eappen, Deputy Commandant for the same.

8. In the abstract of evidence which was recorded by Shri P.V. Eappen, eight witnesses namely PW 1 - Inspector D.K. Das, PW II - SK Deb Barman, PW III - Kishan Lal; PW IV - Chandan Singh; PW V - Baldev Singh, PW VI - Sweeper Desh Raj, PW VII - HC Nagendra Jha and PW VIII - Jethu Singh, were examined between 30th and 31st December, 1998.

The abstract of evidence shows that PW I, II, III, IV, V, VII and VIII have deposed about the happenings of 26th December, 1998. Additionally, Head constable Nagendra Jha as PW VII gave evidence about a similar incident on 24th December, 1998. This witness further stated that when the petitioner was brought back to the company on 26th December, 1998 and was being searched, he took out a liquor bottle from his vest and threw the same in the verandah. PW VIII stated that the petitioner was medically examined on the 26th of December, 1998 at 2245 hours by Dr. B.B. Thapa and produced the medical examination certificate before the officer recording the abstract of evidence.

9. The respondents have also pointed out that after recording the evidence of these witnesses, in compliance with Rule 48(3) of the BSF Rules, the petitioner was given an opportunity to make a statement after having been duly cautioned. The petitioner made a statement before the officer recording the abstract of evidence on the 4th January, 1999 stating that he had consumed liquor before his lunch. He stated that when confronted by the company commandant, he was neither under the influence of liquor nor drunk as alleged by the witnesses. The petitioner also attributed the purchase of the liquor bottle, in his possession, as having been bought for Inspector D.K. Das and that it had fallen out when he was removing the bottle from his underclothes. The petitioner prayed for grant of one last chance.

10. It is an admitted position before us that the petitioner was placed under close arrest vide the order dated 27th December, 1998 and under open arrest with effect from 6th January, 1999 in terms of Rule 33(2)(a) of the BSF Rules.

11. On a consideration of the abstract of evidence, the Commandant passed an order dated 13th February, 1999 directing that the petitioner would be tried for an offence committed by him u/s 26 of the BSF Act, 1968 by a Summary Security Force Court (''SSFC'' hereafter for brevity).

12. The charge on which the petitioner was arraigned to stand trial before the SSFC read as follows :

BSF Act, 1968 Section 26

''Intoxication''

In that he,

at Madhopur Market on 26.12.98

at about 1700 hrs was found in

a state of intoxication.

13. The proceedings of the Summary Security Force court were held on 17th February, 1999 by the commandant. The petitioner was assigned Shri R.V. Yadav, Assistant Commandant of the battalion as the friend of the accused, in accordance with Rule 157 of the BSF Rules, 1969. The chargesheet was stated to have been read and explained to the petitioner.

14. The proceedings of the court conducted on 17th February, 1999 have been placed before this court. The commandant has recorded that he satisfied himself that the accused understood the charges as well as the difference in the procedure which would be followed by the court consequent upon a plea of ''guilt''.

15. It is contended by the respondents that the petitioner pleaded guilty to the charge and that, consequently, the respondents followed the procedure prescribed under Rule 142(2) of the BSF rules. No evidence was recorded by the Summary Security Force Court. After recording a plea of guilty and returning the finding of guilty of the charge, the abstract of evidence prepared earlier is stated to have been read over and explained and attached to the proceedings.

16. It is noteworthy that the SSFC gave an opportunity to the petitioner to make a statement in reference to the charge or in mitigation of the punishment. The SSFC has recorded that the petitioner had set up a plea for award of minimum punishment and had refused to call any witness as to his character.

17. So far as the report of his general character was concerned, the court received a report of poor conduct and that the petitioner had rendered service of over twelve years and ten months with the force. Upon a consideration of these matters, the SSFC directed that the petitioner be dismissed from service. The findings and orders of the SSFC were countersigned by the Dy. Inspector General, respondent No. 2, on 8th April, 1999.

18. The petitioner has made a grievance that he was not given any copy of the record of the abstract of evidence or proceedings of the court until the 8th of June, 1999. The sentence of the SSFC was promulgated and implemented immediately. The petitioner has contended that he was handicapped by the non-availability of any record and prejudiced in filing the statutory appeal u/s 117(2) of the BSF Act challenging the sentence of the SSFC. The submission is that the petitioner had submitted his petition under this provision on 18th April, 1999 reserving his right to submit additional grounds. Copy of the record was sent to the petitioner under the cover of a communication dated 28th May, 1999 and was actually received by him only on 8th June, 1999. In these circumstances, the petitioner submitted additional grounds on 14th June, 1999. The respondent No. 2 has rejected both these petitions vide the impugned order dated 13/16th August, 1999 simply stating that the petitions were devoid of merit.

19. Before this court, the petitioner has vehemently challenged the charges which were framed against him as well as the procedure adopted by the respondents. The petitioner has contended several violations of Rule 49 as well as 48(3) of the BSF Rules by the officer who has recorded the abstract of evidence.

20. The petitioner has challenged the impugned orders inter alia on grounds of procedural irregularities which go to the root of the exercise of jurisdiction by the respondents. The petitioner contends that he was seriously prejudiced and that the rules of natural justice were outrightly flouted as Shri P.V. Eappen, DC who was detailed to prepare the abstract of evidence was actually one of the complainants against the petitioner and had endorsed his adverse view against the petitioner on the complaint. Violation of principles of natural justice is, therefore, contended.

