

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

WP (C) No. 192 (AP) of 2012

Shri Jai Prakash Mishra
Son of Ram Kinkar Mishra
Resident of Dangarbad,
Post Office - Pudripur,
District - Balia, Uttar Pradesh.

..... Petitioner.

- Versus -

1. The Union of India,
represented by
the Secretary to the Government of India,
Ministry of Home Affairs, Jaisalmer House,
26-Mansingh Road, New Delhi.
2. The Judicial Magistrate,
First Class / Assistant Commandant
30 BN, Central Reserve Police Force,
Along, West Siang, Arunachal Pradesh.
3. The Commandant
30th BN, Central Reserve Police Force,
Along, West Siang, Arunachal Pradesh.

..... Respondents.

Advocates for the Petitioner : Mr. Khoda Tari,
Mr. Habung Gyati,
Mr. N. Talley.

Advocates for the Respondents : MR. Muk Partin, CGC.

BEFORE
THE HON'BLE MR. JUSTICE M. R. PATHAK

Date of Judgment : 27th of February, 2017

JUDGMENT (CAV)

Heard Mr. Khoda Tari, learned counsel for the petitioner and Mr. Muk Pertin, learned Senior Advocate and CGC for the respondent Nos. 1 to 3.

2) The petitioner on being selected for the post of Constable in the Central Reserve Police Force (CRPF, in short) j on 27.06.1986, joined the said force on completion of the required training and initially appointed as No. 861131281 Constable in the 30th Battalion of CRPF at Kapurthala, Punjab.

3) In July 1990, the petitioner was transferred to Along, West Siang District of Arunachal Pradesh and accordingly he reported and joined his duties at Along.

4) The Commandant of 30 BN, CRPF, Along, the respondent No. 3, on his application, was granted casual leave to the petitioner w.e.f. 15.09.1990 to 08.10.1990 to attend his mother, who was reported to be sick and he left for his native at Balia, U.P.

5) It is submitted that while looking after his mother, the petitioner himself became ill and undergone treatment at Primary Health Centre (PHC, in short) at Sonwani, near his house at Balia for the period from 05.09.1990 to 26.12.1990, during which the doctor advised him for complete rest.

6) The petitioner on 26.12.1990, obtained fitness certificate from the concerned Doctor of said Sonwani PHC and reported for duties, back at Along, on 31.12.1990. It is also submitted that in the months of October and November 1990, from his native, his father, by telegrams, informed both the respondent Nos. 2 and 3 regarding the illness of the petitioner.

7) It is submitted by the petitioner that while rejoining his duty on 31.12.1990 at Along, though he submitted the medical certificates given to him by the concerned Doctor of the PHC concerned regarding his illness, the respondent No.3 did not accept the same. It is also stated that on 02.01.1991 the respondent No. 2, the Assistant Commandant-cum-the Judicial Magistrate First Class (JMFC, in short) of the 30th BN, CRPF, Along placed the petitioner under judicial custody and only on 09.01.1991 he was released on bail on

furnishing a security amounting to Rs. 5,000/- and during the said period, he was kept under security by another Constable of said 30 BN, CRPF, Along.

8) After hearing the parties and the evidence adduced by the parties, the JMFC-cum-Assistant Commandant, the respondent No. 2, by his Judgment dated 02.02.1991 passed in said Case No. 02/1990, convicted the petitioner guilty of the offence under Section 10(m) of the CRPF Act, 1949 and sentenced him to simple imprisonment till raising of the Court, holding that the petitioner deliberately overstayed his leave from 09.10.1990 to 30.12.1990 without sufficient cause and without permission of the competent authority, which is prejudicial to the good order and discipline of the force. The said JMFC passed the said Judgment in the presence of the petitioner, which was properly explained to him.

9) On the basis of such conviction of the petitioner for the offence under Section 10(m) of the CRPF Act, 1949 and sentence of simple imprisonment till raising of the Court; the concerned Commandant, i.e. the respondent No. 3, holding that the petitioner's said conviction is such as to render his further retention in the public service undesirable and as such by his Office Order under No. J.II-2/91-30-ec-II dismissed him from service from the said date itself under Section 12(1) of said CRPF Act 1949.

