



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 6783 of 2026 a/w
CWP No. 2077 of 2026
Reserved on:- 02.07.2026
Decided on: 29.07.2026
Uploaded on: 29.07.2026

CWP No. 6783 of 2026

Gaurav Verma ... Petitioner

Versus

State of Himachal Pradesh and others ... Respondents

CWP No. 2077 of 2026

Sh. Lakshay Chauhan ... Petitioner

Versus

State of Himachal Pradesh and others ... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

CWP No. 6783 of 2026

For the petitioner : Mr. K.D. Shreedhar, Senior Advocate with Ms. Sneh Bhimta, Advocate.
For the respondents : Mr. Anup Rattan, Advocate General with Ms. Swati Diliak, Deputy Advocate General.

CWP No. 2077 of 2026

For the petitioner : M/s Onkar Jairath, Senior Advocate with M/s Piyush Mehta and Anshul Jairath, Advocates.
For the respondents : Mr. Anup Rattan, Advocate General

¹ Whether reporters of the local papers may be allowed to see the judgment?

with Ms. Swati Diliak, Deputy
Advocate General.

Ajay Mohan Goel, Judge

As common issues of law and fact are involved in these cases, they are being disposed of vide a common judgment.

2. By way of CWP No. 6783 of 2026, the petitioner has approached this Court *inter alia* praying for the following reliefs:-

"I. Issue a writ of certiorari for quashing the impugned order dated 12.01.2026 of the DGP and order dated 15-01-2026 of the Commandant 4th IRBn Jangalberi H.P being illegal and unconstitutional;

II. Issue a writ of mandamus, order or direction commanding the respondents to reinstate the petitioner in service w.e.f. his order of discharge dated 12-01-2026 with all consequential benefits;"

3. In CWP No. 2077 of 2026, the petitioner has *inter alia* prayed for the following reliefs:-

"i. That this Hon'ble Court may be pleased to issue there Writ in the nature of Certiorari or any other appropriate writ, order or direction may kindly be issued quashing and setting aside the impugned order dated 13.01.2026 (Annexure P-7), wherein he has dismissed from service with immediate effect on the ground of conduct which led to the conviction on the criminal charge.

ii. That this Hon'ble Court may be pleased to issue the Writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent to allow the Petitioner to serve as Constable bear Constabulary No. 710 of District Shimla or in

alternative directions may be given to Respondent No. 1 to decide the statutory appeal in a time bound manner.

iii. That the respondents may be directed to produce the entire record of the case for the kind perusal of this Hon'ble Court."

4. In brief, facts of both these cases are as under:

Petitioner Gaurav Verma (petitioner in CWP No.6783 of 2026) was appointed as a Constable in the year 2009. In the year 2016, while posted at BSL Project Security, Sunder Nagar, an FIR was lodged against him, i.e. FIR No. 59 of 2016, dated 25.02.2016, at Police Station Balh, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act), on the allegation that charas, weighing 1003 grams was recovered from him. A departmental inquiry was initiated against the petitioner under Rule 16.24 of the Punjab Police Rules, 1934, as applicable to the Himachal Pradesh Police. The petitioner was suspended from service. It is further the contention of the petitioner that the petitioner preferred an Original Application No.2237 of 2016 before the erstwhile Himachal Pradesh Administrative Tribunal against the departmental inquiry and the learned Tribunal stayed the departmental proceedings. In terms of the averments made in the writ petition, the matter was still pending adjudication before this Court as the Original Application, after the abolition of learned Tribunal, was transferred to the High Court and registered as

CWPOA No. 7210 of 2019. It is further the case of the petitioner that in the Trial that took place pursuant to the lodging of FIR, learned Special Judge, Mandi, convicted the petitioner for commission of offence under the provisions of the NDPS Act and sentenced him to undergo imprisonment for a period of three years and to pay fine of ₹25,000. According to the petitioner, he has preferred an appeal against the judgment of conviction, which is pending adjudication and the sentence imposed upon him stands stayed by this Court in terms of order Annexure P-7.

5. The grievance of the petitioner is that in terms of the impugned order dated 12.01.2026, by wrongly invoking the provisions of Article 311(2)(a) of the Constitution of India and by assuming the role of a disciplinary authority, the Director General of Police has dismissed him from service under Section 63 of the HP Police Act, 2007, which as per him is bad in law.

