

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 540 OF 2025**

Santosh Motiram Chavan,
S/o. Motiram Dattu Chavan,
Age: 41 Yrs, R/at: Terwad Taluka,
Village – Shirol, District – Kolhapur,
Maharashtra – 416 106
Mob. No.08856875410

... Petitioner

Versus

1. Union of India (Through),
The General Manager, Central Railway,
Mumbai CST, Mumbai – 400 001
 2. Sr. Divisional Security Commissioner
(R.P.F), Mumbai Division, Central Railway,
Divisional Railway Manager's Office,
CSTM, Maharashtra- 400 001
 3. Security Commissioner,
Mumbai Division, Central Railway,
R.P.F. Kalyan, Maharashtra – 421 602
 4. Assistant Security Commissioner,
R.P.F. Kalyan, Mumbai Division,
Central Railway, Maharashtra – 421 602
- ... Respondents

...

Dr.Abhinav Chandrachud i/b. Mr.Samir Singh for the Petitioner.

Mr.T.J.Pandian with Mr.Gautam Modanwal and Mr.Prasad Sawant for the
Respondent -Railway.

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**CORAM : RAVINDRA V. GHUGE &
HITEN S.VENEGAVKAR, JJ.**

DATE : APRIL 23, 2026

ORAL JUDGMENT : (Per: Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

DATES AND EVENTS

2. The dates and events are undisputed before us. For ready reference, we summarise the dates and events hereunder:

(a) The Petitioner was selected and appointed as a Constable in the Railway Police Force (R.P.F.) under the Senior Divisional Security Commissioner, Bilaspur Division of the South Eastern Railway, on 22.07.2006.

(b) The Petitioner was transferred to the Central Railway under the Divisional Security Commissioner, Solapur, at Gulbarga on health grounds, on 23.12.2006.

(c) The Petitioner was transferred to the Mumbai Division under Respondent No. 3 at LTT, on 17.04.2019.

(d) On 02.12.2020, the Petitioner was medically de-categorised and subsequently absorbed as a Junior Clerk, and was posted at Kalyan under the immediate administrative control of Respondent No. 4, Assistant Security Commissioner, R.P.F., Kalyan.

(e) The Petitioner got legally married on 28.04.2008. The Petitioner developed a marital discord and both got involved in litigation against each

other. During the subsistence of the first marriage, it is alleged by the first wife that the Petitioner married a lady namely Priya Kamble. This is neither admitted, nor denied by him, in this Petition. He has, however, denied the second marriage in RCC No. 95 of 2022, filed by his wife under Section 494 of the Indian Penal Code, 1860 (for short, “the IPC), alleging bigamy, before the Court at Kurundwad, Kolhapur. The said case is pending.

(f) On 01.09.2021, the Petitioner received a chargesheet under Rule SF-11 of the Railway Servants (Discipline & Appeal) Rules, 1968 (herein after referred to as the Rules of 1968). Two charges were levelled against the Petitioner, which read as under:

‘1. A complaint was filed against you by your wife Shilpa Santosh Chavan dated on 30 11 2016 at the police station Kurundwad for misbehaving with her whose information you kept hidden from the department, this act of your's despite your working on a responsible post was an unwarranted attempt to conceal and mislead the administration.

2. After having solemnised marriage with your wife Smt Shilpa Santosh Chavan, according to Hindu rites and custom you have married a second time in respect of which your first wife has lodged a complaint with the department. That as per Hindu rites and customs and since you have not obtained divorce from your first wife your second marriage is against the railway administration and

indecent and inhuman under Hindu rites and customs.’

(g) The Petitioner was charged with violating Rule 21 (2) of the Railway Services (Conduct) Rules, 1966 (herein after referred to as the Rules of 1966). For ready reference, Rule 21 (2) is reproduced as under:

‘21.Restrictions Regarding Marriage.-(1) No railway servant shall enter into, or contract, a marriage with a person having spouse living: and,

(2) No railway servant, having a spouse living shall enter into, or contract, a marriage with any person.

(3) A railway servant who has married or married a person other than of Indian Nationality shall forthwith intimate the fact to the Government. Provided that the government may permit a railway servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such railway servant and other party to the marriage; and

(b) there are other grounds for so doing.’

