( 2025:HHC:36338 )

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**CWPOA No: 3249 of 2020 a/w**
**CWPOA No. 6860 of 2020**
**Reserved on: 06.06.2025**
**Decided on : 14.10.2025**

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**1. CWPOA No.3249 of 2020**

Pritam Singh ...Petitioner

Versus

Himachal Road Transport Corporation & Others ...Respondents

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**2. CWPOA No.6860 of 2020**

Pritam Singh ...Petitioner

Versus

Himachal Road Transport Corporation & Another ...Respondents

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*Coram*

**Hon'ble Mr. Justice Ranjan Sharma, Judge**

[1] *Whether approved for reporting? Yes.*

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For the petitioners : Mr. Rajender Sharma, Advocate, in both the petitions.

For the respondents : Mr. Raman Jamalta, Advocate, in both the petitions.

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**Ranjan Sharma, Judge**

Petitioner [Pritam Singh] has filed two writ petitions [CWPOA No. 3249 & 6860 of 2020] with the following prayers.

**Prayer in CWPOA No. 3249 of 2020**

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[1] *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

Petitioner, Pritam Singh, after having removed from service has assailed the removal orders dated 15.01.2016 [Annexure A-1], seeking the following reliefs:-

> (i) That the impugned officer order dated 15.01.2016 [Annexure A-1] may kindly be quashed and set aside."
>
> (ii) That the respondents may kindly be directed to reinstate the applicant in service with all consequential benefits.
>
> (iii) That the respondents may kindly be directed to decide the pending appeal of the applicant [Annexure–A-2] within a time bound period.
>
> (iv) That the respondents may kindly be directed to regularize the services of the applicant without any discrimination after completion of one year with all consequential benefits like; seniority pay-fixation and arrears etc. as per the judgments and orders Annexure-A-3 to A-6."

**Prayer in CWPOA No. 6860 of 2020**

In addition to the challenge to the removal orders, the petitioner Pritam Singh assails the Appellate Order dated 09.02.2018 [Annexure A-3], with the following relief:-

> "(i) That the impugned officer order dated 09.02.2018 [Annexure A-3] may kindly be quashed and set aside."

**FACTUAL MATRIX [CWPOA NO. 3249 OF 2020]:**

**2.** Case set up by learned counsel for the

petitioner is that the petitioner was engaged as a Driver on contract basis on 05.05.2002 and his services were regularized on 24.10.2010. While working as a regular driver, he was implicated in an FIR No.39 of 2013 under Sections 304 A, 279 & 427 of Indian Penal Code registered at Police Station Talwara, District Hoshiarpur [Punjab]. Pursuant to investigation and trial, the Learned Trial Court convicted the petitioner. Feeling aggrieved, the petitioner filed an appeal which was dismissed. However, the petitioner filed a Criminal Revision No.3600 of 2015 before the High Court of Punjab and Haryana, wherein, the conviction was upheld but the sentence was modified /reduced on 27.11.2015 from imprisonment for two years with a fine of Rs.1,000/-[Rupees One Thousand] to imprisonment for 6 months. It is averred that while the petitioner was undergoing imprisonment in judicial custody w.e.f 24.08.2015 till release on 01.02.2016, a *Show Cause Notice was issued on 08.12.2015, proposing the penalty of "REMOVAL"*

from service. It is averred that since the petitioner was in custody and was not having the required documents, he could not submit the requisite reply to Show Cause Notice.

**2(i).** For non-filing of reply, the Deputy Divisional Manger of the Respondent-Corporation, imposed the *penalty of removal from service on the petitioner on 15.01.2016 [Annexure A-1].*

**FACTUAL MATRIX [CWPOA NO. 6860 OF 2020]:**

**3.** Case set-up by Learned Counsel for petitioner in CWPOA No. 6860 of 2020, is that after the passing of removal orders dated 15.01.2016, the petitioner submitted an Appeal to the Appellate Authority-cum Divisional Manager of the Respondent-Corporation on 23.03.2017 [Annexure A-2], raising as many as fourteen (14) contentions and the case law. Resultantly the appeal dated 23.03.2017 *[Annexure A-2]* was rejected by the Appellate Authority-cum-Divisional Manager HRTC *[hereinafter referred to as HRTC*] on 09.02.2018 *[Annexure A-3],* without considering the

contentions raised and without recording any finding thereto but the appeal was rejected merely by taking into account his conviction/sentence for six months imprisonment by the Court.

**4.** Heard Mr. Rajender Sharma, Learned Counsel for the petitioner as well as Mr. Raman Jamalta, Learned Counsel for the respondents and have gone through the case records.

**STATUTORY PROVISIONS:**

**5.** Before proceeding to analyze to claim it is necessary to have a recap of the statutory provisions of Rule 11 & 19 of Central Civil Services Classification Control and Appeal Rules [CCS/CCA] as applicable to the employees of Respondent Corporation, alike petitioners, which reads as under:-

> **"PENALTIES AND DISCIPLINARY AUHTORITIES**
>
> **"11. Penalties**
>
> **The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-**
>
> *Minor Penalties -*

(i) censure;
(ii) withholding of his promotion;
(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
(iii) (a) reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
(iv) withholding of increments of pay;

*Major Penalties* -

(v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority in the higher time scale of pay , grade, post or service;

(vii) compulsory retirement;

(viii) **removal from service which shall not be a disqualification for future employment under the Government;**

**(**ix) **dismissal from service which shall ordinarily be a disqualification for future employment under the Government.**

EXPLANATION – (i) to (viii) not required.