6. The case of petitioner Lakshay Chauhan (petitioner in CWP No. 2077 of 2026) is that he was appointed as a Constable in the year, 2015 under the sports persons quota. In 2019, an FIR was registered against him, i.e. FIR No. 84 of 2019, alongwith other accused under Sections 21, 25, and 29 of the NDPS Act and Section 192 of the Motor Vehicles Act at Police Station Bhuntar, District Kullu, Himachal Pradesh. It is also the case of this petitioner that

the Court of learned Special Judge-II, Kinnaur at Rampur Bushahr, H.P. convicted the petitioner in terms of the judgment (Annexure P-5), dated 26.12.2023. In the Criminal Appeal preferred by the petitioner before this Court, the sentence imposed upon him has been suspended.

7. The grievance of the petitioner is that in terms of the impugned order dated 13.01.2026 (Annexure P-7), the Director General of Police, by wrongly invoking the provisions of Article 311(2)(a) of the Constitution of India and by assuming the role of a disciplinary authority, has dismissed him from service under Section 63 of the HP Police Act, 2007, which as per him is bad in law.

8. Mr. K.D. Shreedhar, learned Senior Counsel representing petitioner Gaurav Verma and Mr. Onkar Jairath, learned Counsel representing petitioner Mr. Lakshay Chauhan contended on behalf of the petitioners that the impugned orders passed by the Director General of Police whereby the services of the petitioners were dismissed, without holding of an enquiry, by invoking the provisions of Article 311(2)(a) of the Constitution of India were totally unjust and not sustainable in the eyes of law. It was submitted by the learned counsel that the Director General of Police, not being the disciplinary authority, did not have any

jurisdiction to pass the impugned orders. They also argued that the law laid down by the Hon'ble Supreme Court of India in Union of India vs. Tulsiram Patel, (1985) 3 Supreme Court Cases, 398, has not been followed by the Authority while passing the impugned orders. Learned counsel also submitted that the Director General of Police, not being the competent authority to pass the impugned orders, renders the orders *per se* bad in law and therefore, the same are liable to be set aside on this count only. Learned Counsel further argued that while passing the impugned orders, the Authority not only ignored the judgment of the Hon'ble Supreme Court in Tulsiram Patel's case (*supra*), but also the DOPT OM dated 25.11.2022, which stands appended with the petitions. It was also argued on their behalf that after conviction of the petitioners, they were continuing to perform their duties and there was nothing remiss on their part as far as the performance of their duties is concerned. They submitted that under these circumstances, it was incumbent upon the Authority to have had at least assessed the conduct of the petitioners before passing the impugned orders, however, the parameters laid down by the Hon'ble Supreme Court in invoking Article 311(2)(a) of the Constitution of India have been completely ignored by the Director General of Police while passing the impugned orders. It was also argued that in the light of the fact that the

sentence imposed upon the petitioners was suspended by this Court in the respective appeals preferred by them, the act of dismissing the services of the petitioners is not sustainable.

9. On the other hand, learned Advocate General has argued that as Article 311(2)(a) of the Constitution of India conferred the power upon the competent authority to dismiss the services of an employee without holding an inquiry in the case of conviction and, no illegality can be attributed to the orders passed by the Director General of Police, who, in terms of the orders under challenge, has dismissed the services of the petitioners, on their conviction for having committed offences under the provisions of the NDPS Act by the competent Court of law. Learned Advocate General argued that the petitioners, being employees of the disciplined force, should have been conscious of their conduct and as their conviction under the NDPS Act obviously maligns the reputation of the Police Department as well, the dismissal of their services is the right act that has been done by the Director General of Police. Learned Advocate General also argued that suspension of sentence in appeal by this Court cannot come to the rescue of the petitioners for the reason that the suspension of sentence does not *ipso facto* mean that the conviction has also been stayed. Learned Advocate General submitted that the petitioners, as of today, stand convicted for

commission of offenses under the NDPS Act, therefore, the rigours of holding an enquiry before the dismissal of the services were not attracted in the matter. Learned Advocate General also submitted that taking into consideration the gravity of the allegations levelled against the petitioners and the factum of their having been convicted under the provisions of the NDPS Act, the act of dismissal of the petitioners from service calls for no interference by this Court. Learned Advocate General also submitted that the Director General of Police, being a superior authority than the disciplinary authority or the appointing authority of the petitioners, is empowered under the Punjab Police Rules, as are applicable to the State of Himachal Pradesh, as far as taking of disciplinary action against the petitioners is concerned. Accordingly, he submitted that as there is no merit in the present petitions, the same be dismissed.

10. I have heard learned Senior Counsel as well as learned Counsel for both the petitioners as also learned Advocate General and have also carefully gone through the pleadings of both the petitions as well as documents appended therewith.