10) The petitioner submitted that without furnishing him any show cause, charge sheet, enquiry report and without affording him any opportunity of hearing, the respondents illegally and arbitrarily dismissed him from service in violation of all principles of law and natural Justice, and hence he preferred this writ petition praying for setting aside and quash the order of his conviction and sentence dated 02.02.1991 passed by the respondent No. 2 in Case No. 2/90, under Section 10(m) of the CRPF Act, 1949 and also the order dated 02.02.1991, passed by the respondent No. 3 dismissing him from service under Section 12(1) of said 1949 Act.

11) The petitioner also placed before the Court that being aggrieved with his aforesaid conviction and sentence and dismissal from service; he preferred a writ petition being WP(C) No. 14098 of 1991 before the Hon'ble Allahabad High Court, wherein the parties exchanged their pleadings and by order dated 20.03.2012, the said Hon'ble Court came to the finding that said writ petition of

the petitioner is not maintainable before the said High Court as no part of cause of action had arisen in the State of Uttar Pradesh and as such dismissed the said writ petition with the observation that the petitioner may approach the appropriate Court within the next three months and thereafter, he preferred the present writ petition before this Court within the time prescribed by the said order dated 20.03.2012.

12) The respondents contested the matter by filing their affidavit, wherein the respondents contended that the petitioner was granted leave from 15.09.1990 to 08.10.1990 by the competent authority due to ill health of his mother and he was directed to report back on 09.10.1990. But the petitioner did not report back for duty on 09.10.1990 and overstayed leave w.e.f. 09.10.1990 upto 30.12.1990 for 83 days and reported only on 31.12.1990 at Alang. It is stated by the respondents that as the petitioner overstayed his leave w.e.f. 09.10.1990, a complaint was lodged against him on 26.12.1990 by the appropriate authority and accordingly warrant of arrest was issued against him by the JMFC-cum-the Assistant Commandant, 30th BN CRPF, Alang, the respondent No. 2, which was sent to the Superintendent of Police, Balia (U.P.) for execution. But, before the said warrant was executed the petitioner appeared before the respondent No.2 and only on such appearance he was sent for judicial custody. During the judicial trial in Case No. 2/90, after taking all evidence, wherein the petitioner also submitted his all documents, the Magistrate concerned by order dated 02.02.1991 convicted the petitioner under Section 10(m) of the CRPF Act, 1949 and sentenced him for simple imprisonment to the rising of the Court and that as a result of such conviction the competent authority, i.e. the respondent No. 3 dismissed the petitioner from service under Section 12(1) of said 1949 Act.

13) In their affidavit the respondents also stated that altogether the petitioner has committed an offence under Section 10(m) of said 1949 Act on three occasions during his short span of 5 years in the post of Constable in CRPF. It is also stated that the member of CRPF is expected to be disciplined at all times in their service to the nation and if indiscipline is recorded, the very functioning of CRPF will become a casualty and if the offence committed by the member of the said force, goes unpunished under the provisions of law, it would have a bad impact on the other members of the post. It is also stated by the respondents that because of the repeated violation of Section 10(m) of the CRPF Act, 1949 by

the petitioner, it had resulted in a Judicial trial followed by his dismissal from service under Section 12(1) of said 1949 Act by the Appointing authority and the said dismissal of the petitioner is a liability attached to conviction and imprisonment by the Trial Court

14) The respondents clarified that the petitioner submitted all his evidence including medical certificates, prescriptions given by the doctors at Balia (U.P.), cash memos of his medical tests and all other documents and also cross-examined the prosecution witnesses during the trial of the case and thereafter, the concerned JMFC-cum-the Assistant Commandant convicted the petitioner under Section 10(m) and sentenced him as stated above and asserts that there is no illegality in the impugned judgment of conviction and sentence under Section 10(m) of said 1949 Act dated 02.02.1991, passed by the said Magistrate and also for his dismissal from service under Section 12(1) of said 1949 Act by the respondent No. 3, as a result of such conviction and punishment of imprisonment.