**19. Special procedure in certain cases**

**Notwithstanding anything contained in Rule 14 to rule 18-**

(i) where any **penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge,** *or*

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, *or*

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, **the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:**

Provided that the **Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):**

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

**MANDATE OF LAW:**

**6**. While dealing with provisions of Rule

14(1) of the Railway Servants [Discipline and Appeal] Rules, 1968 which are *pari materia* to Rule 19(i) of the CCS [CCA] Rules the Hon'ble Supreme Court has mandated in **(1976) 3 SCC 190, tilted as The Divisional Personnel Officer Southern Railway and Another Versus T.R Chellappan,** that the term "consider" is not an empty formality. It has been mandated that the term 'Consider' is wide enough to require the disciplinary authority to hold a detailed examination of matter. It has further been held that word 'Consider' denotes that there should be application of mind by the disciplinary authority after considering entire circumstances of the case so as to take a call, after considering variety of factors, as to whether the penalty of removal orders be imposed on delinquent employee, upon conviction in a criminal case. The intent and object of consideration can be achieved, if delinquent employee, is heard and he is given a chance, to satisfy authority regarding

final orders that may be passed by said authority after considering all aspects i.e. the pros and cons of the matter. It has been held that such an enquiry would be a summary inquiry to be held by disciplinary authority after hearing delinquent employee. Moreover, while considering the entirety of circumstances the entire conduct of delinquent employee, gravity of misconduct and the impact which it may likely have on administration; and other extenuating circumstances or other redeeming features present in the case are required to be considered before passing the extreme impugned order of removal based on conviction, in following terms.

> 21. We now come to the third point that is involved in this case, namely, the extent and ambit of the last part of Rule 14 of the Rules of 1968. The concerned portion runs thus:
>
> > ..... *the disciplinary authority may consider the circumstances of the case and* make *such orders thereon as it deems fit.*
>
> In this connection it was contented by the *learned* counsel for the appellant a full-dress or a fresh inquiry after hearing

the accused but only requires the disciplinary authority to impose a suitable penalty once it is proved that the delinquent employees has been convicted on a criminal charge. The Rajasthan High Court in Civil Writ Petition No. 352 of 1971 concerning Civil Appeal No. 891 of 1975 has given a very wide connotation to the word 'consider' as appearing in Rule 14 and has held that the word consider is wide enough to require the disciplinary authority to hold a detailed determination of the matter. We feel that we are not in a position to go to the extreme limit to which the Rajasthan High Court has gone. The word 'consider has been used in contradistinction to the word 'determine'. The rule- making authority deliberately used the word 'consider' and not 'determine' because the word 'determine' has a much wider scope. **The word 'consider' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge.** This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, **the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee.** It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle

contained in Article 311(2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. **It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth.** It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T. R. Chellappan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the

conviction. **This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible.** This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. **The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair play. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty** on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service.

22. Mr. S. N. Prasad appearing for the appellant submitted that it may not be necessary for the disciplinary authority to hear the accused and consider the matter where no provision like Rule 14 exists, because in such cases the Government can, in

the exercise of its executive powers dismiss, remove or reduce in rank any employee who has been convicted of a criminal charge by force of proviso (a) to Article 311(2) of the Constitution. In other words, the argument was that to cases where proviso (a) to Article 311(2) applies a departmental inquiry is completely dispensed with and the disciplinary authority can on the doctrine of pleasure terminate the services of the delinquent employee. We however refrain from expressing any opinion on this aspect of the matter because the cases of all the three respondents before us are cases which clearly fall within Rule 14 of the Rules of 1968 where they have been removed from service without complying with the last part of Rule 14 of the Rules of 1968 as indicated above. **In none of the cases has the disciplinary authority either considered the circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all.** On the other hand in all these cases the dis-service straightaway on the basis of the conviction of the delinquent employees by the criminal courts.

23. For the reasons given above the **High Courts of Kerala and Rajasthan, were in the circumstances, fully justified in quashing the orders of the disciplinary authorities removing the respondents from service.** The appeals therefore fail and are accordingly dismissed but in view of somewhat unsettled position of law on the question involved we leave the parties to bear their own costs."

**6(i).** While dealing with the claim against

discharge/termination from service without affording opportunity of hearing and by ignoring the relevant aspect and circumstances and the objective criteria in service rules before discharging or dispensing with his service were set-aside by the Hon'ble Supreme Court in **Pawan Kumar versus Union of India and Another, (2023) 12 SCC 317,** in the following terms:

> "13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/ terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service."

**7.** Similar proposition of law has been

outlined by various High Courts in the following terms:

**7(i).** This Court in **Hardayal Singh Versus State of Himachal Pradesh, 1977 (1) SLR 327,** highlighted that the penalty of removal or dismissal based on conviction is not automatic but imposition of penalty, if any, has to be adjudged in light of various other factors including accusation role; evidence available service rendered and other extenuating circumstances including family conditions of an employee before imposing the extreme penalty.