11. The moot issue for the purpose of adjudication before this Court is as to whether, in the peculiar facts of these cases, the Director General of Police could have dismissed the petitioners from service without holding an inquiry under Article 311 of the

Constitution of India and further whether the Director General of Police was authorized in law to take such an action against the petitioners or not?

12. Article 311 of the Constitution of India deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. The provisions of this Article state as under:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal

charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

13. In terms of Article 311 (2), no person shall be dismissed or removed or reduced in rank except after an inquiry, in which he has been informed of the charges levied against him and given a reasonable opportunity of being heard in respect of those charges. However, second proviso to Article 311 (2) provides that said Clause shall not apply in following circumstances: -

“(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably

practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient hold such inquiry.”

14. In the present case, sub-clause (b) and Sub-clause (c) have no applicability.

15. The Director General of Police has exercised his power in terms of the provisions of clause (a) of the second proviso to Article 311(2) of the Constitution of India, which provides that the rigours of Article 311(2) of the Constitution of India, that no person shall be dismissed or removed or reduced in rank, except after an inquiry, shall not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

16. Hon'ble Supreme Court of India in **Union of India and another** vs. **Tulsiram Patel**, 1985 (3) Supreme Court Cases 398, qua the applicability of clause (a) of the second proviso to Article 311(2) of the Constitution of India, has been pleased to hold as under:

“127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has 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 and the various factors set out in Challappan case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty of the case was too severe or excessive and not warranted by the facts and circumstances. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the 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 that particular government service the court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

17. Thus, it is evident from the reading of this paragraph of the judgment of Hon'ble Supreme Court of India that where a Disciplinary Authority comes to know that a government servant has been convicted in a criminal charge, then said authority must consider whether the conduct of the incumbent which has led to his conviction is such that it warrants the imposition of a penalty, and if so, then what that penalty should be. Hon'ble Supreme Court has also held that for this purpose, the authority has to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case and various factors set out by the Hon'ble Supreme Court in Challappan's case. This, however, has to be done by the authority itself without involving the incumbent concerned and once the disciplinary authority reaches

the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. Hon'ble Supreme Court has also held that this too has to be done by the authority itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. Hon'ble Supreme Court also held that the disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, etc. and having decided which of the three penalties are required to be imposed, it has to pass the requisite order.

18. This Court would also like, at this stage, to refer to Office Memorandum dated 25.11.2022, appended as Annexure P-13 with CWP No. 6783 of 2026, which is in continuation of the earlier OM dated 11.11.1985, which was issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, after the passing of the judgement by the Hon'ble Supreme Court in Union of India vs. Tulsiram Patel and others (supra).

19. In this Office Memorandum, with regard to action under clause (a) of the second proviso to Article 311(2) of the Constitution of India, the following is mentioned:

“6. 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 (CC&A) Rules, 1965 or any other service rule similar to it, the first pre-requisite 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 be. For that purpose, it will have to peruse the judgement 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.

[Para 4 of the OM No. 11012/11/85-Estt. (A) dated 11.11.1985]

7. 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 the 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 particular service to which the government servant belongs."

20. The orders that have been passed by the Director General of Police, dismissing the petitioners from service, read as under:

"In CWP No. 6783 of 2026

ORDER

Whereas, a case FIR No. 59/2016 dated 25.02.2016 was registered at Police Station Balh, District Mandi, under Section 20 of the NDPS Act 1985 against Constable Gaurav Verma, No. 265 of 4th Indian Reserve Battalion (IRBn.), Jangalberi (hereinafter referred to as the delinquent official), wherein 1003 grams of Charas (commercial quantity) was recovered from his conscious

possession. On completion of the investigation of the above case, chargesheet has been put in before the Ld. Court of Special Judge, Mandi, Division Mandi, H.P. on 31.05.2016.

Whereas, after a full-fledged criminal trial conducted in accordance with law, the delinquent official has been convicted by the Learned Sessions Judge, Mandi, vide judgment dated 08.11.2024, for the offence punishable under Section 20 of the NDPS Act, 1985 in the aforesaid FIR; and

Whereas, the Hon'ble High Court of Himachal Pradesh has, during the pendency of the Criminal Appeal No. 659 of 2024, ordered, suspension of the order of sentence dated 02.12.2024 passed by the Ld. Trial Court. It is, however, evident from the said order that no stay has been granted on the conviction recorded by the Ld. Trial Court, which continues to subsist.