21. The petitioner assails the record of a plea of guilty to the charges prepared by the respondents. The petitioner has vehemently disputed the correctness and authenticity of the record prepared by the respondents on the ground that the same does not bear his signatures. It is urged that evidence of the material civilian witnesses including the alleged informant and the person who was accompanying the petitioner has not been recorded. The submission is that even the statement attributed to the petitioner does not support the allegations and that there is no evidence to support the charge of intoxication. He submits that the admission, if any, was only to the extent that he had consumed liquor when he was not on duty. He had not admitted to being intoxicated. The medical report prepared by the doctor also did not support the charge of his being intoxicated.

22. It is urged that none of the statutory protections were ensured, that the charges or the consequences of the pleas were not explained. The petitioner has challenged the certification with regard to compliance with the statutory rules by the officer recording the abstract of evidence as well as the proceedings based thereon conducted by the commandant. The petitioner has urged bias against both of them.

23. It is contended that having regard to the serious consequences which resulted to the petitioner, the respondents were bound to strictly comply with the statutory provisions as well as the principles of natural justice in letter and spirit.

It is further submitted that in any case the sentence imposed on the petitioner was grossly disporportionate to the nature of allegations against the petitioner.

24. Learned Counsel for the respondents has on the other hand vehemently defended the action which has been taken against the petitioner. According to him, the petitioner voluntarily admitted his guilt and all statutory provisions and procedural safeguards have been complied with leading to the inevitable conclusion of guilt of the petitioner. Mr. Rajat Gaur, learned Counsel has submitted that the punishment imposed on the petitioner in the given facts was justified and fair.

25. We may first examine the petitioner''s contention that the action of the respondents is unsustainable on the ground that preparation of the abstract of evidence was assigned to an officer who had already taken a strong view against the petitioner in writing and that his bias has resulted in denial of statutory protection and a fair trial to the petitioner.

26. We find that it is undisputed that Shri P.V. Eappen who was a Deputy Commandant and had been appointed the adjutant of the battalion, endorsed the abovenoted comments on the complaint dated 27th December, 1998 of Inspector Das. A bare reading of these comments would show that Shri P.V. Eappen had taken a clear view so as the conduct of the petitioner is concerned. The question which has to be answered is as to whether this would vitiate the further proceedings conducted by him in preparing the abstract of evidence on the ground that he was biased against the petitioner; as well as the consequent and ensuing proceedings of the SSFC, its finding of guilt against the petitioner and the order of sentence imposed on him thereafter as illegal on the ground that they violated principles of natural justice.

27. We find that the written complaint dated 27th December, 1998 was addressed by Inspector D.K. Das to Shri P.V. Eappen who had thereon endorsed remarks to the effect that the petitioner was in the habit of imbibing liquor and that constant complaints against him were being received. Shri Eappen had also stated that the petitioner had been recently punished u/s 26 of the BSF Act. It was his clear view even at that stage that the petitioner was incapable of being reformed and that minor penalties on him would have no deterrent effect. In his note on 27th December, 1998 Shri Eappen had recommended that strictest disciplinary action be taken against the petitioner. These comments are self-explanatory in nature and manifest the obvious opinion he held of the petitioner.

28. The Supreme Court had occasion to consider the legality of a challenge to an order of dismissal from service passed by a General Security Force Court constituted under the Border Security Force Act in the judgment reported at Union of India (UOI) and Others Vs. B.N. Jha, The court''s observations on the spirit, purpose and intendment of the statute, applicability of principles of natural justice and bias of the court deserve to be considered in extenso and read as follows :

17. The scheme of the Act and the Rules leading to holding of a trial by the General Security Force Court leaves no manner of doubt that the basic principles of natural justice have been codified therein. The provisions of the Act and the Rules in no uncertain terms envisage protection from bias against an officer. We may notice that the Act which was enacted in the year 1968 even sought to fill up the gaps occurring in other Acts like Army Act, Navy Act or Armed Forces Act in this behalf so as to protect a person from personal bias or a real likelihood of bias. Rule 46 was made with a view to achieve the said purpose. It is not in dispute having regard to the phraseology used in Rule 45B of the Rules that an accused at the first instance is

bound to the tried by his Commandant.

(Underlying supplied)

The Supreme Court further reiterated the classification of bias under three heads being, legal interest which means that the Judge is in such a position that a bias must be assumed; pecuniary interest; and personal bias. The court placed reliance on legal expansion of these expressions in texts and judicial pronouncements which throw valuable light on the issue and may be usefully extracted as follows:

30. Law in this regard has expanded to a great extent. In J.F. Garner''s Administrative Law, it is stated:

the natural justice ''bias'' rule looks to external appearances rather than to proof of actual improper exercise of power. If the reasonable observer would have the requisite degree of suspicion of bias in the decision-maker then that decision can be challenged. It is a matter of the courts ensuring that ''justice is seen to be done''. Since successful challenge is based on appearances, it is natural that the types of matter to which the rule applies is somewhat confined. As we shall see it clearly applies to judicial and disciplinary functions but not generally more widely to administrative decision making and actions.

31. In Metropolitan Properties Co. (FGC) Ltd. v. Lannon reported in 1968 (3) All ER 304, Lord Denning MR observed:

In considering whether there was a real likelihood of bias; the court does not look at the mind of the justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does it, his decision cannot stand; see R. v. Huggins (8), Sunderland Justices (9), per Vaughan Williams, L.J. Nevertheless, there must appear to be a real likelihood of bias. Surmise or conjecture is not enough; see R. v. Camborne Justices, ex parte Pearce (10); R. v. Nailsworth Justices, ex parte Bird (11). There must be circumstances from which a reasonable man would think it likely or probable that the justice, or Chairman, as the case may be, would, or did, favour one side unfairly at the expenses of the other. The court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking; ''The Judge was biased''.