**7(ii).** In **Civil Writ Petition No. 3074 of 1995,** titled as **Daya Nand Versus State of Haryana (P&B),** decided on 24.01.2000, the Punjab and Haryana High Court has held that conviction cannot lead to the extreme penalty of dismissal or removal automatically and before imposing any penalty based on conviction an employer is bound to take into account entirety of factors including accusation; role attributable to an employee

allegedly involved in the Criminal offence evidence available on record role of employee concerned service rendered and extenuating factors are to be kept in view and extreme penalty of removal or dismissal base on conviction is not to be imposed automatically and *ipso facto*.

**7(iii).** In **Chinthanuru Sivaiah Versus Southern Power Distributions Company of A.P. Limited, Tenali and Another, in WP No. 7232 of 2003, dated 20.06.2003**, The Andhra Pradesh High Court, while dealing with the similar situation has held as under:-

> "9. Even where an employee is sought to be dismissed on the basis of conviction in a criminal case, the employer is required to put the employee on notice, though not under an obligation to conduct any departmental or other enquiry in this regard. The reason is that much will depend on the purport and interpretation of the relevant Service Rules, which may provide for dismissal on conviction by a Criminal Court, in a given case, **the employee may be able to satisfy the employer that the conviction, which he has suffered in a criminal case, may not be the one contemplated under the relevant Service Rules or the judgment of the Supreme Court referred to above.** The employer is required to undertake verification or examination at least to this limited extent.

10. Otherwise, a situation may arise where the employer may dismiss an employee straightway without verifying as to whether the conviction, which the employee had suffered, is in any way, relatable to the relevant provisions under the Service Rules or the orders issued by the competent authority from time to time. **If instances are required to demonstrate such a contingency, the present case provides for one. Had the petitioner been at least informed of the proposed action, he would have been successful in making the respondents to realize that what they were purporting to do is outside the scope of the judgment of the** Supreme Court nor the Memo issued for implementation of the same. Therefore, the impugned order cannot be sustained on this ground also."

**7(iv).** In a similar situation, in **Writ Petition No.1921 of 1994,** titled as **Champalal & Ors. Versus Additional Commissioner, Nagpur & Anr.** decided on 28/29.08.2012, the Bombay High Court has held as under:-

"10. In paragraph no. 5 it is observed that it was not a condition precedent that misconduct must arise out of employment and not outside it. The test has been found to be whether the servant conducted himself in a way inconsistent with faithful discharge of his obligations undertaken by him, either expressly or impliedly in accepting the services.

11. In ***Shankar Das v. Union of India and another (supra), the Hon'ble Apex Court has while considering the provisions of Article 311 (2) observed***

***in paragraph no.7 that the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in no-parking area should be dismissed from service.*** The right to impose penalty carries with it the duty to act justly. In facts presented to it, the Hon'ble Apex Court found that the penalty of dismissal from service imposed upon the appellant before it, was dismissal. Though the appellant was a cash clerk, who was punished under Section 409 of Indian Penal Code, and sum involved is of 5000/- only, he was given benefit of Section 4 of the Probation of Offenders Act, but because of his conviction, the Government had dismissed him from service summarily.

12. In ***Om Prakash v. The Director, Postal Services and others (supra), the Full Bench of Punjab & Haryana High Court*** has considered the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965 in the background of Probation of Offenders Act, 1958. The appellant was convicted for using a forged cash memo for claiming medical reimbursement and was given benefit of Section 4 of the said Act. Because of this incidence, he was dismissed from Government service. While considering this challenge, the Full Bench has observed that there was no provision enabling the employer to dismiss or remove an employee from service because of his conviction on criminal charge and disciplinary action can be taken for conduct which led to conviction or a criminal charge, if such conduct constitutes misconduct according to relevant services rules. While appreciating this issue further, this Full Bench also considers illustration in which a Government servant assaults his neighbour and stands convicted for the same. **The Full Bench found that it**

**may not be possible to take departmental action against such Government servant, unless the competent Authority holds that the conduct of the delinquent officer was unbecoming. The Full bench has concluded that the Rule making authorities justifiably do not provide for a disciplinary action in every case of conviction and let its necessity & the matter to be decided by the competent Authority after appreciating original conduct and not the conviction. The Full Bench therefore set aside the order of punishment which was only on the ground of conviction.**

13. Perusal of the judgment of Hon. Apex Court in case of Divisional Personnel Officer, Southern Railway and another v. T.R. Chellappan (supra), becomes necessary in this background.

14. The language of Rule 14, looked into by the Hon'ble Apex Court in this judgment, is same as that of Rule 9. *The relevant words are "disciplinary authority may consider the circumstances of the case and pass/make such order thereon as it deems fit".* This language is appreciated by the Hon'ble *Apex Court in para-21 of the judgment. The Hon'ble Apex Court has held that the word "consider" has been used in contradistinction to the word "determine".* It has been thereafter held that when the issue is of punishment upon an employee, *the disciplinary authority has to consider entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed. The matter can be objectively determined only after delinquent employee is heard and is given chance to satisfy the authority regarding final orders that may be passed by the said authority. The term "consider" postulates consideration of all the aspects,*

*the pros and cons of the matter after hearing aggrieved person in summary enquiry.* The Hon'ble Apex Court has notedthat the delinquent employee may have been guilty of some technical offence, for instance, violation of the Transport Rules or the Rules under the Motor Vehicles Act, 1988, where no major penalty may be attracted. *Little later it has also observed that conviction of delinquent employee would be taken as sufficient proof of misconduct and then the authority has to embark upon a summary enquiry as to the nature of extent and penalty to be imposed. If such authority is of the opinion that the offence is too trivial or of a technical nature, it may refuse to impose any penalty in spite of such conviction. This is found to be salutary scheme of said Rule.* The Division Bench of this Court in the case of SatishPralhadrao Raikwar v. State of Maharashtra and another (supra) has in para-8 noted the significance of gravity of misconduct which leads to conviction of Government servant while considering similar provisions i.e. Rule 13(i) of the Maharashtra Civil Services (Pension) Rules, 1982.