15) Sections 9 to 14 of the CRPF Act, 1949 relates to offices and punishments. Section 9 of the said Act relates to 'more heinous offences' whereas Section 10 relates to 'less heinous offences'. Section 10(m) of said 1949 Act provides that –

"Every member of the Force who –

(a)

(b)

(m) absents himself without leave, or without sufficient cause over-stays leave granted to him; or

(n) is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline; or

(o)

(p)

Shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both."

16) Sections 12(1) of the CRPF Act, 1949 provides Place of imprisonment and liability to dismissal on imprisonment and it reads as –

"12. Place of imprisonment and liability to dismissal on imprisonment.

(1) Every person sentenced under this Act to imprisonment *may* be dismissed from the Force, and shall further be liable to forfeiture of pay, allowance and any other moneys due to him, as well as of any medals and decorations received by him."

17) The Central Reserve Police Force Rules, 1955 have been framed under Section 18 of the CRPF Act, 1949. Chapter VI of the said 1955 Rules relates to Discipline and Rule 27 of the 1955 Rules provides for 'procedure for the award of punishment' and as per Rule 27(a) a Constable of CRPF can be dismissed or removed from the force by the concerned Commandant after formal departmental enquiry. As per explanation (a) to said Rule 27(a) dismissal of a member of the Force precludes being re-employed in Government service while removal of any such member from the Force shall not be disqualification for any future employment under the Government other than an employment in the CRPF.

18) Sub-Rule (c) of Rule 27 of 1955 Rules provides the procedure for conducting departmental enquiry by issuing written charge and Sub-Rule (cc) of said Rule 27 provides as follows –

27(cc). Notwithstanding anything contained in this rule:

- (i) where any penalty is imposed on a member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or
 - (ii) where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules; or
 - (iii) where the Director General is satisfied that in the interest of security of the state, it is not expedient to hold any enquiry in the manner provided in these rules,
- the authority competent to impose the penalty may consider the circumstances of the case and make such orders thereon as it deems fit.

19) Further Rule 28 of 1955 Rules provides for appeal and Rule 29 for Revision by the concerned personnel of the Force who is found guilty and Rule 31 relates to "desertion and absence without leave", which reads as follows –

"31. Desertion and Absence without leave.

- (a) If a member of the force who becomes liable for trial under Clause (f) of Section 9, or Clause (m) of Section 10 or for deserting the Force while not on active duty under Clause (p) of Section 10 read with Clause (f) of Section 9, does not return of his own free will or is not apprehended within sixty days of the commencement of the desertion, absence or overstayal of leave, then the Commandant shall assemble a Court of Inquiry consisting of at least one Gazetted Officer and two other members who shall be either superior or subordinate officers to inquire into the desertion, absence or overstayal of leave of the offender and such other matters as may be brought before them.

- (b) The Court of Inquiry shall record evidence and its findings. The Court's record shall be admissible in evidence in any subsequent proceedings taken against the absentee.
- (c) The Commandant shall then publish in the Force Order the findings of the Court of Enquiry and the absentee shall be declared a deserter from the Force from the date of his illegal absence, but he shall not thereby cease to belong to the Force. This shall, however be no bar to enlisting another man in the place of a deserter."

20) It is to be noted herein that CRPF Act, 1949 came into force prior to the Constitution of our country was adopted, whereas CRPF Rules 1955 was framed and made applicable after the Constitution came into force. The CRPF Act, 1949 no doubt is a complete code but it is an Act which was enacted before the Constitution of India. By reading the provisions of Rule 27(cc) CRPF Rules, 1955 which was incorporated only on 15.07.1971, it can be well presumed that the said provision was incorporated in conformity with the provisions of Article 311 (2) of the Constitution.