Whereas, the undersigned has carefully examined the judgment of conviction dated 08.11.2024, the nature and gravity of the offence proved, the quantity and character of the contraband involved, and the findings recorded by the criminal court; and

Whereas, Article 311(2)(a) of the Constitution of India provides that where a Government servant is dismissed or removed on the ground of conduct which has led to his conviction on a criminal charge, the requirement of holding a departmental enquiry or issuing a show cause notice shall not apply; and

Whereas, Section 63 of the Himachal Pradesh Police Act, 2007, provides that a police officer of a rank superior to that of a Constable may himself perform any duty assigned by law or by a lawful order to any subordinate officer, and may aid, supplement,

supersede, or prevent the action of such subordinate whenever it appears necessary or expedient for effective enforcement of law or for preventing any infringement thereof; and

Now, therefore, in exercise of the powers conferred under Article 311(2)(a) of the Constitution of India, and section 63 of the Himachal Pradesh Police Act 2007, the undersigned, being the competent authority, hereby dismisses Constable Gaurav Verma, No. 265, 4th IRBn., Jangalberi, District Hamirpur from service with immediate effect, on the ground of conduct which has led to his conviction on a criminal charge.

It is further ordered that the dismissal shall entail forfeiture of service benefits, except those, if any, which may be admissible under the relevant rules."

In CWP No. 2077 of 2026

ORDER

Dated 13.01.2026

Whereas, a case FIR No. 84/2019 dated 18.11.2019 under Sections 21, 25 and 29 of the NDPS Act was registered at Police Station Brow, District Kullu, against Constable Lakshay No. 710 of District Shimla (hereinafter referred to as the delinquent official) and others. On completion of the investigation of the above case, charge sheet was put up before the learned Special Judge-II, Kinnaur at Rampur Bushahr, H.P. on 10.07.2020 in accordance with law.

Whereas, after a full-fledged criminal trial conducted strictly in accordance with law, the delinquent official stands convicted by the competent criminal court, namely the learned Special Judge-II,

Kinnaur at Rampur, vide judgment dated 26.12.2023, for offences punishable under the NDPS Act, 1985 in the aforesaid FIR; and

Whereas, the Hon'ble High Court of Himachal Pradesh, during the pendency of Criminal Appeal No. 15 of 2024, ordered suspension of the order of sentence dated 01.01.2024 passed by the learned Special Judge-II, Kinnaur at Rampur-Bushahr, District Shimla, H.P. It is, however, evident from the said order that no stay has been granted on the conviction recorded by the learned Trial Court, which continues to subsist.

Whereas, the undersigned has carefully examined the judgment of conviction dated 26.12.2023, the nature of the offences proved against the delinquent official, the quantity and character of the contraband involved, and the findings recorded by the learned Trial Court; and

Whereas, Article 311(2)(a) of the Constitution of India provides that where a Government servant is dismissed or removed on the ground of conduct which has led to his conviction on a criminal charge, the requirement of holding an inquiry under Article 311(2) shall not apply; and

Whereas, Section 53 of the Himachal Pradesh Police Act, 2007, provides that a police officer of a rank superior to that of a Constable may himself perform any duty assigned by law or by a lawful order to any subordinate officer and may aid, supplement, supersede, or prevent the action of such subordinate whenever it appears necessary or expedient for effective enforcement or for preventing any infringement thereof; and

Now, therefore, in exercise of the powers conferred under Article

311(2)(a) of the Constitution of India and Section 63 of the Himachal Pradesh Police Act, 2007, the undersigned, being the competent authority, hereby dismisses Constable Lakshay No. 710 of District Shimla from service with immediate effect, on the ground of conduct which has led to his conviction on the criminal charge. It is further ordered that the dismissal shall entail forfeiture of service benefits, except those, if any, which may be admissible under the relevant rules."

21. Before proceeding any further, at this stage itself, the Court would first like to answer the issue as to whether the impugned orders are *non est*, as has been urged by the learned Senior Counsel for the petitioners on the plea that the Director General of Police, not being the disciplinary authority or the appointing authority of the petitioners, was not competent to pass the orders.

22. The petitioners herein are the employees of the Police Department. They are governed by the provisions of the Punjab Police Rules, 1934, as are applicable to the State of Himachal Pradesh. Departmental proceedings are envisaged in Rule 16.24 of the said Rules.