15. In **AIR 1989 S.C. 1185 "Union of India v. Parma Nanda", Hon. Apex Court, through** its larger bench, in paragraph 29 observes that cases where the penalty is imposed under Clause (a) of the second proviso to Article 311(2) of the Constitution of India, constitute an exception to the normal rule. **Where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal Court, the Court or Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of**

**the criminal charge, it may step in to render substantial justice & may remit the matter to the competent authority for reconsideration** or by itself substitute one of the penalties provided under clause (a). **Another larger bench of the Hon. Apex Court in AIR 1986 S.C. 555 "Satyavir Singh v. Union of India"** draws on earlier Constitutional Bench view to note in paragraph 6 (100) that in an appeal, revision or review filed by a civil servant dismissed or removed from service or reduced in rank by applying to his case Clause (a) of the second proviso or an analogous service rule, it is not open to him to contend that he was wrongly convicted by the criminal Court. **He can, however, contend that the penalty imposed upon him is too severe or excessive or was one not warranted by the facts and circumstances of the case.** Both these Larger Bench judgments rely upon the Constitution Bench judgment of Hon. Apex Court in AIR 1985 S.C. 1416 "Union of India v. Tulsiram Patel". In view of these cases, we do not find it necessary to refer to various other judgments, to which learned counsel for the petitioner has invited our attention.

16. Scrutiny of the present controversy in the backdrop of this law is essential. As present accident is by a driver outside his employment or duty hours and in private capacity, though it may not constitute a "misconduct" as understood in labour jurisprudence, here that concept of misconduct under Industrial Employment Standing Orders Act. 1946 or Rules & Model Standing Orders framed thereunder will not be relevant & need not be gone into. Only question will be whether such an accident can be construed as "conduct" under Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967. We only observe that these Conduct Rules do not

define what is "conduct" or "misconduct" What type of behaviour or nature of acts/omissions are accepted & prohibited is envisaged in it. Rule 9 of the Discipline & Appeal Rules, 1967 lays down special procedure in certain cases. It begins with non-obstante clause and exclude the application of Rules 6,7% in its entire body, said Rule 9 nowhere uses the word "misconduct". Rules 6 is about procedure for imposing major penalties, Rule 7 is procedure for minor penalties & Rule 8speaks of the joint inquiry. Exclusion of requirement to follow this procedure in circumstances where Rule 9 gets attracted is deliberate & obviates need of a fresh fact finding inquiry due to proof thereof in the shape of prosecution. a conviction in criminal prosecution, In standard of proof beyond reasonable doubt is adopted while in disciplinary proceedings, it is preponderance of the probabilities. It is to be borne in mind that the strict rules of evidence which apply to a criminal trial are not attracted in a disciplinary enquiry. Hence, conviction after a trial is accepted as sufficient proof of "conduct" in the scheme of said Rule 9. Not employing word "misconduct" while excluding the Rules 6 to 8 is not indicative of the fact that "conduct" subjected to scrutiny in Rule 9 must always be one for which otherwise a departmental action is open. Absence of any defined "misconduct" in the Conduct Rules or then in Discipline & Appeal Rules is to keep the concept of "conduct" therein wide enough to curb any practice unbecoming on part of the zillaparishad servant. Effort of petitioner to limit its scope because of opening part of the non-obstante clause in Rule 9 therefore, has to fail. But then the consideration whether such conduct has any relevance in the light of the Conduct Rules is not dispensed with. Here, impact of solitary incidence or "conduct" of deceased Champalal on his employment

deserved consideration. If such "conduct" had any impact, whether it was unbecoming on part of Champalal as a Zilla Parishad servant to indulge in it also warranted scrutiny' Respondent no. 2 as disciplinary authority ought to have recorded its own findings in this regard before deciding to punish Champalal under Rule 9 of the 1967 Discipline & Appeal Rules. Such an approach & application of mind is lacking in present matter. **Rule 9 required respondent no. 2 disciplinary authority to consider the circumstances of the case and then pass such order thereon as it deemed fit. Thus duty to balance circumstancesleading to conviction of Champalal with administrative need to preserve efficiency & prestige of employment is not discharged by the respondent no. 2.**

17. The impugned order does not show that respondent No.2- Chief Executive Officer had issued any show cause notice to deceased Champalal or then had given him any opportunity as to why punishment of removal from service should not be inflicted upon him. **It also reveals non-application of mind qua the nature of conduct.** The deceased had put in about 19 years of service as a driver before his removal and his past service record or performance does not find any mention. Whether a solitary accident resulting in a charge under Section 304 (A) of the Indian Penal Code was sufficient to remove from employment has not been, therefore, evaluated. The fact that he was to retire just three years thereafter which also may have been a relevant factor for determining proportionate punishment to be selected, has been ignored. **The order choosing a particular punishment passed by respondent No. 2 ought to have been dependent on & commensurate with the nature of**

**the conduct viz. the circumstances constituting offence or leading to conviction of Champalal.** Obligations as found by the Hon. Apex Court in case of "Divisional Personnel Officer, Southern Railway and another v. T.R. Chellappan," "Satyavir Singh v. Union of India" & "Union of India v. Parma Nanda" (all supra), are not discharged by employer & our perusal of punishment order dated 13.12.1991 shows that **Champalal was mechanically punished not on account of his conduct/circumstances, but only because of his conviction.** Circumstances necessitating removal from service as a proportionate punishment are nowhere reflected in the punishment order.

