HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12636/2018

Rajesh Kumar S/o Shri Kundan Lal, aged about 45 years, R/o Village- Sanseri, P.s.- Shahjanpur, Tehsil- Neemrana, Alwar.

----Petitioner

Versus

1. State Of Rajasthan Through Secretary, Home Appeal Government Secretariat, Government Of Rajasthan, Jaipur.
2. Director General Of Police, Lal Kothi, Jaipur.
3. Deputy Inspector General Of Police, Kota Range, Kota.
4. Superintendent Of Police, Jhalawar.

----Respondents

For Petitioner(s) : Mr. V.B. Sharma

For Respondent(s) : Mr. Pradeep Kalwania, GC
Mr. B.S. Chhaba, AAG with
Mr. Utkarsh Dwivedi
Ms. Yuvika Pilania
Mr. Shubhendu Pilania
Ms. Malti, Asst. GC
Mr. Hardik Singh

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Reserved on ::: May 30, 2024
Pronounced on ::: July 01, 2024

1. The petitioner by filing this writ petition has assailed the order dated 19.10.2000 passed by the Superintendent of Police, Jhalawar, whereby the respondent department dismissed him from the service. The petitioner has also assailed the order dated 27.01.2003 passed by the

Dy. Secretary, Home (Appeal), whereby the review petition filed by him was dismissed.

2. Briefly stated facts of the matter are that the petitioner was appointed as Constable under the respondents department on 31.05.1993. When the petitioner was posted Police Station Gandhar, a criminal case No.75/1999 came to be registered against him along-with four other Constables for the offences under sections 302 and 201 IPC wherein it was alleged that the petitioner and four other constables had tortured and killed one Radhey Shyam Darji.

After completion of investigation, charge-sheet was filed against the petitioner and four other constables and after conclusion of the trial, the petitioner and three constables were convicted by the trial court and the judgment of conviction and awarding sentence to the petitioner was affirmed by the Hon’ble High Court in Criminal Appeal No.2073/2011. The judgment of conviction and sentence of the petitioner was challenged before the Hon’ble Apex Court and the Hon’ble Apex Court in Criminal Appeal No. 2072/2011 over turned the conviction and sentence vide its judgment dated 27.04.2016. The case of the petitioner is that since his conviction has been set aside by the Hon’ble Apex Court vide judgment dated 27.04.2016, he should be reinstated back in service.

3. Counsel for the petitioner submitted that though the petitioner was convicted by the trial court for the offences under sections 302 and 201 IPC and was sentenced to Life Imprisonment, however, he was dismissed from service in view of the charge of willful absence from duty for about 105 days. Counsel also submitted that the order of dismissal of the petitioner from service is purely violative of principles of natural justice for the reason that neither the charge-sheet issued against the petitioner nor the show-cause notice after conclusion of the inquiry with a copy of the inquiry report was ever served upon him. It is also the submission of the counsel for the petitioner that one of the Constable namely; Tej Singh who was also co-accused in the criminal case along-with the petitioner but acquitted by the trial court and who also dismissed from the service in view of the charge of willful absence from duty, has been reinstated back in service by altering the penalty of dismissal from service to that of withholding of two annual grade increments with cumulative effect. Counsel also submitted that the dismissal of the petitioner from the service as well as the other person Tej Singh was in view of the identical charge of willful absence from the duty and therefore, non- reinstatement of the petitioner in service back hits Article 14 of the Constitution of India. Counsel also submitted that the penalty of dismissal from service imposed upon the petitioner is disproportionate

to that of charge of willful absence of the petitioner from the duty.

4. Counsels appearing for the respondents submitted that the order of penalty of dismissal from service is just and proper in the facts and circumstances of the case because the same has been passed after due consideration of the inquiry report in regard to the charges leveled against the petitioner. Counsels further submitted that this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is not required to re-appreciate the evidence. Counsels also submitted that the unauthorized absence of the petitioner was due to involvement in a criminal case in order to avoid the arrest in a criminal case and thus, he has deliberately absented himself from the duty. Counsels also submitted that it is not in dispute that the petitioner remained absent from the duty and in such circumstances, the order of penalty does not call for any interference by this Court.