(h) Mr. S.K. Pathak, Inspector, DAW-11, was appointed as the Enquiry Officer. The Enquiry Officer conducted the enquiry just like a regular departmental enquiry and, after recording the statements of the witnesses as well as the Petitioner, submitted the Enquiry Report dated 14.07.2021 to the Department.

(i) Because the charges levelled against the Petitioner were held to be proved, Mr. T.A. Ramachandran, Assistant Security Commissioner, RPF, Kalyan, issued Order No. 09 of 2021, dated 29.09.2021. Considering that the Petitioner had 19 years of service left, and after adverting to the show cause notice issued, the replies, and the statements of the witnesses as well as the Petitioner, a punishment of withholding one increment for one year, without cumulative effect, was imposed on the Petitioner. He was intimated that an appeal against this order under the Rules of 1968, would lie before the Security Commissioner.

(j) On 16.02.2022, the Revisional Authority exercised *suo moto* powers under Rule 25.1(v) of the Rules of 1968 and cancelled all the orders, and directed the Disciplinary Authority to continue the enquiry by issuing a major penalty chargesheet, as the Appellate Authority is not competent under the Rules to cancel the minor chargesheet.

(k) On 17.02.2022, the major penalty chargesheet was issued to the Petitioner.

(l) On 10.03.2022, a new Enquiry Officer was appointed to conduct the Enquiry.

(m) On 14.03.2022, the Petitioner acknowledged receipt of the chargesheet.

(n) Between 14.06.2022 and 22.09.2022, an enquiry was conducted as per Rule 9 of the Rules of 1968. The Petitioner participated in the enquiry and was called upon to submit his defence statement.

(o) The Petitioner approached the learned Central Administrative Tribunal (in short, the Tribunal) by preferring Original Application No. 683 of 2022 and was granted ad-interim protection, on 02.02.2023.

(p) On 11.02.2024, the Tribunal delivered a judgment and dismissed the Original Application, relying upon the judgment of the Allahabad High Court in *Union of India, Thru. G.M. and Others v. Rayees-Ul-Haque and Another*, 2018 SCC OnLine All 5740: (2019) 3 All LJ 473.

(q) The Petitioner approached this Court by filing the present Petition, on 20.12.2024.

(r) The impugned order of dismissal dated 03.01.2025, based on the second DE, was passed and the Petitioner was dismissed from service by way of punishment for marrying for the second time.

ORAL SUBMISSIONS OF THE PARTIES

3. We have considered the extensive submissions of the learned Advocate, Dr. Chandrachud, on behalf of the Petitioner, and the learned Advocate, Mr. Pandian, on behalf of the Union of India/Railway, and we have gone through the record and the reported judgments cited. We would be advertent to these cited reports as we proceed further to deal with their submissions, in this judgment.

4. Mr. Pandian, the learned Advocate for the Railways, has vehemently canvassed that Rule 21 of the Rules of 1966 clearly restricts a second marriage for a person who is not permitted by personal law to indulge in a second marriage, while the first marriage is subsisting. He further relies upon Rule 25 under the chapter 'Revision and Review' under Part VI of the Rules of 1968, more particularly, sub-clause 1(v)(c), to support his contention that the Revisional Authority of the Indian Railways had the jurisdiction to ignore and set aside the preliminary enquiry, the findings, and the punishment order based thereon, and to direct framing of a fresh chargesheet, appointment of a fresh Enquiry Officer, and conduct a fresh departmental enquiry.

5. Mr. Pandian has cited a judgment delivered by this Court, Bench at Aurangabad, in *Ramrao s/o Maroti Shinde v. Union of India and*

others, 2022 (2) *Mh. L.J.* 483, to contend that paragraph 13 of *Ramrao s/o Maroti Shinde* (supra), records that if no departmental enquiry has been conducted, the Railways can initiate a departmental enquiry. He, therefore, submits that Rule 219.4(b) of the Railway Protection Force Rules, 1987 (the Rules of 1987), read with Rule 148.3, would not be applicable in the present case, since the said Rules pertain to disciplinary enquiries when it is not necessary to award a minor punishment. However, he concedes that this Court has interpreted under Rule 219.4(b), to conclude that a departmental enquiry cannot be dropped in its entirety, when it is concluded and the quantum of punishment is also decided. He has also relied upon the judgment of the Allahabad High Court in *Rayees-Ul-Haque* (supra), which has been considered by the Tribunal in its impugned judgment.