18. Shri Mohokar, learned counsel, has invited our attention to the report submitted by the Police Officer to Judicial Magistrate First Class to show the nature of conduct. According to him, after giving dash to a Bicycle Rider, the deceased did not wait there or did not go to the nearest Police Station. He was required to be arrested. He has urged that this conduct was sufficient to warrant the removal. The document relied upon by him to show these facts is not on record before us & has not been considered by respondent no. 2. The punishment is not being imposed by this Court and, therefore, all relevant facts having bearing upon it needed to be considered by the said respondent Chief Executive Officer as a disciplinary authority. Moreover, this report cannot be accepted as correct re-production of the events which transpired at the time of accident. Admission of the deceased Champalal is only of a charge as framed and not of the alleged events recorded in his report by the police officer. We, therefore, are not in a position to countenance the efforts made by Shri Mohokar, learned counsel. **The appellate authority i.e. respondent No.1-has also**

> **fallen in same error.** It has also overlooked the fact that its conduct which is punishable departmentally and not the conviction which needs to be taken cognizance of. Order of the punishment dated 30.12.1991 as also appellate order dated 23.02.1994 are, therefore, unsustainable and the same are quashed and set aside. 3 years after the punishment, Champalal had reached the age of superannuation. Thus, during his lifetime he actually suffered the punishment & hence, this judgment is of no practical utility for him. Hence, we see no point in placing the issue back before respondent No. 2 for reconsideration of the controversy."

**7(v).** In **Writ Petition No. 785 of 2000** tilted as **State of Madhya Pradesh and Another Vs. Dr. Sheetal Kumar Bandi & Others,** decided on 12.08.2022, the Madhya Pradesh has observed as under:-

> **"11.** A bare reading of Rule 19 of the State Rules in the context of the proviso (2) (a) of Article 311, will make it abundantly clear that these provisions are merely enabling and do not enjoin the disciplinary authority to impose the extreme penalty of dismissal or removal in every case of conviction, say for trivial offences or technical offences not involving moral turpitude' Principle of natural justice and fair play, therefore, required that the authority concerned should apply its mind to the facts and circumstances of a particular case so as to decide what penalty, if at all, is required to be imposed on the delinquent employee and in order to determine this question, the delinquent employee should also be heard and his view point should

be taken into consideration. Even in the case of Tulsiram (supra) relied upon heavily by the learned Additional Advocate General, their Lordships cautioned: The Disciplinary Authorities are expected to act justly and fairly after taking into account all the facts and circumstances of the case and if they act arbitrarily and impose a penalty which is unduly excessive, capricious or vindictive, it can be set aside.....

12. In Shankar Dass (supra), the apex court lamented "despite observations of the learned Magistrate the **Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. But that power like every other power has to be exercised fairly, justly and reasonably**. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no parking area should be dismissed from service. In the instant case also, the authorities concerned do not seem to have considered the facts and circumstances of the case which led to the conviction of the respondent-employee and instead acted with a pre-determined mind while imposing the penalty of removal. So, even if the respondent may not be held entitled to be heard on the question of penalty, then also his removal was liable to be set-aside as the panty of removal from service imposed upon him is whimsical.

13. For what we have said above, this petition must fail and is dismissed with costs. Counsel's fee Rs.5,000/-, if certified.

Petition Dismissed."

**7(vi).** In **CWPOA No.6429 of 2019,** titled as **Mohinder Singh versus The Himachal Road**

**Transport Corporation & Others**, decided on 06.03.2023, a Co-ordinate Bench of this Court held as under:-

> 16. In **Tusliram Patel's case, five-Judges Bench of the Supreme Court** has discussed the guiding principles for dispensing with enquiry in case of conviction and other special circumstances and in furtherance thereto Government of India, Department of Personnel and Training has issued OM No. 11012/11/85-Estt. (A), dated the 11th November, 1985 and 4th April, 1986, relevant portion whereof is as under:-
>
> > "**Guiding principles for dispensing with enquiry in cases of conviction and other special circumstances.-** (a) General: The judgment delivered by the Supreme Court on 11.07.85 in the case of Tulsi Ram Patel and others has been the cause of much controversy. The apprehension caused by the judgment is merely due to an inadequate appreciation of the point clarified in this judgment and in the subsequent judgment of the Supreme Court delivered on September 12, 1985 in the case of Satyavir Singh and others (Civil Appeal No. 242 of 1982 and Civil Appeal No. 576 of 1982). It is, therefore, imperative to clarify the issue for the benefit and guidance of all concerned.
>
> 2. In the first place it may be understood that the Supreme Court in its judgment has not established any new principle of law. It has only clarified the constitutional provisions, as embodied in Article 311 (2) of the Constitution. In other words, the judgment does not take

away the constitutional protection granted to government employees by the said Article, under which no government employee can be dismissed, removed or reduced in rank without an inquiry in which he has been informed of the charges against him and given reasonable opportunity to a defend himself. It is only in three exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Article 311 (2) that the requirement of holding such an inquiry may be dispensed with.