29. In the Oxford English Dictionary, Second Edition, "Bias" is defined at page 166 as follows :

2. a. To give a bias or one-sided tendency or direction to; to incline to one side; to influence, affect (often unduly or unfairly).

"Biased" has been defined in this dictionary as:

2. a. influenced; inclined in some direction; unduly or unfairly influenced; prejudiced.

30. In the instant case, an issue relating to personal bias of the officer who recorded the abstract of evidence has been complained of. In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, Dr. Hari Ram (Co-Education) Higher Secondary School, the court considered a large number of decisions and observed that the requirement of the natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. It further noticed that the doctrine of natural justice cannot be put within the strait-jacket of a rigid formula. The court further noticed that De Smith in his Judicial Review of Administration Action at page 262 observed that "a real likelihood of bias means at least a substantial possibility of bias". These principles would apply to the present consideration.

31. The Supreme Court considered the issue of real likelihood of bias in the judgment reported at S. Parthasarthi Vs. State of Andhra Pradesh, and held as follows:

16. The tests of ''real likelihood'' and ''reasonable suspicion'' are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the inquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon (1968) 3 WLR 694. We should not, however, be understood to deny that the court might with greater propriety apply the ''reasonable suspicion'' test in criminal or in proceedings analogous to criminal proceedings.
(Underlining supplied)

32. The grounds for disqualification of Shri P.V. Eappen from appointment/detailment as an officer to prepare an abstract of evidence have to be

determined from the circumstances in the present case, the prior events and the attitudinal bias towards the accused which ultimately led to a reasonable apprehension of bias.

33. Further, bias relates to factors that can be said to predispose an officer''s approach in the preparation of the abstract of evidence. Shri P.V. Eappen''s comments and observations appended to the complaint dated 27th December, 1998 is a factor relevant and material so as to manifest his predisposition and approach in the manner in which he prepared the abstract of evidence.

34. The respondents, however, contend that Shri Eappen was only preparing the abstract of evidence and was not the adjudicating authority.

35. In this behalf, reference can usefully be made to the observations by De Smith in his renowned text Administrative and Constitutional Law which was relied upon by the court in Union of India v. B.N. Jha (supra) as well and reads as follows:

If the main functions of a tribunal are to determine disputed questions of law and fact, and to exercise discretionary powers by reference to standards that are not self-created but explicitly prescribed by statutory or other rules, on the basis of evidence openly tendered, and if, moreover, the abdicators can normally be expected to preserve a detached attitude towards the parties and issues before them, then a ''departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator ought not to be and will not be countenanced.

36. It is trite that principles of natural justice would apply with full force to such conduct which leads directly to the final act of decision. In para 26 of Union of India and Ors. v. B.N. Jha (supra) the Apex Court reiterated the well settled principles that the duty to act fairly is the theme of the principles of natural justice. The court placed reliance on the elaboration of this principle in Halsbury''s Laws of England which has a bearing on the present case as well. The statement of law in para 85 of H alsbury''s Laws of England, Vol. 1 (i), 4th Edition, relied upon in UOI v. B.N. Jha (supra) sets out the applicable principles succinctly and reads as follows :

85. Thus a presumption that natural justice must be observed will arise more readily where there is an express duty to decide only after conducting a hearing or inquiry or where the decision is one entailing the determination of disputed questions of law and fact. Prima facie, moreover, a duty to act in accordance with natural justice will arise in the exercise of a power to deprive a person of his livelihood or of his legal status where that status is not merely terminable at pleasure, or to deprive a person of liberty or property rights or another legitimate interest or expectation, or to impose a penalty on him; though the conferment of a wide discretionary power exercisable in the public interest may be indicative of the absence of an obligation so to act. Where a discretionary power to encroach upon individual rights is

exercised, factors to be taken into account in deciding what fairness requires in the exercise of the power include the nature of the interests to be affected, the circumstances in which the power falls to be exercised and the nature of the sanctions, if any, involved. The content of the duty to act fairly will normally be very limited where the authority is in the course of exercising a function not culminating in a binding decision, but that may not be the case if the wording of the grant of powers or the context indicates that a fair hearing ought to be extended to persons likely to be prejudicially affected by an investigation or recommendation.

On a careful reading of the above extract, it is clear that observation of principles of natural justice in cases involving inquiry, investigation and recommendations which impact the final decision, is not only inevitable but essential.

37. Section 70 of the BSF Act provides that the commandant of any unit shall hold the SSFC. In the instant case, it is important to note, that the officer recording the abstract of evidence was not the authority who was to adjudicate upon the innocence or guilt of the petitioner with regard to the offence with which he was charged. As per the statutory scheme, discretion is conferred on the Commandant u/s 70 even to take a final decision based on such abstract of evidence.

38. An abstract of evidence is ordered and prepared under Rule 49 of the Border Security Force Rules, 1965 (BSF Rules, 1965 hereafter). As per Sub-rule 2(a), the abstract of evidence is required to include signed statements of witnesses whenever available or a precise thereof as well as copies of all documents intended to be produced during trial. Under Sub-rule (3) of Rule 49, the accused is mandatorily required to be given an opportunity to make a statement after he has been cautioned in terms of Sub-rule (3) of Rule 48.

39. Rule 48 prescribes the manner in which the record of evidence is to be prepared by a commandant or an officer detailed by him to do so. So far as the caution which is required to be given to the accused person is concerned, the same is prescribed under Sub-rule (3) whereby the officer recording the evidence is required to inform the accused of the options available to him as to whether to make a statement or not. The accused is required to be informed that such statement as made by him, would be taken in writing and may be used as evidence against him. Only thereafter statement if any, made by him is to be taken down in writing.