OUR ANALYSIS AND CONCLUSIONS

6. This case involves three issues. **Firstly**, whether, the Railways could have nullified an enquiry (which they now term as a Preliminary Enquiry). **Secondly**, whether, the punishment of dismissal from service is shockingly disproportionate to the nature of the misconduct, if proved. **Thirdly**, whether the Railways can prove the ‘factum of marriage’ in a departmental enquiry, more so, when the complaint of the first wife is

being investigated by the Court in RCC No. 95 of 2022 under Section 494 of the IPC, which may have the jurisdiction to decide whether the Petitioner has indulged in bigamy.

FIRST ISSUE

7. We find in *Rayees-Ul-Haque* (supra), that the Allahabad High Court has held that Rule 25 of the Rules of 1968 confers power on the Reviewing Authority to enhance the punishment and in case the punishment proposed is a major penalty for which the prescribed procedure has not been followed, then the said Authority can either hold an enquiry or direct that the enquiry be conducted as per procedure. The principle of double jeopardy would not impact the second chargesheet, because there was no first enquiry conducted at all.

8. We find that, in *Ramrao s/o. Maroti Shinde* (supra), this Court has recorded in paragraph 13 that, as no departmental enquiry was necessary for awarding a minor punishment, the Force had not conducted a departmental enquiry. In paragraph 14, this Court concluded that the Force had subsequently initiated a departmental enquiry. However, the said D E proceedings, after completion, were cancelled after the stage of inflicting punishment on the delinquent. After the said punishment had been acted

upon, the Force started a second D E. This was held to be illegal and beyond the powers of the Revisional Authority.

9. What we find from the case in hands is, that after the enquiry was conducted by appointing an Enquiry Officer, pursuant to the service of a chargesheet leveling charges against the Petitioner, and after conducting the enquiry like a full-fledged departmental enquiry, the punishment of stoppage of one increment without cumulative effect for one year, was awarded to the Petitioner, keeping in view that the Petitioner had 17 years of service left.

10. In paragraph 16 of *Ramrao s/o. Maroti Shinde* (supra), this Court concluded that if a misconduct is committed by the delinquent and a major penalty is to be awarded, the due procedure laid down under Rule 153 will have to be followed. In the said case, the Petitioner was alleged to have indulged in dishonesty and misappropriation. The first enquiry was conducted and a punishment was awarded. Instead of exercising revisional powers to review the quantum of punishment, which was permissible under the Rules, the Revisional Authority dropped the entire enquiry and, as if acting on a clean slate, a fresh (second) chargesheet was issued and the enquiry was commenced. It is in these circumstances that this Court

interfered with the second enquiry having been initiated after the conclusion of the first enquiry.

11. The Railways have heavily relied upon the revisional powers of the Authority under Clause 25 of the Rules of 1968, which reads as under:

‘25. Revision -

(1) Notwithstanding anything contained in these rules-

(i) the President, or

(ii) the Railway Board, or

(iii) the General Manager of a Railway Administration or an authority of that status in the case of a Railway servant serving under his control, or

(iv) the appellate authority not below the rank of a Divisional Railway Manager in cases where no appeal has been preferred, or (v) any other authority not below the rank of Deputy Head of Department in the case of a Railway servant serving under his control – may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or under the rules repealed by Rule 29, after consultation with the commission, where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may

consider proper in the circumstances of the case; or

(d) pass such orders as it may deem fit:

Provided that-

(a) no order imposing or enhancing any penalty shall be made by any revising authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed;

(b) subject to the provisions of Rule 14, where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or the penalty specified in clause (iv) of Rule 6 which falls within the scope of the provisions contained in sub-rule (2) of Rule 11 or to enhance the penalty imposed by the order under revision to any of the penalties specified in this sub-clause, no such penalty shall be imposed except after following the procedure for inquiry in the manner laid down in Rule 9, unless such inquiry has already been held, and also except after consultation with the Commission, where such consultation is necessary.