3. **Even under these three exceptional circumstances, the judgment does not give unbridled power to the competent authority** when it takes action under any of the three clauses in the second proviso to Article 311 (2) of the Constitution or any service rule corresponding to it. **The competent authority is expected to exercise its power under this proviso after due caution and considerable application** of mind. The principles to be kept in view by the competent authority while taking action under the second proviso to Article 311 (2) or corresponding service rules have been defined by the Supreme Court itself. These are reproduced in the succeeding paragraphs for the information, guidance and compliance of all concerned.

4.(b) **Cases falling under rule 19** (i): When action is taken under Clause (a) of the second proviso to Art. 311 (2) of the Constitution or Rule 19 (i) of the CCS CCA) Rules, 1965, **or any other service rule similar to it, the first prerequisite is** that, the Disciplinary Authority should be aware that a Government servant has been convicted on a criminal charge. But this awareness alone will not suffice. **Having come to know of the conviction of a Government servant on a criminal charge, the Disciplinary Authority must consider whether his conduct,**

**which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose,** it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case. **In considering the matter, the Disciplinary Authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features.** This however has to be done by the Disciplinary Authority by itself. Once the Disciplinary Authority reaches the conclusion that the Government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant. This too has to be done by the Disciplinary Authority by itself. **The principle, however, to be kept in mind is that, the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted** by the facts and circumstances of the case.

5. After the competent authority passes the requisite orders as indicated in the preceding paragraph, **a Government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case.** If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review.

**The court (which term will include a Tribunal having the powers of a court) will go into the question whether impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particulars service to which the government servant belongs.**

17. Provisions contained in proviso (a) to Clause (2) of Article 211 of the Constitution of India **and Rule 19(i) of CCS (CCA) Rules** provide that on conviction an employee can be dismissed or removed or reduced in rank, on the ground of conduct which led to conviction on criminal charge, without conducting any enquiry. **But, it does not mean that every conviction shall be followed by removal of employee, as it does not mandate automatic removal on conviction. Employer having right to remove the employee from service, without enquiry, has to consider all relevant factors, like nature and gravity of offence, impact of conviction on service, suitability of employee in service after conviction, and competent authority is expected to exercise its power under these provisions after due caution and considerable application of mind and has to consider that the conduct of the employee was such as warrants imposition of penalty and, if so, what that penalty should b, as these provisions not only provide dismissal or removal from service but also in alternative, reduction in rank which definitely provides discretion to the competent authority to impose appropriate penalty, if any required,** in the given facts and circumstances of the case.

21. It has been contended on behalf of petitioner that except the accident in reference, petitioner has never committed any other offence, much less a grievous offence of any kind involving moral turpitude or rashness or negligence while performing duties as driver for about 14 years with the HRTC and the accident took place in the year 2008 and thereafter also he served the HRTC as a driver without any fault or rashness or negligence at any point of time till 2014 and HRTC itself considers that petitioner was not at all fault, as has come in the report of Works Manager as well as in reply to the claim petition filed before the MACT Visakhapatnam and, therefore, it has been canvassed that in these peculiar facts and circumstances, **removal of petitioner from service is unwarranted and disproportionate.**

23. Needless to the **say concerned appellate/ revisional/ reviewing authority, as the case may be, shall decide the matter in accordance with law** in the light of pronouncements of the Supreme Court as well as provisions of CCS (CCA) Rules as explained in the pronouncements of the Supreme Court and explained in Office Memoranda issued by the Government from time to time, and shall make such order therein, as it deems fit in accordance with law."

**8.** While dealing with the claim, assailing termination-removal upon conviction under Rule 19(i) of the CCS(CCA) Rules without considering the relevant factors like nature and gravity of offence, impact of conviction on service, suitability

of employee in service after conviction, length of service and other mitigating factors and in absence of non consideration of these relevant parameters, the Impugned Order of removal dated 15.01.2016 [Annexure A-1] passed by the disciplinary authority was set-aside by this Court in **CWP No. 4573 of 2022, Shiv Raj versus Himachal Road Transport Corporation and another** decided on 15.09.2025, in the following terms:-

> 14. In the aforesaid judgment, **coordinate Bench of this Court has held that though provisions contained in proviso (a) to Clause (2) of Article 211 of the Constitution of India and Rule 19(i) of CCS (CCA) Rules provide that on conviction an employee can be dismissed or removed** or reduced in rank, on the ground of conduct which led to conviction on criminal charge, without conducting any enquiry, but **it does not mean that every conviction shall be followed by removal of employee, as it does not mandate automatic removal on conviction, rather Employer having right to remove the employee from service, without enquiry, has to consider all relevant factors, like nature and gravity of offence, impact of conviction on service, suitability of employee in service after conviction, and competent authority is expected to exercise its power under these provisions after due caution and considerable application of mind.**