5. Considered the submissions advanced by both the counsels appearing for the respective parties.

6. The petitioner was issued a charge-sheet dated 24.09.1999 with a charge of willful absence from duty.

7. One of the submission of the counsel for the petitioner is that the petitioner has never been served with a charge-sheet and so also the show-cause notice, which is required to be served after completion of the inquiry along-

with the inquiry report so that the delinquent person can submit his representation as regards the inquiry proceedings. Counsels appearing for the respondents submitted that the charge-sheet as well as the show-cause notice, which are required to be served upon the delinquent have been served upon the petitioner in a proper manner.

8. In reply to the writ petition, the respondents in para 6 of the reply has stated that the charge-sheet was served upon the father of the petitioner namely; Kundan Lal and subsequently, the copy of the show-cause notice along-with the inquiry report was duly served upon his father. However, the petitioner failed to appear before the Enquiry Officer and so also before the Disciplinary Authority. In support of the contentions, the respondents have placed on record the documents related to the service of charge-sheet upon the father of the petitioner. The document (Annex.R/2 with the reply to the petition) clearly speaks about the service report in regard to the charge-sheet upon the father of the petitioner and not in respect of show-cause notice, which is required to be served upon the delinquent person after completion of the inquiry report as is mandated under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short 'the Rules of 1958').

9. The petitioner has been imposed with a major penalty of dismissal from service. The procedure for imposing

major penalty has been given under Rule 16 of the Rules of 1958.

10. Sub-rule 10 of Rule 16 of the Rules of 1958 speaks that the Disciplinary Authority shall forward a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority to the Government Servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days.

The petitioner has specifically averred and contended that no show-cause notice after completion of the inquiry report was submitted upon him along-with the inquiry report so as to submit the representation as required under Rule 16 of the Rules of 1958. The respondents so as to counter the submissions, has placed on record the document Annex.R/2 related to the service of the charge-sheet and there is no document submitted by the respondents to show that the show-cause notice along-with the inquiry report was served upon the petitioner so that he may submit his representation, if so desires, before passing the order of penalty.

11. It is a well settled law that before imposing penalty a Government Servant is required to serve the show-cause notice along-with the inquiry report allowing him an

opportunity to submit his representation but in the present case the respondents could not show that they have ever served the show cause notice to the petitioner as required under sub-rule 10 of Rule 16 of the Rules of 1958. Passing of penalty order without service of the show-cause notice along-with the inquiry report upon a Government Servant is held to be violation of principle of natural justice and thus, this Court can also safely held that the respondents have passed the penalty order in gross violation of principle of natural justice as the show cause notice along-with the inquiry report has not been served upon the petitioner.

12. The petitioner has also raised an issue that Mr. Tej Singh who was also the co-accused in the criminal case along-with the petitioner, acquitted by the trial court and was dismissed from the service on the charge of willful absence from duty, has been reinstated back in service considering his review petition by altering the penalty form dismissal to the penalty of withholding two annual grade increments vide order dated 24.05.2004 (Annex.9 with the writ petition) passed by the Inspector General of Police, Kota Range, Kota. It was submitted that the charge against the petitioner as well as co-accused Tej Singh of willful absence from duty is same. The only difference in the case of the petitioner and Tej Singh is that co-accused Tej Singh was acquitted by the

learned trial court whereas the petitioner has been acquitted by the Hon'ble Apex Court.

13. In reply to the writ petition in para 12 about the aforesaid averments of the petitioner, the respondents have stated that in the case of Tej Singh, in the review petition, the Reviewing Authority after taking note of the relevant facts and circumstances passed the order dated 20.05.2000 and the petitioner cannot seek any parity in the matter of penalty order passed by the Competent Authority after taking note of all relevant facts and circumstances of the case.