21) It is seen from the records of the case submitted by the respondents that as the petitioner did not join his post on 09.09.1990, the Liaison Officer of 30th BN, CRPF, Along (AP) on 26.10.1990 filed a complaint before the JMFC of the said battalion under Section 10(m) of the CRPF Act, 1949 against the petitioner for his overstay in leave and unauthorised absence without any permission from competent authority w.e.f. 09.10.1990. Accordingly, Case No. 2/90 was registered against the petitioner, warrant of arrest was issued against him, but before the same was executed, the petitioner reported for duty on 31.12.1990 and on his production before the JMFC on 02.02.1991, he was arrested and detained in custody. Though the petitioner pleaded guilty for his offence under Section 10(m) of said 1949 Act before the JMFC, but cognizance of said offence was taken, trial commenced, two prosecution witnesses were examined who were cross examined by the petitioner and the petitioner himself placed as defence witness. The petitioner also placed all his documents before the trial Court. The said Court of JMFC after examination of the witnesses of both the sides and the evidence placed before it, found that the petitioner was granted 15 days casual leave from 15.09.1990 to 08.10.1990 but he did not report for his duty on 09.09.1990 and remained absent from 09.09.1990 to 30.12.1990 without sufficient cause and that he neither took any necessary permission for extension of his leave from the competent authority nor did he seek any permission from the authority concerned for extension of his leave w.e.f. 09.09.2010 and as such

the Court came to the finding that the petitioner unauthorisedly remained absent in duty by overstaying his leave for 83 days from 09.09.2010 to 30.12.1990. The Court also found that the petitioner during his 5 years of service, on two previous occasions also overstayed leave, i.e. from 10.06.1988 to 14.06.1988 for five days and again from 12.10.1989 to 16.11.1989 for 36 days. But it is to be noted herein that for such overstay of his leave on both the occasions, the petitioner was neither punished nor any proceeding was drawn against him, as reveals from the record. The said Court after considering the matter, by Judgment & Order dated 02.02.1991 passed in said Case No. 2/90 found the petitioner guilty of the offence under Section 10(m) of the CRPF Act, 1949 and convicted him for the said offence, sentencing him for simple imprisonment till rising of the court, which was passed in the open Court in presence of the accused petitioner.

22) It is also seen from the records of the case that the respondent No. 3, the Commandant of 30th BN, CRPF, Along on 02.02.1991 itself by an Office Order No. J.II-2/91-30-EC-II dismissed the petitioner from service w.e.f. 02.02.1991 (AN) itself under Section 12(1) of said 1949 Act holding that the petitioner remained unauthorisedly absent in his duty from 09.10.1990 to 30.12.1990 by overstaying his leave from 15.09.1990 to 08.10.1990 without any permission and that he has been convicted under section 10(m) of the 1949 Act by the Court and therefore his retention in public service is undesirable. Accordingly the Commandant of the battalion dismissed the petitioner from service by serving him a copy of the said office order on 02.02.1991 itself.

23) The said record further reveals that during the trial before the JMFC cum Assistant Commandant the prosecution witness stated that as the petitioner did not report for his service after expiry of his casual leave, a Memo was sent to him on 12.10.1990 at his leave address to re-join the duty forthwith and thereafter, on 13.10.1990 the authorities received a telegram from the father of the petitioner that he is seriously ill which was brought to the notice of the Commandant of the 30th Battalion of the CRPF on the same day and it is only on 15.11.1990, the said witness was directed to inform the petitioner at his home address to submit medical certificate regarding his illness which accordingly communicated to the petitioner on 16.11.1990 but no such medical certificate were received from the end of the petitioner and thereafter, on 26.12.1990, a complaint was lodged for offence under Section 10(m) of the CRPF Act. On his