(2) No proceeding for revision shall be commenced until after -

(i) the expiry of the period of limitation for appeal; or

(ii) the disposal of the appeal where any such appeal has been preferred:

Provided that the provisions of this sub-rule shall not apply to the revision of punishment in case of Railway accidents.

(3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.

(4) No power of revision shall be exercised under this rule -

(i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and

(ii) by a revising authority unless it is higher than the appellate authority where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired:

Provided that nothing contained in clauses (i) and (ii) above, shall apply to revision by the President.

(5) No action under this rule shall be initiated by-

(a) an appellate authority other than the President; or

(b) the revising authorities mentioned in item (v) of sub-rule (1) -

after more than six months from the date of the order to be revised in cases where it is proposed to impose or enhance a penalty or modify the order to the detriment of the Railway servant; or more than one year after the date of the order to be revised in cases where it is proposed to reduce or cancel the penalty imposed or modify the order in favour of the Railway servant:

Provided that when revision is undertaken by the Railway Board or the General Manager of a Zonal Railway or an authority of the status of a General Manager in any other Railway Unit or Administration when they are higher than the appellate Authority, and by the President even when he is the appellate authority, this can be done without restriction of any time limit.

Explanation: For the purposes of this sub-rule the time limits for revision of cases shall be reckoned from the date of issue of the orders proposed to be revised. In cases where original order has been upheld by the appellate authority, the time limit shall be reckoned from the date of issue of the appellate orders.

25-A. ***Review-*** The President may at any time either on his own motion or otherwise review any order passed under these rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice:

Provided that no order imposing or enhancing any penalty shall be made by the President unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 6 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an enquiry under Rule 9 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 9, subject to the provisions of Rule 14 and except after consultation with the Commission where such consultation is necessary..

12. What we find from Rule 25(1)(v), which is invoked by the Railways, is that the Revisional Authority can call for the records of the enquiry and revise any order, after consultation with the Commission. Where such consultation is necessary, the order of punishment proposed,

can be confirmed / modified / set aside or can be enhanced or any other penalty could be imposed or the case could be remitted to the authority which made the order or to any other authority, directing such authority to make such further enquiry as it may consider proper in the circumstances of the case.

13. In the first proviso (a), no order imposing or enhancing any penalty can be made by the Revising Authority unless the Railway servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed. The Railways had issued a notice dated 16.02.2022 calling upon Respondent No. 4 (the Disciplinary Authority) to continue the enquiry by issuing a major penalty chargesheet. A major penalty chargesheet was issued on 17.03.2022, which is almost identical to the first charge sheet. A new Enquiry Officer was appointed on 10.03.2022.

14. However, we find that there is no document placed before us to indicate that the Revisional Authority had consulted the Commission, which is mandatory in a case wherein a major penalty of dismissal from service is to be imposed in place of a minor penalty.

15. We find from the Rules applicable that there is no provision enabling the Revisional Authority to drop/cancel a completed enquiry and commence a fresh enquiry. What can only be done, is that, if there was no enquiry conducted at all and a simple minor punishment is proposed and the Revisional Authority desires to inflict a major punishment (for which a D E is compulsory), then a D E can be conducted. This is permissible only if there was no D E conducted earlier. The distinguishing feature in the case in hand is that, though a full-fledged enquiry was conducted in 2021 by issuing a charge-sheet and by appointing an Enquiry Officer who recorded evidence and statements, the said enquiry is now being conveniently branded as a preliminary enquiry. It is beyond debate that a preliminary enquiry does not call for issuance of a charge sheet and appointment of an Enquiry Officer.

16. The Railways had indeed conducted the first D E. A minor punishment was proposed by the Enquiry Officer strictly within the Rules, which permitted him to do so. It is not the case of the Railways that the said Enquiry Officer should not have drawn a conclusion on the quantum of punishment or should not have awarded the punishment to the Petitioner. This proposed punishment was taken up suo-moto by the Appellate Authority, Respondent No. 3, under Rule 25, who cancelled the

entire enquiry. This order was then suo-moto taken up by the Revisional Authority, Respondent No. 2, and the order dated 16.02.2022 was passed with the following observations:

‘Shri.Santosh Chavan, Senior Clerk, Security Commissioner-I office Kalyan was issued SF-11 RPF/Kalyan /DAR/SF-11/01/2021 dated: 01/09/2021 by the Asst. Security Commissioner, RPF Kalyan under Discipline and Appeal Rules 1966. And on this charge the Asst. Security Commissioner/RPF/Kalyan by Order No. 09/2021 dated 29.09.2021 Imposed a penalty of "Withholding the next increment for a period of one year non cumulative".

