

**Court No. - 23**

**Case :-** WRIT - A No. - 26484 of 2019

**Petitioner :-** Anil Kumar Gautam

**Respondent :-** Union Of India Thru G.M. Northern Railway New Delhi And Ors.

**Counsel for Petitioner :-** Shireesh Kumar

**Counsel for Respondent :-** Suniti Sachan,A.S.G.I.,Kumar Ayush

AND

**Case :-** WRIT - A No. - 20792 of 2016

**Petitioner :-** Manglesh Kumar Singh

**Respondent :-** Chief Security Commissioner Railway Protection Force And Ors.

**Counsel for Petitioner :-** Anil Kumar Mishra,Kirti Kar Tripathi,Piyush Mishra,Puran Kumar,Shireesh Kumar,Shrikant Tripathi

**Counsel for Respondent :-** Pankaj Srivastava,A.S.G.I.,Ishan Baghel,Mrs.Suniti Sachan,Pratul Kumar Srivastava

**Hon'ble Manish Mathur,J.**

Heard Mr. Shireesh Kumar, learned counsel for petitioner, Mr. Ishan Baghel, learned counsel for opposite parties in Writ A No.20792 of 2016 and Mr. Kumar Ayush, learned counsel for opposite parties in Writ Petition No.26484 of 2019.

Both petitions are against the same cause of action and had earlier been clubbed vide order of this Court. The cause of action being similar, both petitions are being decided by common judgment.

Petitions have been filed against the punishment orders imposed upon them whereby major penalty of reduction in rank has been imposed.

Succinctly stated, the petitioners were appointed on the post of constable in the Railway Protection Force but subsequently, the petitioners herein along with one Shri Hari Kishan Yadav were placed under suspension in contemplation of departmental proceedings. Charge-sheet was served upon them and departmental proceedings ensued. During pendency of the inquiry proceedings, criminal cases were also lodged against the petitioners for theft of Railway Property. The departmental proceedings thereafter culminated in passing of orders dismissing petitioners from service. Subsequently, the said

dismissal orders were modified and reduced penalty as indicated hereinabove was imposed. Thereafter, the criminal trial ended in passing of judgment and order dated 21.07.2017 by the Additional Chief Judicial Magistrate, Northern Railway acquitting the petitioners and the said Hari Kishan Yadav from charges levelled against them. The acquittal was honorable and not on the basis of benefit of doubt

Learned counsel for petitioners submits that Hari Kishan Yadav had also assailed the punishment orders in Writ Petition No.20094 (S/S) of 2016; Hari Kishan Yadav Vs. Union of India and others, which was allowed by means of judgment and order dated 06.02.2019 directing the opposite parties to reinstate the petitioner in service on the post of head constable providing all consequential benefits admissible to the post. It is submitted that the aforesaid judgment and order was thereafter challenged in Special Appeal Defective No.6 of 2020; Union of India through General Manager Northern Railway & Ors. versus. Hari Kishan Yadav and this Court vide judgment and order dated 07.01.2020 was pleased to dismiss the special appeal on merits. It is submitted that the aforesaid judgment and order was not appealed against and in fact has already been complied with in the case of Hari Kishan Yadav. It is submitted that the petitioner's case standing on the same footing is also required to be disposed of in same terms.

Learned counsel appearing on behalf of opposite parties, upon instructions do not dispute the fact that the petitioners stand on the same footing as the said Hari Kishan Yadav.

It is a relevant fact that the learned Single Judge vide judgment and order dated 06.02.2019 has allowed the petition of Hari Kishan Yadav primarily on the basis of acquittal order passed in criminal proceedings. The special appeal however in its judgment and order dated 07.01.2020 has clearly dismissed the

special appeal while recording the fact that once departmental inquiry and criminal trial are on the same set of facts, charges, evidence and witnesses and the employee has been acquitted honorably in criminal trial, then finding to the contrary on the very same evidence in departmental proceedings would be unjust. The Division Bench of this Court has relied upon various judgments of Hon'ble the Supreme Court to buttress such a finding.

From a perusal of the material on record and upon consideration of submissions advanced by learned counsel for parties, it is apparent that the case of petitioners is similar in nature to that of said Hari Kishan Yadav. As such, it would be expedient in the interest of justice to accord the same treatment to the petitioners of present writ petitions.

Considering the aforesaid facts, writ in the nature of certiorari is issued quashing the impugned orders dated 01.03.2019. The opposite parties are directed to reinstate the petitioners in service on the post of head constable and to provide all consequential benefits admissible to the post within a period of three months from the date of production of certified copy of this order as the relief granted in the case of Hari Kishan Yadav.

With the aforesaid directions and observations, the writ petitions stand **allowed**.

**Order Date :-** 30.5.2022

Subodh/-

**(Manish Mathur,J.)**