Cross-examination, the said witness denied to receive the 2nd telegram from the father of the petitioner. The other two prosecution witnesses have also express their view regarding non-receipt of the medical certificate from the petitioner and the telegram dated 23.11.1990. However, during the trial, the petitioner submitted all his evidence including the original copies of the money receipts of such telegrams dated 08.10.1990 & 23.11.1990 that were sent by his father regarding his health, his medical certificates, prescriptions given by the doctors at Balia (U.P.), cash memos of his medical & clinical tests and all other documents. On being enquired by the Court as to why he did not report at the battalion headquarter or COY headquarter after his casual leave was over, the petitioner in his evidence stated that he could not rejoin his duty as he felt sick during his leave period and further, he was asked as to why he was treated as an outpatient though his first telegram reflects that he was seriously ill, the petitioner replied that as there was no bed available in the PHC concerned, he was treated as an outpatient and that said PHC is very near to his house. But the concerned JMFC did not consider these aspects, came to a finding that the petitioner took treatment for fever only, reported to be ill for 83 days and was not admitted in any hospital, did not write to the department for extension of leave and for all these, the said Court came to the conclusion that the petitioner was not seriously ill and by the Judgment dated 02.02.1991 convicted him guilty for the offence under Section 10(m) of the CRPF Act, 1949, sentencing him for Simple Imprisonment till rising of the Court, holding that he overstayed his leave from 09.10.1990 to 30.12.1990 without sufficient cause and without permission of the competent authority, which is prejudicial to the good order and discipline of force. But, the JMFC, in his said Judgment dated 02.02.1991 did not consider the fact that after receipt of the first telegram of the petitioner dated 08.10.1990 on 13.10.1990, it is only after the direction dated 15.11.1990 of the respondent No. 3, i.e. the competent authority, on 16.11.1990 the petitioner was asked to submit the medical certificate regarding his illness. During this period from i.e. from 13.10.1990 to 15.11.1990, the petitioner was neither informed about rejection of his intimation made vide telegram dated 08.10.1990 nor was asked to submit any other documents. Moreover, all the original receipts, medical certificates, receipt of telegrams were available before the JMFC, concerned, which were apparently not considered.

24) Further it seen that the concerned JMFC, in his said judgment dated 02.02.1991 while holding the petitioner guilty of offence under Section 10(m) of the CRPF Act, 1949 also have held that the overstay of leave by him from 09.10.1990 to 30.12.1990 is prejudicial to the good order and discipline of force; though from the reading of Section 10(m) of said 1949 Act, it is clear that it does not include 'is prejudicial to the good order and discipline of force', which is included only in Section 10(n) of said 1949 Act.

25) Thereafter, the Commandant, the respondent No. 3 by his order dated 02.02.1991 dismissed the petitioner from service under Section 12(1) of said 1949 Act since he was imprisoned as noted above.

26) From the above it can be seen that the petitioner by his telegram had shown reason for his overstay of leave from 09.10.1990, by sending his telegram on 08.10.1990, which was responded only on 16.11.1990, though it was duly received on 13.10.1990. Secondly the reasons for his overstay of leave and original receipts of his second telegram, medical certificates, clinical reports, cash memos, receipts etc. were available before the Court of JMFC cum Asstt. Commandant as evidence and part of records.

26) As per Section 10(m) of said CRPF Act,1949 every member of the force who absents himself without leave, or without sufficient cause over-stays leave granted to him is punishable with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay, or with both. Further Section 12(1) of the said 1949 Act provides that every person sentenced under this Act to imprisonment *may* be dismissed from the said force. It is settled that the word '*may*' as provided in Section 12(1) of the Act bestow a discretion on the part of the competent authority whether or not to dismiss a member of the force from service pursuant to a sentence of imprisonment under the Act and while exercising the discretion, the competent authority has to consider various relevant factors including the nature of the offence for which he has been sentenced to imprisonment.

27) In the present case from the above, only on presumption the JMFC cum Asstt. Commandant, respondent No. 2 came to a conclusion that the petitioner is guilty of offence under Section 10(m) of the 1949 Act and sentenced him with simple imprisonment for the day till rising of the Court, holding that the petitioner

overstayed his leave from 09.10.1990 to 30.12.1990 without any sufficient cause though the authority concerned remained silent from 13.10.1990 to 16.11.1990 in spite of receipt of the telegram from the petitioner on 13.10.1990. Said JMFC also exceeded his jurisdiction holding that petitioner's such overstay 'is prejudicial to the good order and discipline of force', though Section 10(m) of 1949 Act does not comprises the same.

28) From the above it can be seen that the Commandant, respondent No. 3 without exercising his power under Section 12(1) of said 1949 Act as required under law as to whether the petitioner needs to be dismissed from service as a member of the force or not and without considering the other relevant factors, mechanically dismissed him from service by the impugned order dated 02.02.1991 since the JMFC cum Asstt. Commandant convicted the petitioner under Section 10(m) of said 1949 Act sentencing him with simple imprisonment for the day till rising of the Court.