I the undersigned having examined the entire case file and the complaint dated 23/12/2021 made by the wife of the Sr. Clerk in detail conclude that even though the charge framed against the Sr.Clerk are more serious and yet the Asst. Security Commissioner, RPF Kalyan has imposed a lesser penalty. The Security Commissioner-I/RPF/ Kalyan considering the penalty imposed as inadequate had cancelled the charge memorandum and the order of penalty however the Security Commissioner-I/RPF/Kalyan was not the competent authority under Railway Servants (Discipline and appeal) Rules 1968.

So now considering the entire facts all orders issued to the Senior Clerk in respect of the charge memorandum is cancelled under the provision of Rule 25.1 sub rule(v) of Railway Servants (Discipline and appeal) Rules 1968 taking suo moto cognizance and without prejudice and passing orders directing the Disciplinary Authority to continue the Disciplinary proceedings by issuing major penalty charge memorandum to the Senior Clerk which as understood is justified.’

17. Having perused Rule 25.1(v), we are of the view that the Revisional Authority is only empowered to call for the records of the enquiry and revise any order made under these Rules, after consultation with the Commission where such consultation is necessary, and to confirm, modify, or set aside the order, enhance the penalty, or remit the case to the authority (the Disciplinary Authority) which made the order, or to any other authority, directing such authority to make such further enquiry as it may consider proper in the circumstances of the case.

18. Proviso (b) below Rule 25.1 indicates that, subject to the provisions under Rule 14, which pertains to special procedures in certain cases in matters of conviction or in matters where an enquiry could not be conducted, a penalty under Part III – Penalties and Disciplinary Authority under Rule 6(v) to (ix), being a major penalty, could not be imposed except after conducting an enquiry.

19. No provision enabling or permitting a ‘preliminary enquiry’ has been cited before us. The enquiry conducted against the Petitioner in 2021, which is now termed to be a ‘preliminary’ enquiry, was conducted by an Enquiry Officer appointed by the Railways. A regular chargesheet was

served upon the Petitioner. His reply was obtained. Evidence was recorded, and punishment of stoppage of one increment without cumulative effect for one year, was proposed. If a major penalty was to be imposed, the procedure required to be followed under Rule 9 is mandated under proviso (b) reproduced above. In such a case, the D E was already conducted. The Railways could have issued a notice of hearing to the Petitioner for enhancing the quantum of the punishment.

20. It is in the above backdrop that, the Railways believed that the enquiry conducted against the Petitioner was a preliminary enquiry and, since a major punishment was to be imposed, a fresh enquiry was conducted. The learned Tribunal accepted such an enquiry to be permissible under the Rules and concluded that the Railways' Revisional Authority was within its rights to initiate a departmental enquiry.

21. The learned Advocate for the Petitioner, Dr. Chandrachud, submits, on instructions, that the Petitioner is in a precarious condition. His first marriage is on the rocks and he is already facing litigation. His first wife does not reside with him. His impugned dismissal order is based on a second D E in the same charges, when the Employer cannot prove the factum of the purported second marriage in a D E.

22. Be that as it may, on the one hand, he stands a serious risk of paying maintenance to the first wife as and when such an order may be passed by a competent court. On the other hand, he has to feed himself. By the punishment order of ‘dismissal’ inflicted on him, he has now lost his source of income and is virtually starving.

23. He submits, on instructions, that if such an act has been committed by him, it cannot be termed as being such a grave and serious act as would deserve to be met with an order of dismissal from service. He, therefore, submits that the punishment of dismissal awarded to the Petitioner amounts to a shockingly disproportionate punishment.