14. On consideration of the material available on the record in regard to the aforesaid submissions, this Court finds that the petitioner was issued charge-sheet dated 24.09.1999 with the following charges:-

*"**1.** आप पुलिस थाना गंगधार पर माह मई 99 को बतौर काानिस्टेबल पदस्थापित था। आपको तत्कालीन पुलिस अधीक्षक श्री डी.सी.जैनू आई. पी.एस. जो दिनांक 11.5.99 से थाना गंगधार पर केम्प किये हुये थे, ने निर्देश दिये थे कि आप पुलिस लाईन झालावाड में आमद करावें, साथ ही इस संबंध में दिनांक 12.5.99 को थाना गंगधार के रोजनामचा आम रपट सं. 417 समय 12.20 पी.एस. पर अंकित की जाकर आपको तत्कालीन पुलिस अधीक्षक झालावाड के मौखिक आदेश की अनुपालना में रिजर्व पुलिस लाईन, झालावाड रवाना किया गया व हिदायत की गई थी कि आप पुलिस लाईन झालावाड में उपस्थिति देवें, मगर आपने इस आदेश की कोई अनुपालना नहीं की एवं आप उसी दिन से स्वेच्छा से गैर हाजीर हो गयें।*

2. आपको पुलिस अधीक्षक कार्यालय झालावाड़ के डी.ओ.बी. आदेश संख्यां 491 दिनांक 11.5.99 से आपके विरूद्ध अनुशासनात्मक कार्यवाही किया जाना प्रस्तावित होने के फलस्वरूप निलंबित किया गया, तथा इस आदेश के तहत आपको रिजर्व पुलिस लाईन, झालावाड़ में अपनी उपस्थिति दिया जाना था, मगर आप रिजर्व पुलिस लाईन झालावाड में उपस्थित नहीं हुये। इस प्रकार आपको कार्यालय पुलिस अधीक्षक, झालावाड के पत्र क्रमांक 2887–89 दिनांक 14.5.99 के द्वारा रिजर्व

पुलिस लाईन, झालवाड में उपस्थिति देने के लिये, नोटिस जारी करके श्री रहुफ मोहम्मद कां नि. 624 रिजर्व पुलिस लाईन झालावाड. के साथ आपको तामील कराने के लिये आपके गांव सांसेडी पुलिस थाना शाहजहांपुर, जिला अलवर के मार्फत भिजवाया गया। इस नोटिस को श्री रहुफ मोहम्मद कानि. 624 ने पुलिस थाना शाहजहांपुर के कानि. के साथ आपके गांव सांसेडी जाकर दिनांक 15.5.99 को आपके नही मिलने पर आपके पिता श्री कुन्दनलाल को तामील करवाया, जिसके गवाह भी श्री हरद्वारीलाल पुत्र भोलूराम निवासी सांसेडी जो उस समय मौजूद थे, हैं इस नोटिस की तामील पर इस गवाह के हस्ताक्षर व आपके पिता श्री कुन्दन लाल के हस्ताक्षर मौजूद हैं। इस नोटिस में आपको यह स्पष्ट कर दिया गया था कि आप अपनी उपस्थिति नोटिस के प्राप्त होते ही रिजर्व पुलिस लाईन झालावाड. में देवें, अन्यथा आपके विरूद्ध अनुशासनात्मक कार्यवाही की जावेगी। आप दिनांक 12.5.99 से आज दिनांक 24.9.99 तक बिना किसी सुचना एवं अनुमति के स्वेच्छा से गैर हाजीर चल रहे है।

3. आप पूर्व में भी दिनांक 22.7.96 से 9.10.96 तक स्वेच्छा से अनुपस्थित रहे जिसका निर्णय पूर्व में डी.ओ.बी. सं. 1038 दिनांक 9.10.96 से किया जाकर 17 दिन ई.ओ.एल. एवं. योम पी.डी. के दण्ड से दण्डित किया गया था। इस प्रकार आप स्वेच्छा से अनुपस्थित होने के आदि हैं।"