40. The above narration would show that substantial statutory power and discretion is conferred on the officer preparing the abstract of evidence which would enable him to give a particular slant to the evidence and the statements which he was recording or abstracting. There is sufficient opportunity also to influence and impact the statement and conduct of an accused person on the part of officer so detailed in view of the explanations and cautions he has to administer to him.

41. Once completed, the abstract of evidence is required to be placed before the Commandant. Under Rule 51, upon going through the abstract of evidence the

Commandant can at that stage itself, inter alia dismiss the charges against the accused person; or rehear the charge and award one of the summary punishments; or try the accused by a Summary Security Force Court; or apply to a competent officer or authority to convene a court for the trial of the accused.

42. Even though the officer who records the abstract of evidence is not an adjudicator or the judge in the matter, however, he occupies a crucial position, as his observations are significant enough to be able to influence the result of its consideration by the commandant merely by the manner in which he records the abstract of evidence and his approach in recording the same.

43. So far as the punishment which could be awarded by the Summary Security Force Court is concerned, the same is prescribed u/s 48 of the BSF Act. The same ranges from a sentence of death under Sub-section (a), to imprisonment for a term extending from three months upto life under Sub-section (b) of Section 48 of the BSF Act. Under Sub-section (c), the security force court may sentence a person with dismissal from service; imprisonment for a term not exceeding three months in force custody under Sub-section (d); reduction to the ranks or to a lower rank or grade or place in this list of their rank in the case of an under-officer under Sub-section (e); forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion under Sub-section (f); forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose under Sub-section (g); fine, in respect of civil offences under Sub-section (h); severe reprimand or reprimand except in the case of persons below the rank of an under officer under Sub-section (i); forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty under Sub-section (j) and forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal under Sub-section (k).
The discretion conferred on the court, therefore, is substantial and the punishment which it may impose is severe. Valuable rights of the person arraigned to stand trial before the Security Force Courts are impacted.

44. Merely because the role of preparing an abstract of evidence is not on the same platform as that of a decision making authority, yet it would be wrong to undermine the significance and the role of the officer recording the evidence, the nature of task entrusted upon him and its relevance in the decision making process in any disciplinary proceedings.

45. In the present context ''bias'' derives its shade from the dictionary meaning and includes `a departure from the standard of even-handed justice'' which the law requires from those who occupy judicial office, quasi judicial office as well as significant stages that come into the making of a complete valid trial. It is necessary that all such officers and authorities come with an independent mind. The standard

of what will constitute bias varies from case to case and with the nature of the function performed by the officer who is stated to be biased. Having regard to the scheme of the BSF Act and extensive reliance placed by the court thereunder on the recording of the abstract of evidence in the subsequent proceedings, the significance of preparation of such abstract of evidence cannot be sufficiently emphasised. It can, therefore, be concluded that an officer detailed for preparing an abstract of evidence must be such who can act with a cold neutrality. He must be an officer who is not in an awry position and his approach towards the case of the accused and towards the accused in person is central. Certainly, he ought not to have taken a position against the accused person and have pre-determined the charge.

46. It is noteworthy that Rule 49 of the BSF Rules permits the commandant to record the abstract of evidence himself. However, vide the order dated 28th December, 1998, the Commandant detailed the Deputy Commandant Shri P.V. Eappen for the same.

47. The petitioner stood charged with the commission of an offence u/s 26 of the Border Security Force Act, 1968. The commission of an offence u/s 26 is punishable by imprisonment extending upto six months or such lesser punishment as is prescribed under the Act. Section 48(c) and thereafter of the statute prescribe dismissal, punishment of reduction of rank and the other punishments noticed hereinabove.

48. Our attention has been drawn to the note which was appended by Shri P.V. Eappen to the report dated 27th December, 1998 submitted by Inspector D.K. Das which formed the very basis of initiation of the action against the petitioner. This note was placed before the Commandant who on consideration thereof directed preparation of the abstract of evidence. There is, therefore, force in the petitioner''s contention that Shri Eappen was a complainant in the matter.

49. The endorsement given by Shri P.V. Eappen on the complaint dated 27th December, 1998 renders him eligible in fact to be a witness on behalf of the prosecution. Instead, he was detailed to record the ''abstract of evidence''.

50. In the SSFC proceedings conducted against the petitioner, the only material relied upon to find the petitioner guilty of the charge by the commandant is the abstract of evidence prepared by Shri P.V. Eappen. No evidence was recorded by the court.

51. Valuable rights of the petitioner in the present case that were at stake including his service record, reputation in society and liberty. Most importantly his employment which had been his means of livelihood for the past 13 years approximately, an essential concomitant of the right to life, was at risk.

52. As per the statutory scheme noticed above, an officer recording the abstract of evidence is able to influence the proceedings of the court also by the manner in which he records the evidence and the consequential sentence which is imposed upon a person. Thus, the requirement of fairness in the procedure which was followed at all stages becomes crucial.

In this background, it cannot be held at all that the degree of independence and fairness required on the part of Shri P.V. Eappen was in any way lesser than that was required of the person conducting a trial.

53. It is clearly evident that Shri P.V. Eappen had taken a firm view so far as the complaint against the petitioner is concerned as well as the action which was necessary against him. His comments raise justifiable doubts as to his independence as the officer preparing the abstract of evidence. A person whose conduct is under scrutiny is entitled to a sustained confidence in the independence of the minds of those who occupy significant positions in the stages of the investigation and the trial. The detailment of an officer for recording of the abstract of evidence is a serious matter and could not have been assigned to somebody who had already taken a view against the person whose conduct was under examination, manifesting his bias against the accused person.