24. The law on conducting a second enquiry in the same cause is well settled, and a second enquiry is impermissible. The judgments delivered by this Court in *Vasant Yashwant Thorat v. Maharashtra Jeevan Pradhikaran and Ors.*, Writ Petition No. 8752 of 2017 dated 02.03.2020; *K.R. Deb v. The Collector of Central Excise, Shillong*, (1971) 2 Supreme Court Cases 102 ; *M. Kolandai Gounder v. Divisional Engineer, Tamil Nadu Electricity Board, Thuraiyur and Others*, by the Madras High Court, 1997 (1) LLN 371; *Kanailal Bera v. Union of India and Others*, (2007) 11 Supreme Court Cases 517 ; and *Vijay Shankar Pandey v. Union of India*

and Another, (2014) 10 Supreme Court Cases 589, were considered by this Court while delivering a judgment in *Lalit Ramkrushna Bode v. State of Maharashtra and Others* in Writ Petition No. 13368 of 2025 dated 16.10.2025.

25. In the present case, the Railways conducted the first enquiry by issuing a chargesheet and by appointing an Enquiry Officer. This mode of conducting an enquiry is permissible under the Rules. The documents were taken on record, statements were recorded, and the Petitioner was given an opportunity in defence. Thereafter, based on the Enquiry Officer's report, the Disciplinary Authority awarded the punishment of stoppage of one increment for one year without cumulative effect. Now, this enquiry is being termed by the Railways as a preliminary enquiry.

26. We are unable to be persuaded to accept the stand of the Railways that this enquiry was not a regular enquiry and, therefore, a fresh enquiry was conducted by issuing a second chargesheet and by appointing a second Enquiry Officer. On the one hand, no Rule permits a preliminary inquiry. The Railways had factually conducted the first enquiry by following a procedure which is the normal procedure for conducting an enquiry. Merely because the Disciplinary Authority's quantum of

punishment was not to the liking of the Revisional Authority, cannot prompt him to set aside the entire enquiry and wipe out the entire record and proceedings by ignoring that an Enquiry Officer was appointed and a chargesheet was issued followed by an enquiry report. This is an act beyond the revisional powers of the Revisional Authority.

27. We would have appreciated the stand of the Revisional Authority, had he issued a show cause notice to the Petitioner for enhancing the quantum of punishment, calling for an explanation from the Petitioner, in the backdrop of the fact that an enquiry was already conducted. However, by issuing a second chargesheet, appointing a second Enquiry Officer, and conducting a second enquiry in the same manner as like the earlier enquiry, and thereafter proposing a major punishment, was impermissible under its revisional powers. On this count, we cannot agree with the submissions of the learned Advocate, Mr. Pandian, and we find that the learned Tribunal has erred in concluding that the first enquiry was a mere preliminary enquiry.

28. Hence, we conclude on the first issue that a second D E, by cancelling the first D E, was impermissible within the revisional powers of the Revisional Authority. Nevertheless, it was permissible to the said

authority to issue a show cause notice to the Petitioner, for giving him a hearing on enhancing the quantum of the punishment.

SECOND ISSUE

29. Be that as it may, the Petitioner has been dismissed from service on 03.01.2025. He has been out of employment until today. Dr. Chandrachud submits that, notwithstanding the conclusion of this Court on the First Issue, the Petitioner is willing to treat the proceedings as if the Railway Force is hearing him on enhancement of punishment on the basis of the first D E.

30. Dr. Chandrachud submits, on instructions, that since the Petitioner is not in gainful employment, he would naturally pray for full back wages or some quantum of back wages. However, in order to render a '*quietus*' to the matter and bring the litigation to an end, the Petitioner voluntarily waives the entire back wages. If the Railways desire to take this litigation forward at a higher level, being dissatisfied with the conclusion of this Court in this judgment, the concession of waiver of back wages would stand withdrawn, and the Petitioner would then, in appropriate proceedings before the higher Court, pray for full back wages.

31. He further submits, on instructions, that even if it is presumed that he has indulged into a second marriage, which judicial verdict would be delivered by the Criminal Court in RCC No. 95 of 2022, it could be termed as a mistake, which cannot be branded as being so grave and serious that he should be awarded the punishment of dismissal which amounts to civil death. The stoppage of two increments for a period of three years is also acceptable to him with deprivation of backwages for a period of 15 months (time elapsed till today), only if the Railways desire that some enhanced punishment, more than the punishment of stoppage of one increment for one year, should be imposed.

32. Mr. Pandian submits that he is unable to make any statement in such circumstances and leaves it to the Court to pass an appropriate order.