The other person namely; Tej Singh who was also co-accused in the criminal case was issued the charge-sheet with the following charge:-

"पुलिस थाना गंगधार पर माह मई 99 को बतौर कानि. पदस्थापित आपके पुलिस अधीक्षक श्री डी.सी.जैन आई.पी.एस. जो दिनांक 11.05.00 से थाना गगंधार केम्प किये हुये थे, ने निर्देश दिये थे कि आप पुलिस लाईन झालावाड़ में आमद करावे साथ ही इस सम्बन्ध में दिनांक 12.5.99 को थाना गगंधार के रोज आम रपट सं. 417 समय 12.20 पीएम परअंकित की जाकर आपकी तत्कालीन पुलिसअधीक्षक झालावाड. के मौखिक आदेश की अनुपालना में रिजर्व पुलिस लाईन झालावाड रवाना किया गया व हिदायत दी गई थी कि आप पुलिस लाईन झालावाड़ में उपस्थिति देवे, मगर आपने इस आदेश की कोई अनुपालना नही की एवं आप उसी दिन से स्वेच्छा से गैर हाजिर हो गये।

2. आपको पुलिस अधीक्षक कार्यालय झालावाड़ के डी.ओ.बी आदेश सं. 490 दिनांक 11.5.99 से आपके विरूद्ध अनुशासनात्मक कार्यवाही किया जाना प्रस्तावति होने के फलस्वरूव निलम्बित किया गया तथा इस आदेश

के तहत आपको रिजर्व पुलिस लाईन झालावाड़ में अपनी उपस्थिति दिया जाना था, मगर आप रिजर्व पुलिस लाईन झालावाड़ में उपस्थित नही हुये। इस पर आपको कार्यालय पुलिस अधीक्षक झाला. के पत्र सं. 2902–4 दिनांक 14.5.99 के द्वारा रिजर्व पुलिस लाईन झालावाड़ में उपस्थिति देने के लिये नोटिस जारी करके श्री श्यामसिंह हेड का. 179 थाना झालरापाटन के साथ आपको तामील कराने के लिये आपके गांव सिघांनिया पुलिस थाना झालरापाटन के मार्फत भिजवाया गया। इस नोटिस को श्री श्यामसिंह हेड कानि. 179 ने आपके गांव सिघंनिया जाकर दिनांक 14.5.99 को आपके नहीं मिलने पर आपके पिता श्री जवाहर सिंह को तामील करवाया, जिसके गवाह श्री भंवरसिंह एवं भूरसिंह निवासी सिघ ांनिया जो उस समय मौजूद थे है। इस नोटिस तामील पर इन गवाहों के हस्ताक्षर व आपे पिता श्री जवाहरसिंह के हस्ताक्षर मौजूद है। इस नोटिस में आपकों यह स्पष्ट कर दिया था कि आप अपनी उपस्थिति नोटिस के प्राप्त होते ही रिजर्व पुलिस लाईन झालावाड़ में देवे, अन्यथा आपके विरूद्ध अनुशासनात्मक कार्यवाही की जावेगी। आप दिनांक 12.5. 99 से आज दिनांक 24.9.99 तक बिना किसी सूचना एवं अनुमति के स्वेच्छा से गैरहाजिर चल रहे हैं।

3. आप पूर्व में श्री 11 बार क्रमशः दिनांक 13.7.90, 4.8.93, 6.11.93, 26. 12.93, 28.12.93, 3.4.93, 6.5.95, 11.12.96, 10.10.98, से 24.10.98, तक एवं दिनांक 6.11.90 को स्वेच्छा से अनुपस्थित रहे है, जिसका निर्णय पूर्व में लिया जाकर उक्त अवधि को ई.ओ..एल. एवं पी.डी. के दण्ड से दण्डित किया गया है। इस प्रकार आप स्वेच्छा से अनुपस्थित रहने के आदि है।"

On perusal of the charges leveled against the petitioner as well as other person namely; Tej Singh, who is co-accused in the same criminal case, this Court finds that the charges against both the persons are same.