54. The courts have deprecated proceedings which reflected even reasonable likelihood of bias. In the given facts, it is highly improbable, if not impossible, that Shri Eappen could have exercised independent mind without any inclination or bias in his attitude towards the petitioner while recording the abstract of evidence.

55. In view of the above discussion, it has to be held that the detailing of Shri P.V. Eappen for recording the abstract of evidence was illegal and violative of the rights of the petitioner on the ground that the same is in violation of well settled principles of natural justice.

56. The present writ petition would deserve to be allowed on this short ground alone, however, the petitioner has assailed the impugned orders on several other grounds. Certain other aspects of the case require to be noticed. It is also noteworthy that the record of the hearing of the charge on the offence report on 28th December, 1998 does not give any details of the statement of witnesses who were heard by the commandant, if at all. The proceedings placed before this Court show that a mere format was maintained in which certain particulars in terms of names and dates have been filled in. The certification of having complied with the requirement of Rule 45B is in a typed format.

57. The respondents have placed heavy reliance on the plea of guilt which has been recorded by the commandant in the SSFC proceedings held on 17th February, 1999. The petitioner has vehemently disputed that he pleaded guilty to the offences with which he was charged.

58. Rule 142 of the BSF Rules, 1969 prescribes as to how a plea of guilty or not guilty should be recorded and reads as follows :

142. General plea of "Guilty" or "Not Guilty".- (1)The accused person''s plea of ''Guilty'' or ''Not Guilty'' (or if he refuses to plead or does not plead intelligibly either one or the other), a plea of ''Not Guilty'' shall be recorded on each charge.

(2) If an accused person pleads ''Guilty'' that plea shall be recorded as the finding of the Court but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.

(3) Where an accused person pleads guilty to the first two or more charges laid in the alternative, the Court may after Sub-rule (2) has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges as follow the charge to which the accused has pleaded guilty without requiring the accused to plead thereto, and a record to that effect shall be made in the proceedings of the Court.

59. If an accused person pleads guilty to the charges, the Security Force Court is required to comply with the requirements of Sub-rule 2 of Rule 142. Such plea is mandatorily to be recorded as the finding of the court but before it is so recorded, the court is required to ascertain that the accused understands the nature of the charge to which he has pleaded guilty. The court is required to inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty. The court is also required to inform the accused person of the difference in procedure which will be followed by the court upon the accused entering a plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.

Sub-rule 2 casts a duty on the court to ascertain from the accused, before recording of the plea of guilt, as to whether he understands nature of the charge to which he has pleaded guilty and shall inform him of the general effect of his plea after ensuring that he has understood the nature of the charge. The court shall enter the plea only thereafter and proceed with the trial accordingly.

60. Rule 81 stipulates the procedure which is to be followed on a plea of guilty. When the court has so recorded a finding of guilty in respect of the charge, the prosecutor then is required to read the record or the abstract of evidence, as the case may be to the court or inform the court of the facts contained therein. Thereafter, under Sub-rule (3) of Rule 81, the accused person may (a) adduce

evidence of character and in mitigation of punishment; (b) address the court in mitigation of punishment, (c) proceed under Rule 101 when Sub-rule (3) has been complied with. In accordance with Rule 101, the court shall take evidence of the general character, age, previous conviction and record of the conduct of accused person; decorations, reward, period spent in custody or confinement etc. The court would give an opportunity to the accused person to cross examine witnesses, to produce such record and address the court in mitigation of his punishment.

61. Similar statutory provisions governing army personnel are to be found in the Army Act and Rules thereunder. In the context of recording of pleas of guilt by court martials exercising jurisdiction thereunder, the courts have repeatedly emphasized that signatures of the accused especially on a plea of guilt, even though they are not statutorily required, ought to be taken as a matter of abundant caution.

62. The statutory scheme with regard to recording of a plea of guilt under the Border Security Force Act is similar to the scheme under the Army Act. The observations of the Jammu and Kashmir High Court on the manner in which a plea of guilt is to be recorded in 1984 (3) SLR 675 Prithpal Singh v. Union of India and Ors. which arose in the context of the Army Act, shed valuable light on the issue which has been argued before us. On this question, in para 9 of the judgment, the court held as follows:

10. The most important aspect of the case is as to whether the petitioner had pleaded guilty to the charges as is suggested by Mr. Hussain or not. Plea of guilt recorded by Lt. Col. Mehta is dehors Rule 115 of the Army Rules. In the first place the alleged plea of guilt is unsigned by the authorities. Surprisingly the petitioner also has not signed the alleged plea of guilt. At what stage word ''guilty'' was recorded against each charge is not known. If it was recorded in presence of the accused/petitioner obviously his signatures would have been obtained on it. Then the minutes of the enquiry should have contained an advice to the petitioner not to plead guilty as enjoined by Rule 115 of the Army Rules. This important mandate of the Rule has been flagrantly violated. Therefore the proceedings conducted by the Summary Court Martial which have affected the petitioner''s fundamental rights as he is deprived of his job are vitiated. The protection afforded by the procedure should not have been denied to the petitioner if it was intended to proceed against him under the Army Rules. As to whether charges were correct or not as already observed this Court cannot go into that aspect of the matter. But certainly this Court will set aside the punishment which is awarded to the petitioner on the ground that the decision to punish the petitioner was taken by contravening the mandate of Rules. Such a decision would be arbitrary and shall be violative of the guarantees contained in Article 14 of the Constitution. The argument of the learned Counsel for the respondent that the petitioner was not prejudiced in any manner during the Summary Court Martial proceedings is devoid of force. The petitioner has suffered punishment of dismissal from service and the punishment is awarded by conducting

proceedings in such a manner which were neither fair not judicial. Could the Summary Court Martial observe the Rules governing the conduct of Summary Court Martial in breach. Answer to this question will be emphatic no in view of the glory of the Constitution and rights guaranteed by it.