29) Though 1955 Rule provides for statutory appeal and revision against the order of dismissal but the petitioner did not prefer an appeal and but without any such delay filed writ petition before the Hon'ble Allahabad High Court, Uttar Pradesh after his dismissal from service from 02.02.1991 being W.P(C) No. 14098 of 1991 that was dismissed on 20.03.2012 allowing the petitioner to approach the appropriate Court within the next three months, as the said writ petition is not maintainable at Allahabad and the petitioner filed the present petition within the said time limit.

30) In a similar case of overstay of leave by a Head Warder of Jodhpur Central Jail, a Five Judges Constitution Bench of the Hon'ble Supreme Court in the case of *Jai Shanker -Vs- State of Rajasthan*, reported in *AIR 1966 SC 492* have observed that –

"It is true that the Government may visit the punishment of discharge or removal from service on a person who has absented himself by over-staying his leave, but we do not think that Government can order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of showing cause why he should not be removed. If this is done the incumbent will be entitled to move against the punishment for, if his plea succeeds, he will not be removed and no question of reinstatement will arise. It may be convenient to describe him as seeking reinstatement but this is not tantamount to saying that because the person will only be reinstated by an appropriate authority, that the removal is

automatic and outside the protection of Article 311. A removal is removal and if it is punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed, no matter how the Regulation describes it. To give no opportunity is to go against Article 311 and this is what has happened here.

In our judgment, Jai Shanker (the appellant of the case) was entitled to an opportunity to show cause against the proposed removal from service on his overstaying his leave and as no such opportunity was given to him his removal from service was illegal. He is entitled to this declaration."

31) The Court has also considered the Judgment of the Hon'ble Supreme Court passed in the case of *Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO & Others -Vs- Surinder Kumar* reported in (2011) 10 SCC 244 and also the Judgment of the Hon'ble Apex Court in the case of *Union of India -Vs- Tulsiram Patel*, reported in (1985) 3 SCC 398.

32) Considering the aforesaid back ground of the case, the Court is of the view that the concerned JMFC cum Asstt. Commandant failed to prove the acts of discipline of the petitioner beyond reasonable doubt that the petitioner overstayed his leave from 09.10.1990 to 31.12.1990 without sufficient cause and also exceeded his jurisdiction holding that such overstay of the petitioner 'is prejudicial to the good order and discipline of force', while hooding him guilty under the offence of Section 10(m) of said CRPF Act, 1949, which does not include the same and is provided only with Section 10(n) of the said Act. Therefore the said Judgment passed by the respondent No. 2 dated 02.02.1991 in Case No. Case No. 02/1990 is hereby set aside and quashed.

33) Further the order dated 02.02.1991 passed by the respondent No. 3, dismissing the petitioner from service under Section 12(1) of said CRPF Act, 1949 w.e.f. 02.02.1991 consequently set aside and quashed and also for the reason the same was passed mechanically as noted above.

34) For the reasons above, the Court though interfered with the decision of the authority since the relevant matters were not considered while issuing the impugned Judgment of conviction and sentence passed by the respondent No. 2 and the order of dismissal of the petitioner from service passed by respondent No. 3 both dated 02.02.1991 respectively, the Court is also concern that petitioner was dismissed from service w.e.f. 02.02.1991 and that he did not prefer any appeal as provided by the relevant Rules, but preferred a writ petition

before Hon'ble Allahabad High Court against the said orders dated 02.02.1991 being W.P(C) No. 14098 of 1991, which was dismissed only on 20.03.2012, after which he preferred this petition as directed in the said writ petition. Considering the same, the Court is of the view that it will be not be just and proper directing the respondents to reinstate the petitioner in service at this stage. Accordingly, the respondent No. 2, on the basis of evidence already recorded by him, shall consider the matter a fresh and shall pass the Judgment in Case No. 02/1990 in accordance with law, on or before 31st May 2017, informing the petitioner about the outcome of the same. Thereafter, the respondent No. 3, if need arises, may pass the relevant order under Section 12(1), under section 12(1) of the CRPF Act, 1949, if so required, in accordance with law on or before, 30th June, 2017, duly informing the petitioner.

35) With the aforesaid observation and direction this writ petition stands allowed to the extent indicated above.

36) Registry shall hand over the record back to the learned CGC appearing for the respondents.

JUDGE

Paul