> 16. Similarly, this Court finds **that appellate throaty, before whom petitioner filed appeal against order of removal, nowhere bothered to look into the grounds of appeal, rather it simply on the basis of order passed by the Disciplinary Authority, proceeded to dismiss the same.** If the order passed on Review Petition filed by the petitioner, by the competent authority is perused, he also without ascertaining the correctness of grounds of review, proceeded to dismiss the appeal and as such, impugned orders deserve to be quashed and set-aside.
>
> 17. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, **present petition is allowed and office orders dated 23.12.2019 and 15.11.2021 (Annexure P-9 & P-13) are quashed and set-aside and respondents are directed to reinstate the petitioner w.e.f. 23.12.2019 and thereafter, release retiral benefits/pension to the petitioner, if he is otherwise eligible.**

**ANALYSIS:**

**9.** Taking into account the entirety of the facts and circumstances including the prayer made in both the connected petitions, this Court is of the considered view that the impugned removal orders dated 15.01.2016 *[Annexure A-1* in CWPOA No. 3249 of 2020] passed by the disciplinary authority and likewise the impugned orders dated 09.02.2018 [Annexure A-3

in CWPOA No. 6860 of 2020] dismissing the appeal filed by the petitioner; cannot stand the test of judicial scrutiny, *for the following reasons:-*

**ANALYSIS OF THE REMOVAL ORDERS DATED 15.01.2016 [ANNEXURE A-1] IN CWPOA NO. 3249 OF 2020:**

**9(i).** Once the Respondent Corporation has removed the petitioner from service on 15.01.2016 *[Annexure A-1],* due to conviction of petitioner in criminal charge by the Trial Court, sentencing the petitioner for two year imprisonment with fine of Rs.1,000/- and in revision the aforesaid sentence was modified/reduced on 27.11.2015 to six months imprisonment by the Punjab and Haryana High Court. Notably after conviction, while the petitioner; Pritam Singh was undergoing sentence from 24.08.2015 till his release on 01.02.2016; the Respondent-Corporation issued a Show cause Notice on 08.12.2015 *[Annexure R1/C]* directing the petitioner to submit a reply to the proposed penalty of removal from service**.** However, since the petitioner was in custody

and was unable to submit a reply for want of documents, yet, by ignoring these material aspects, the Respondent Corporation imposed the penalty of removal against the petitioner vide order dated 15.01.2016 [Annexure A-1]. In above backdrop, removal orders dated 15.01.2016 [Annexure A-1] cannot pass the test of judicial scrutiny, for the reason, *firstly,* the opportunity of making representation on proposed penalty as contemplated under the proviso to Rule 19(i) of the CCS[CCA] Rules is not a mere formality ; and *secondly,* the delinquent deserves to be afforded such opportunity, which must be effective and meaningful by allowing the employee to put-forth his case, revealing the mitigating circumstances and other relevant aspects before giving effect to the proposed penalty. In the instant case, failure of the Respondent-Corporation to provide such meaningful and effective opportunity, vitiates the decision making process, vitiating the removal orders. Denying an effective

and meaningful opportunity to petitioner to make representation against proposed penalty after conviction on a criminal charge renders the entire action a nullity and inoperative in law ; and *thirdly*, order of penalty under Clause (i) of Rule 19 of the CCS [CCA] Rules is not to be passed in a casual manner merely on the basis of judgement of conviction passed by a Court. Even *passing of an "order" as contemplated under proviso to Rule 19(i)* pre-supposes grant of an opportunity of making representation against the proposed penalty to the disciplinary authority before passing the adversial order of removal. In addition, the adversial order of penalty could not be passed without considering all relevant factors-aspects and circumstances i.e. the accusation; the role of petitioner employee; evidence led against petitioner other circumstances extenuating including the fact as to whether the proposed penalty of removal was proportionate to the accusation and/or conviction; resulting

in six months imprisonment or whether such conviction was of a trivial nature. Moreover, other circumstances i.e. dependency of petitioner and other circumstances were bound to be taken into account by Disciplinary Authority.

The intent and object of affording an opportunity to a delinquent proposing imposition of penalty and to take into account totality of facts and giving due weightage to relevant aspects before passing the adversial order. Even the passing of an order by disciplinary authority is not an empty formality but is aimed to arrive at an objective order. Merely, in view of conviction the penalty of removal from service was not to be passed automatically ignoring the fact that at the time of registration of F.I.R. No. 39 of 2013 the petitioner was 42 years of age and was in the prime of his youth and even at the time of passing of removal order the petitioner was of 48 years of age coupled with other mitigating circumstances including the dependency and the

factum of having rendered 15 years service, as Driver from 2002 to 2016 and these aspects have been ignored by the disciplinary authority. Even the import of Rule 19 of the CCS[CCA] Rules is just to give effect to the principles of natural justice before taking the final action and before passing final orders, after affording an opportunity of hearing to the delinquent employee and after considering the entirety of the facts and circumstances of the case in an object manner. The removal orders passed by disciplinary authority on 15.01.2016 [Annexure A-1] do not spell out that all the aforementioned relevant aspects were considered by the disciplinary authority before passing the removal orders.