15. The respondents while considering the review petition in the matter of co-accused Tej Singh against the order of his dismissal from service, has passed the order

dated 20.05.2004 wherein the penalty of withholding two annual grade increments has been imposed with the following observations:-

> *"अपीलार्थी की अनुपस्थिति का कारण अपने आप को निर्दोष मानकर गिरफतारी से बचने का रहा था एवं चूंकि इस अभियोग में न्यायालय उसे दोषमुक्त कर दिया तो उसका अनुपस्थित रहना बहुत गम्भीर आरोप नहीं है।*
>
> *चार माह की अनुपस्थिति के आरोप में राज्य सेवा से पृथक कर देना आर्थिक मृत्यु दण्ड की सजा है जिसके चलत अपीलान्ट का परिवार बरबाद हो जावेगा तथा दण्ड आरोप की गम्भीरता का समानुपाती भी नही है।*
>
> *उपरोक्त विवेचन के आधार पर मैं इस निर्णय पर पहूँचा हूं कि अपीलार्थी को दिया गया दण्ड अधिक है तथा न्यायोचित नहीं है।"*

16. In the case of Tej Singh, the respondents have observed that his absence was not treated as serious because he was absent from the duty so as to avoid his arrest and he was later-on acquitted by the trial court. In the case of the present petitioner also, the petitioner was avoiding his arrest in the same criminal case and he has now been acquitted by the Hon'ble Apex Court with the following observations:-

> *"PW-1/Balu who was also picked up along with Radhey Shyama Chamar was asked a specific question in the cross-examination as to where Radhey Shyam Darji is and his categorical reply was that Radhey Shyam Darji is alive and he was not lodged in jail along with them. In this backdrop, when the prosecution's own case, as set up in the charge sheet in support of which the*

aforesaid evidence is given, does not prove the allegation of killing Radhey Shyam Darji, we fail to understand as to how aid of Section 106 of the Indian Evidence Act could be taken by the Trial Court. It is trite that the prosecution has to stand on its own legs and sufficient evidence should have been produced to show how and from where Radhey Shyam Darji was picked up and tortured. On the contrary, insofar as picking of persons is concerned, the prosecution case itself mentions the name of Radhey Shyam Chamar. The documents which are produced in support thereof and have been discussed above do not prove, leveled beyond reasonable doubt, the charges which were leveled against the appellants, namely, torturing and killing of Radhey Shyam Darji.

We, thus, allow these appeals and set aside the conviction of the appellants. The appellants shall be released from jail forthwith, if not required in any other case.

Since the appellants are Government Servants and are exonerated and acquitted of the charges, it goes without saying that they will be entitled to the service benefits accordingly."

17. The Hon'ble Apex Court in the case of ***Rajendra Yadav v. State of Madhya Pradesh & Others, reported in 2013(3) SCC 73***, has observed as under:-

"12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they

can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical

allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

14. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re- instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

Similarly, in the case of ***Sengara Singh & Others v. State of Punjab & Others, reported in 1984 AIR SC 1499***, the Hon'ble Apex Court has observed as under:-