The court had thus observed that if the statement was recorded in the presence of the accused/petitioner, obviously, his signatures would have been obtained on it.

63. On this very issue, Sukanta Mitra Vs. Union of India (UOI) and Others, . the court observed as follows:

9. This apart the fact remains that the appellant has been convicted and sentenced on the basis of his plea of guilt. The plea of guilt recorded by the Court does not bear the signatures of the appellant. The question arising for consideration, therefore, is whether obtaining of signatures was necessary. In a case Union of India and Ors. v. Ex-Havildar Clerk Prithpal Singh and Ors. KLJ 1991 page 513, a Division Bench of this Court has observed:

The other point which has been made basis for quashing the sentence awarded to respondent-accused relates to Clause (2) of Rule 115. Under this mandatory provision the court is required to ascertain, before it records plea of guilt of the accused, as to whether the accused undertakes the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea and in particular of the meaning of charge to which he has pleaded guilty. The Court is further required under this provision of law to advise the accused to withdraw that plea if it a appears from summary of evidence or otherwise that the accused ought to plead not guilty. How to follow this procedure is the main crux of the question involved in this case. Rule 125 provides that the court shall date and sign the sentence and such signatures shall authenticate of the same. We may take it that the signature of the accused are not required even after recording plea of guilt but as a matter of caution same should have been taken.

xxx xxx

11. Admittedly, in the present case signatures of the accused/appellant have not been obtained on the plea of guilt recorded by the BSF Court which as a matter of caution must have been obtained and nor it is revealed from the record that the appellant was ever informed about the general effect of the plea of guilt.

64. Our attention has also been drawn to the judgment of this Court dated 17th January, 2008, passed in LPA No. 254/2001 entitled The Chief of Army Staff and Ors. v. Ex. 14257873 K. Sigmm Trilochan Behera wherein the court had occasion to consider the case where plea of guilt of the respondent was recorded on a printed format. The court deprecated the non-recording of complete plea which was not signed by the respondents as well. This case had also arisen in the context of recording of a plea of guilty by a court martial under the Army Act and in a similar

situation, the court observed as under.

5. Secondly, the signatures of the respondent were not obtained on any of these proceeding. The plea of the respondent was recorded on a printed format. The column of arraignment reads as under :

By the Court-How say you No. 14257873K ULNK Trilochan Behera are you guilty or not guilty of the ... charge preferred against you?

The answer is recorded as "Guilty". It does not mention what was the charge though a separate chargesheet has been placed on record which is dated 22nd March, 1994, which is not signed by the respondent. The complete plea of guilt of the respondent was not recorded.

No date was mentioned on the paper where this was recorded. The record did not bear the signatures of the judges as well. Certain other procedural guidelines had also not been complied. The court held that failure to comply with the prescribed procedure amounted to violation of the procedural safeguards provided in Army Rule 115(2) and were violative of the rights of the accused under Article 14 of the Constitution of India.

65. On the same issue, in 2003 II AD (Delhi) 103 Lachhman (Ex. Rect.) v. Union of India and Ors. it was held :

13. The record of the proceedings shows that the plea of guilty has not been entered into by the accused nor has it been recorded as per Rule 115 inasmuch neither it has been recorded as finding of court nor was the accused informed about the general effect of plea of guilt nor about the difference in procedure which is involved in plea of guilt nor did he advise the petitioner to withdraw the plea if it appeared from the summary of evidence that the accused ought to plead not guilty nor is the factum of compliance of Sub-rule (2) has been recorded by the Commanding Officer in the manner prescribed in Sub-rule 2(A). Thus the stand of the respondents that the petitioner had entered into the plea of guilt stands on highly feeble foundation.

66. In Uma Shanker Pathak v. UOI and Ors. 1989 (3) SLR 405 Allahabad High Court had occasion to deal with this question and held that:

10. The provision embodies a wholesome provision which is clearly designed to ensure that an accused person should be fully forewarned about the implications of the charge and the effect of pleading guilty. The procedure prescribed for the trial of cases where the accused pleads guilty is radically different from that prescribed for trial of cases where the accused pleads ''not guilty''. The procedure in cases where the plea is of ''not guilty'' is far more elaborate than in cases where the accused pleads ''guilty''. This is apparent from a comparison of the procedures laid down for these two classes of cases. It is in order to save a simple, unsuspecting and ignorant accused person from the effect of pleading guilty to the charge without being fully

conscious of the nature thereof and the implications and general effect of that plea, that the framers of the rule have insisted that the court must ascertain that the accused fully understands the nature of the charge and the implications of pleading guilty to the same.

67. In the decision dated 8th September, 2008 in W.P.(C) No. 6036/2005 Ex. Naik Subhash Chander v. UOI and Ors. this Court had occasion to test the propriety and legality of a record of a summary security force court which is identical to that in the present case. Ex Naik Subhash Chander was tried for committing an offence u/s 20 of the BSF Act. The plea of guilt against the petitioner had been recorded in identical terms. The observations of the court can also be usefully extracted and read as follows:

11. ...The possibility of its being manipulated cannot be ruled out. Such like certificates can be prepared at any time. This justifies the need for obtaining the signatures of the accused viz. to lend authenticity to such a record.