33. Taking a holistic view of the dates, events, and the fact situation, there is no reason to debate that, if the Petitioner has married for the second time during the subsistence of the first marriage, he has committed a blunder. Notwithstanding his marital discord and the litigation between him and his wife, he could have waited until a divorce was granted and then entered into a second marriage. Nevertheless, what has

happened has happened, and we now have to assess whether dismissal from service, in these peculiar facts and circumstances, could be a commensurate punishment, reminiscent of the fact that the second enquiry was impermissible and the Revisional Authority could have heard the Petitioner for enhancing the punishment to the extent it legally appeared to be commensurate. Dismissal from service in these circumstances is shockingly disproportionate to the gravity and seriousness of the misconduct.

34. The Petitioner has agreed to waive back wages for a period of almost 15 months and has also agreed to suffer stoppage of two increments for three years. We are of the view that this could be a commensurate /proportionate punishment to be awarded, because if the Petitioner is dismissed from service, he would be in great financial crisis. He is facing the first wife in litigation on issues such as payment of maintenance, which would be a difficult situation, if he is dismissed from service. He needs to earn a salary, which would be a solution to all his financial problems. He would be rendered to penury without any wages, upon dismissal from service.

35. It is in the above peculiar facts and circumstances, that we conclude on the second issue, that the punishment of dismissal from

service amounts to a shockingly disproportionate punishment. Instead, stoppage of two increments for three years, with deprivation of entire back wages for 15 months, would be a commensurate punishment to the Petitioner.

THIRD ISSUE

36. Insofar as the **third issue** is concerned, we are seriously circumspect as to whether an employer can prove bigamy in a departmental enquiry, especially when the Petitioner is facing R.C.C. No. 95 of 2022, filed by his wife alleging bigamy under Section 494 of the IPC, before the learned Court at Kurundwad, Kolhapur.

37. Dr. Chandrachud has informed us that the Petitioner has denied the allegation of bigamy before the Court. He is also facing cases bearing R.C.A. No. 45 of 2019, R.C.A. No. 46 of 2019 and Cri.M.A. No. 30 of 2023 (maintenance revision appeal) before the learned District Judge-1 and Additional Sessions Judge, Jaysingpur, District Kolhapur. He is further facing Cri.M.A. No. 58 of 2023 (for maintenance) and Cri.M.A. No. 20 of 2025 (for maintenance revision).

38. When a specific case of bigamy is being considered by the Competent Court, in view of the case having been instituted by the wife seeking a declaration of bigamy, the Railways should have refrained from taking upon themselves the task of proving the charge of bigamy. The Railways have relied upon the evidence tendered by some witnesses, as well as the Pandit (the Pujari/Priest who is alleged to have performed the marriage rituals). The question is as to what would happen if the Court declares that the Petitioner has not indulged in bigamy. A judicial verdict would prevail. If the Petitioner is acquitted of the charge of bigamy, the Railways cannot take the stand that his second marriage is proved in a departmental enquiry. We, therefore, answer Issue No. 3 by concluding that the Railways should have refrained from conducting the enquiry when, on an identical ground, a case was pending before the Court, instituted by the wife alleging bigamy.

39. To be fair to the Petitioner as well as the Railways, we, thus, conclude that though the Petitioner has voluntarily suffered the punishment of stoppage of two increments for three years and has waived back wages for 15 months, if R.C.C. No. 95 of 2022 is dismissed by the Court and if the Petitioner is acquitted of the charge of bigamy, we grant him the liberty

to raise a claim with the Railways for the refund of the amount relating to the stoppage of two increments for three years, as well as for payment of back wages for 15 months.

40. In view of the above, this **Petition is partly allowed**. The impugned judgment of the learned Tribunal stands modified in terms of our foregoing conclusions on the two issues. The punishment of dismissal from service stands substituted with the punishment of stoppage of two increments for three years with deprivation of back wages from 03.01.2025 till 03.05.2026. The Petitioner shall be reinstated in service from 04.05.2026. The stoppage of two increments for three years would commence from 04.05.2026 and the punishment would conclude on 03.05.2029.

41. **Rule is made partly absolute** in the above terms.

(HITEN S.VENEGAVKAR, J.) (RAVINDRA V. GHUGE, J.)