*On the other hand*, a bare reading of the removal orders reveal that the Respondent-Corporation has imposed penalty of removal merely be taking into account the conviction and sentence awarded by the Court under Sections

279 and 304A IPC but without considering the other relevant consideration including accusation, nature of offence, role of petitioner, the evidence against the petitioner, longevity of service; the entire conduct of the petitioner; the gravity of misconduct committed by him; the fact as to whether alleged misconduct is likely to have an effect on the administration and other extenuating circumstances; and or redeeming circumstances including the term of sentence upon conviction and other extenuating circumstances including the dependency and the proportionality of punishment sought to be imposed on the petitioner.

In above backdrop, this Court is of the considered view, that the disciplinary authority i.e. Deputy Divisional Manager, HRTC, Pathankot has passed the removal orders dated 15.01.2016 [Annexure A-1] in a perverse and cryptic manner and by ignoring relevant consideration-factors as detailed hereinabove. Mere judgement of

conviction and sentence cannot be the basis for imposing the harshest penalty of removal automatically by ignoring the other aspects, as has been done in the instant case. In these circumstances, removal orders dated 15.01.2016 [Annexure A-1], cannot pass the test of judicial scrutiny and therefore, the impugned order of removal is quashed and set-aside.

**ANALYSIS OF THE ORDERS DATED 09.02.2018 [ANNEXURE A-3] PASSED BY THE APPELLATE AUTHORITY:**

**10.** Feeling aggrieved against the order of removal the petitioner submitted an Appeal dated 23.03.2017 [Annexure A-2], raising as many fourteen (14) contentions, on various aspects but the Appellate Authority-cum-Divisional Manager dismissed the appeal of the petitioner on 09.02.2018 [Annexure-3].

A bare look at the orders dated 09.02.2018 *[Annexure A-3]* indicates that the Appellate Authority-cum-Divisional Manager, HRTC, Dharmshala, has rejected the Appeal, by a non-

speaking order. Fourteen contentions raised by the petitioner in Appeal dated 23.03.2017 *[Annexure A-2]* have neither been considered nor addressed by Appellate Authority. Even a perusal of orders dated 09.02.2018 *[Annexure A-3]* indicates that Appellate Authority rejected the claim/appeal merely under the pretext of judgment passed by Punjab and Haryana High Court, in the matter, without discussing the factual backdrop as to whether the role of the petitioner was such so as to warrant extreme penalty of removal on petitioner. Further, mere conviction in judicial proceedings will not give an automatic right to an employer to impose the gravest of penalty of removal on an employee. Before imposing gravest penalty of removal, the role of the employee in alleged offence; the evidence existing on record; other extenuating circumstances, including service rendered; and other relevant factors including age of employee and also mitigating factors ought to have been taken into account

even by the Appellate Authority, which was not so done. In the instant case, even the Appellate Authority has rejected the appeal on 09.02.2018 *[Annexure A-3].* Even while passing the order on 09.02.2018 *[Annexure A-3]* the Appellate Authority has remained silent and has not adjudicated the appeal in the true perspective by considering the fourteen contentions raised in the appeal in backdrop of parameters required to be considered by the Appellate Authority. In these circumstances, the Appellate Order dated 09.02.2018 [*Annexure A-3]* being perverse cannot sustain and the same is accordingly interdicted by this Court.

**11.** Since this Court had quashed the removal orders dated 15.01.2016 [Annexure A-1] and the orders passed by the Appellate Authority dated 09.02.2018 [*Annexure A-3]* therefore, this Court directs the re-instatement of the petitioner as the removal orders as well as the Appellate Orders were passed in total violation of Rule 19(i) of

the CCS (CCA) Rules. Non-compliance or infraction of statutory rules and the mandate of law has prejudiced the petitioner by depriving him of the right to substantiate his claim for a lesser penalty, vis-à-vis the harshest of penalty of removal imposed against the petitioner, merely by relying upon the judgement of conviction and by ignoring other relevant aspects as detailed hereinabove. However, upon reinstatement, this Court directs the Respondent-Corporation to take a decision as to whether the period from the date of passing of removal order dated 15.01.2016 till re-instatement of the petitioner hereinafter is to be treated as duty period with full pay and allowances or whether the pay and allowances for this period are to be curtailed or denied [wholly or partly] by taking recourse to law, including Fundamental Rule 54 (1) hereinafter, if so desired.

**CONCLUSION AND DIRECTIONS:**

**12.** In view of the above discussion and

for the reasons recorded hereinabove, both the writ petition(s) *are allowed*, *in the following terms*:-

(i) Office order dated 09.02.2018 [Annexure A-3], passed by Appellate Authority cum- Divisional Manager, HRTC, Dharamshala, rejecting the appeal, ignoring material aspects is quashed and set aside;

(ii) Removal orders dated *15.01.2016 [Annexure A-1]* are quashed and set-aside;

(iii) Respondent-Corporation is directed to reinstate the petitioner in service on or before 31.12.2025;

(iv) Consequent upon the quashing of removal orders and appellate orders; the Respondent-Corporation upon reinstatement shall pass appropriate orders for treating the period from removal i.e. *15.01.2016* till re-instatement as duty period with full pay and allowances or to deny the pay and allowances [wholly or partly] by resorting to action as contemplated under Fundamental Rule 54 (1) or other enabling provisions, if any, on or before 31.12.2025;

(v) Parties to bear respective costs.

As aforesaid, the instant writ petition(s) as well as pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.

**(Ranjan Sharma)**
**Judge**

**October 14, 2025**

( 2025:HHC:36338 )

(tm/*Shivender*)