68. In the above background, compliance with the statutory mandate has to be real. No cosmetic satisfaction or compliance could meet the requirements of law and a bald certification by the respondents that statutory provisions have been complied with is insufficient. Such certification certainly does not satisfy the legal requirements.

69. Our attention is drawn to the photocopy of these proceedings which has been placed on record by the petitioner. The plea of guilt of the petitioner has been recorded on a typed format, the columns whereof reads as follows :

Q-1. How say you No. 860014234 L/NK Vimal Kumar Singh, are you guilty or not guilty of the charge, which you have heard read?

Ans. GUILTY

Only the word "Guilty" is handwritten.

70. We find that the following had already been typed below the space for the above answer:

The accused having pleaded guilty to the charge, the court read and explained to the accused the meaning of the charge to which he has pleaded guilty and ascertains that the accused understands the nature of the charge to which he has pleaded guilty. The court also informed the accused the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The court satisfies itself that the accused understands the charge and the effect of that plea and the difference in procedure which will be followed consequent to the said plea. The court satisfy itself that the accused understands the charge particularly the difference in procedure.

The above indicates that the SSFC had at the outset assumed that the petitioner would plead guilty and has proceeded on that basis.

71. Thus in the typed format interestingly, even though the respondents have left a blank space for filling up an answer to the Q-1 noted above by the accused. However, below the space for the answer, the full proceedings which are to be recorded upon the accused having pleaded guilty to the charge, are found to have been typed. The respondents have also typed in the certification of the compliance with the requirements of Rule 142(2) of the BSF Rules. The SSFC proceedings do not bear the signatures of the petitioner at any place at all. In the light of the above discussion, this omission is crucial.

72. Perusal of this document does not show as to what was the charge to which was explained to the petitioner to which he pleaded guilty and it is left to presumption that it was actually the contents of the charge sheet dated 28th December, 1998 which was put to the petitioner and that he pleaded guilty to the same.

73. It is noteworthy that a separate charge sheet has been placed on record dated 17th February, 1999. This charge sheet also does not bear the signatures of the petitioner.

74. Even if it was to be held that no illegality can be founded in the failure to obtain signatures by the court, it is clearly evident that there was no real trial of the petitioner at all and that the respondents had proceeded against the petitioner in a premeditated manner after having predetermined the result of the proceedings.

75. The petitioner has contended vehemently not only before us but also in his petitions dated 18th April, 1998 as well as 14th June, 1999 that he was severely handicapped in the proceedings which were conducted by the respondents. It has been pointed out that the petitioner is illiterate having barely studied upto 10th class and does not know the English language. The submission is that the petitioner was handicapped by his inability to understand any of the proceedings which were taken and have been relied upon by the respondents. It is noteworthy that Rule 62(h) of the BSF Rules, 1969 casts a duty on the officer of a convening court to appoint an interpreter whenever necessary. Even in his petition dated 14th June, 1999, the petitioner raised a plea that no proper interpreter was ever appointed.

76. A grievance is made by the petitioner that Shri R.V. Yadav, Assistant Commandant who was appointed as friend of the accused, did not assist him at all. Several additional points with regard to discrepancies in matters of detail relating to the time, location of the petitioner, failure to examine the person who is alleged to have informed Inspector Das, have been asserted in support of the challenge by the petitioner. The respondents do not disclose even the particulars of the person who allegedly gave the information to the petitioner''s battalion.

77. It has also been staunchly contended that the respondents are not even in a position to disclose the names and particulars of the civilian with whom the petitioner was allegedly found roaming at the Madhopur market on the 26th December, 1998 even though such civilian was allegedly brought back to the battalion, clearly giving the lie to the case set up against the petitioner. This civilian was certainly a material witness in support of the charges who has not been examined.

78. Learned Counsel for the petitioner has placed reliance on the pronouncement of the Supreme Court reported at Hardwari Lal Vs. State of U.P. and Others, In this case, the Apex Court was of the view that the inquiry was not proper on the ground of non-observance of principles of natural justice for the reason that evidence of two material witnesses had not been recorded. The court held that in this background, the order of dismissal was required to be set aside and the contention of the respondents that there was other material which was sufficient to come to the conclusion one way or the other, would not justify sustenance of the order of dismissal for the reason that the testimony of the complainant who had not been examined, could not be wished away.

In the case in hand also, as noticed above, the plea of the petitioner has not been considered and material evidence has not been produced.

79. Learned Counsel for the petitioner has also strongly contended that the respondents have relied on the report of the medical examination of the petitioner conducted on 26th December, 1998 wherein the doctor had opined that even though the petitioner had consumed liquor and was under the influence of alcohol, he was without any loss of control over his faculties. Mr. Jha, learned Counsel has placed extensive reliance on material defining intoxication and its parameters. The respondents have explained that the petitioner was taken to the hospital on 2250 hours on that date and the medical examination was conducted thereafter which is more than five hours after the incident as reported in the offence report.

80. Be that as it may be, the statement of the petitioner purportedly recorded by Shri P.V. Eappen on the 4th January, 1999 also shows that the petitioner had explained that he had consumed liquor before lunch but had denied that he was under influence of liquor or drunken as alleged by the witnesses or intoxicated as alleged by the respondents. He had also stated that the liquor which was found in his possession had been purchased for inspector D.K. Das, the complainant. The statement attributed to the petitioner, stretched to its maximum, would amount to an admission of consumption of liquor before lunch. It does not by itself establish quantum of his drink or his state of mind or senses. If the statement in its entirety was to be accepted and considered, it would be difficult to bring home the charge that the petitioner was not in his senses or was intoxicated. The admission of consumption of liquor would by itself not establish the fact as to whether the petitioner was in a state of intoxication or not.