"7. What then is the situation ? As a sequel to Police agitation, the State Government dismissed about 1100 members of the Police Force on the

allegation that they participated in the agitation. The State Government also filed criminal prosecutions against a large number of the agitatOrs. Subsequently, the State Government reinstated 1000 dismissed members of the Police Force in their original posts and withdrew the criminal cases against them. If the filing of the criminal cases was the distinguishing feature, which would distinguish the case of the present appellants from others, that feature has become irrelevant because the criminal cases against those who were subsequently reinstated have been withdrawn. It is not suggested that the present appellants were leaders or indulged into more violent activities. We repeatedly questioned the learned Counsel to specify the distinguishing features of the present appellants from those in whose cases the Committee recommended the reinstatement and the State Government accepted the recommendations. There is not an iota of evidence which would distinguish the case of the present appellants from those who were beneficiaries of the indulgence of the Committee and the largesse of the State. The net result has been that the present appellants have been arbitrarily weeded out for discriminatory and more severe treatment than those who were similarly situated. This discrimination is writ large on the record and the Court cannot overlook the same.

8. As usual the bogey was raised that this Court should not encourage indiscipline in ranks of paramilitary forces like the Police because that will tinkle with national security. We asked Mr. Sharma,

learned Counsel whether the charge should be addressed to the Court or to the State Government. The High Court dismissed the petitions on an earlier occasion probably guided by this consideration. The State government thereafter constituted a Committee to review the cases of all dismissed agitators and the Committee picked and chose some for its indulgence leaving the rest to fend for themselves. May we repeat the question as to who would be responsible for creating such situation and encourage indiscipline in the Police Force ? The State or the Court. The State divided the agitators into two classes i.e. favourites and non favourites. The Court is restoring the balance by this order. Therefore, the charge misdirected at the Court must be ignored.

9. What then should be done ? The appellants have been accused of participating in a procession taken out by the members of the Police Force for ventilating their grievances about their service conditions. May be that still having not reached the stage of tolerance for formation of associations amongst police personnel, the demonstrators may be looked upon with disfavour. But approaching the matter from this angle, all the 1100 dismissed members of the Police Force were guilty of same misconduct namely indiscipline to the same extent and degree as the present appellants. Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present

appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment melted to the present appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action."

Similarly, in the case of ***Man Singh v. State of Haryana, reported in (2008) 12 SCC 331***, the Hon'ble Apex Court has observed as under:-

"19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now

turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.

20. In the backdrop of the above-mentioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle."

18. Taking into consideration the observations of the Hon'ble Apex Court while acquitting the petitioner so also the observations of the Reviewing Authority in passing the order dated 20.05.2004 in the case of Tej Singh, this Court can very well held that the approach of the respondents hits Article 14 of the Constitution of India which speaks of parity and equality.

19. This Court while giving the aforesaid finding has also taken into consideration the findings and the observations of the Hon'ble Apex Court while acquitting the petitioner and more specifically the observations of the **Hon'ble Apex Court that the petitioner (appellant therein) who is a government servant and exonerated of the charges, will be entitled to the service benefits accordingly**.

20. Counsel appearing for the petitioner has also raised an issue that the penalty of dismissal from service imposed upon the petitioner in view of the charges leveled against him is disproportionate so as to shock the consciousness of the Court. Since this Court has already held that the order of penalty is in violation of principle of natural justice, this Court at this stage would not like to go into whether the penalty is proportionate or not.

21. In view of the discussion made above, the writ petition filed by the petitioner is allowed. The penalty order dated 19.10.2000 passed by the Superintendent of Police, Jhalawar as well as the order dated 27.01.2003 passed by the Dy. Secretary Home (Appeal) are set aside. The respondents are directed to reinstate the petitioner back in service. The petitioner would be entitled to all consequential benefits. However, the petitioner would be entitled for notional benefits for the intervening period but actual benefits

from the date of his acquittal by the Hon'ble Apex Court i.e. from 27.04.2016.

The respondents after reinstating the petitioner in service would be at liberty to serve show-cause notice along-with the inquiry report and after receiving the representation from the petitioner, may pass an order afresh after taking into consideration the penalty imposed upon other person namely; Tej Singh, referred in above part of the judgment.

22. In view of the order passed in the main petition, the stay application and pending application(s), if any, also stand disposed of.

(GANESH RAM MEENA),J

Sharma NK/Dy. Registrar