81. The petitioner has also vehemently attributed motives for his implication by Inspector Das and Sweeper Des Raj. He has contended that these two persons had borrowed money and were nurturing malice against the petitioner for the reason that he was demanding return thereof. The record shows that the sweeper Des Raj has subsequently returned Rs. 5000/- through a bank draft vide BN HQ letter No. Estt/130Bn/BK/99/875/dated 5th August 1999. The petitioner has also placed reliance on the statement of Ct. Driver Chandan Singh (PW IV) and Insp. D.K. Dass (PW 1) to contend that these persons have not alleged that the petitioner was intoxicated even though they had met the petitioner at 1700 hours. This was certainly relevant material. The impugned orders do not reflect that any of these issues have been at all considered.

82. In view of the above discussion, it has to be held that the respondents have failed to abide by the statutory mandate in recording the proceedings of the SSFC. The order dated 17th February, 1999 of the Summary Security Force Court finding the petitioner guilty of offences u/s 26 of the BSF Act as well as the order of sentence imposed on the same date, are contrary to law and principles of natural justice; legally not sustainable and are, accordingly, hereby set aside and quashed.

83. For the same reason, the order countersigning of the dismissal order on 8th April, 1999 by the Dy. Inspector General as well as the order dated 14th June, 1999 passed by the Director General communicated under the letter signed on 13/16th August, 1999 are also not sustainable and is hereby set aside and quashed.

84. In view of the order of dismissal being set aside, the question which finally arises is that what would be the consequential reliefs which would flow therefrom. The petitioner would obviously require to be reinstated into service with continuity of service for all purposes.

85. The petitioner is accordingly directed to be reinstated into service with benefit of notional promotions and seniority. Appropriate orders in this behalf shall be passed by the respondents within six weeks.

86. However, the entitlement of a workman to get reinstated on account of setting aside of an order of termination of his service, does not necessarily result in payment of back wages. The Supreme Court has held that this question would be independent of the order of reinstatement. (Ref : U.P.S.R.T.C. Ltd. Vs. Sarada Prasad Misra and Another,

87. So far as the issue of payment of back wages is concerned, no rigid or mechanical or strait-jacket formula can be followed and the same depends on the facts and circumstances of each case. [Ref : see para 17 of U.P. SRTC Ltd. v. Sarada Prasad Mishra and Anr.(supra)]. It was observed that the power of the court is discretionary which has to be exercised by a court or tribunal keeping in view the facts in their entirety and all relevant circumstances independent of the order of reinstatement into service.

88. So far as relevant circumstances are concerned, some of the factors which have weighed with the court in grant of appropriate back wages have included the following :

(i) the nature of employment and regular service of permanent character would not be comparable to a short or intermittent daily wage employment though it may be for 240 days in a calender year (Ref General Manager, Haryana Roadways Vs. Rudhan Singh,

(ii) If the workman has rendered considerable period of service before his services are wrongly terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and qualification possessed by him, he may not be in a position to get another employment. However, where the total length of service rendered by workman is small, the award of back wages for the complete period i.e. from the date of termination till the date of award which is often large, would be wholly inappropriate.

(iii) The court also observed that other factors like the manner and method of selection and appointment, i.e. whether it was after proper advertisement of the vacancy or inviting applications from the employment exchange; nature of appointment as to whether ad hoc, short-term, daily wage, temporary or permanent in character; any special qualification required for the job would be weighed in taking a decision regarding the award of back wages. (Ref.: General Manager, Haryana Roadways Vs. Rudhan Singh, General Manager, Haryana Roadways Vs. Rudhan Singh,

(iv) On the same issue, in UPSRTC Ltd. v. Sarada Prasad Misra (supra), the Supreme Court held that the record of the employer reflected that the services of the respondent-workman had never been found satisfactory. On an earlier occasion, his services were terminated but he was taken back giving a chance to improve. Unfortunately, the workman did not utilise the same. The workman stood warned on several occasions prior to the three incidents in question. In this view of the matter, the Supreme Court held that grant of back wages to this workman was not correct and the order of the courts below was interfered with. Therefore the record of the employee has been held to be a relevant factor.

(v) A very important consideration on this issue is the fact that the employer is being compelled to pay the workman for a period during which he contributed nothing at all, for a period that was spent unproductively while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. On this aspect, the approach which is required to be taken has been succinctly put by the Supreme Court in the judgment reported at Allahabad Jal Sansthan Vs. Daya Shankar Rai and Another, when the court held that "no just solution can be offered but the golden mean may be arrived at".

89. From the above discussion, so far as factors which could govern consideration of the prayer for entitlement of back wages, the factual scenario, the principles of justice, equity and good conscience would guide the consideration. In the instant case, the petitioner had rendered about thirteen years of service upto the date of his dismissal. The defaulter sheet placed before the court showed that there were a total of three entries since enrolment, two of which were in the last twelve months. Considering that a long time has lapsed between the date of his dismissal and date of his reinstatement and also the fact that even though the petitioner has stated that he was not intoxicated but states that he had consumed liquor and was roaming in civilian areas, we do not propose to award any back wages. The petitioner shall, therefore, not be entitled to back wages.

90. In view of the above discussion, the following directions are made:

(i) the impugned orders dated 17th February, 1999; 8th April, 1999 and 13th/16th August, 1999 are set aside and quashed.

(ii) the petitioner shall stand reinstated with continuity in service; benefits of seniority and notional promotion(s) on the date his immediate juniors were promoted and all other consequential benefits except back wages.

(iii) Necessary orders in terms of the above shall be passed within six weeks by the respondents.

This writ petition is allowed in the above terms.