23. Chapter-16 of the Punjab Police Rules, 1934, as is applicable to the State of Himachal Pradesh provides for 'punishments'. Rule-16.1 of the said Rules provides for 'Authorized punishments'. Sub-Rule of Rule-16.1 provides that no Police

Officer shall be departmentally punished otherwise than as provided in the said Rules and Sub-Rule (2) thereof provides that the departmental punishments mentioned in the second column of the subjoined table may be inflicted on officers of the various ranks shown in the heading Nos. 3 to 6, by the officers named below each heading in each case, or by any officer of higher rank. The Rule provides as under:-

“16.1 Authorized punishment.-(1) No police officer shall be departmentally punished otherwise than as provided in these rules. (2) The departmental punishments mentioned in the second column of the subjoined table may be inflicted on officers of the various ranks shown in the heading Nos. 3 to 6, by the officers named below each heading in each case, or by any officer of higher rank-

1	2	3	4	5	6
Sr. No.	Departmental Punishment	Inspectors	Sergeants, Sub- Inspectors and Assistant Sub Inspectors	Head Constables	Constables
	Dismissal	Deputy General, Inspector-General, Government Railway Inspectors-Assistant Police, the Assistant Inspector-General, Provincial Addit-ional Police, designated as Commandant, Provincial Additional Police, and the Assistant Inspector-General of Police (Traffic)	Superintendents of Police Commandants of Punjab Armed Police and Superintendent (Administrative), Deputy Government Railway Police.	Superintendent Police; Superintendent (Administrative). of Deputy Government Railway Police; Superintendents Deputy Assistant incharge of Railway Police Sub-Divisions; Senior Superintendent of Police, Lahore; Officers-in-charge of Police Constables Training Centres. Deputy Superintendent of Police, Lahaul and Spiti	Superintendents of Police, Deputy Superintendent (Administrative), Government Railway Police; Deputy Superintendents charge of Railway Police in Sub-Divisions; Senior Assistant in-charge of Recruits Training Centres. Superintendent Police, Lahore; Officer-of Deputy Superintendent of Police, Lahaul and Spiti.

24. The petitioners before this Court are Inspector and Constables, respectively. The punishment of dismissal can be imposed upon an Inspector, by a Deputy Inspectors-General or any

Officer of higher rank. Similarly, the punishment of dismissal can be imposed upon a Constable by the Superintendent of Police or by any officer of higher rank. Herein, the punishment of dismissal has been imposed upon the petitioners by the Director General of Police, who obviously is an Officer of higher rank than the one envisaged in Rule 16.1.

25. Therefore, in light of the fact that the Punjab Police Rules do empower the Director General of Police to impose the punishment of dismissal on the petitioners, being an Officer of higher rank than the Officers shown in Headings 3 to 6 (supra), this Court finds no merit in the contention of learned Senior Counsel for the petitioners that the Director General of Police could not have had passed the impugned orders.

26. Now, this Court would be referring to the other aspect of the matter as to whether, in the peculiar facts and circumstances of these two cases, the orders passed by the Director General of Police, dismissing the petitioners from service are sustainable in the eyes of law or not.

27. A perusal of the orders of dismissal passed by the Director General of Police demonstrates that it stands mentioned therein that FIRs were registered against the petitioners under the provisions of the NDPS Act. Thereafter, a full-fledged criminal trial

was conducted in the matter as per law and the delinquent officials were convicted by the learned Special Court for commission of offenses punishable under the provisions of the NDPS Act. It has also been observed in the orders that though the petitioners have preferred appeals against the judgments of conviction and the High Court has ordered the suspension of the sentence, but no stay has been granted on the conviction recorded by the learned Special Judge. Thereafter, the authority has also observed that it has examined the judgment of conviction, the nature and gravity of the offenses proved as also the quality and quantity of the contraband involved and thereafter, by referring to the provisions of clause (a) of the second proviso to Article 311(2) of the Constitution of India, as also Section 63 of the Himachal Pradesh Police Act, 2007, it has dismissed the petitioners from service with immediate effect on the ground of conduct which has led to their conviction on criminal charges.

28. In terms of the judgment of the Hon'ble Supreme Court of India in Tulsiram Patel's case (supra) and also in terms of the contents of the Office Memorandum, which has been issued in the year 2022, in the matters relating to the applicability of clause (a) of the second proviso to Article 311(2) of the Constitution of India, what has to be taken into consideration by the authority is

that it should be aware that the government servant has been convicted on a criminal charge and the disciplinary authority thereafter must consider whether the conduct of the government servant which has led to his conviction, was such as it warrants the imposition of penalty, and if so, then what penalty.

29. Applying these principles to the facts of this case, obviously, the action under clause (a) to the second proviso to Article 311(2) of the Constitution of India was resorted to by the Director General of Police after he became aware that the petitioners herein were convicted on criminal charges.

30. A perusal of the order of dismissal passed by the authority demonstrates that it took into consideration the fact that the petitioners were convicted under the provisions of the NDPS Act, which obviously has severe gravity attached to it and after taking into consideration the factum of the conviction of the petitioners and that too for commission of offenses punishable under the NDPS Act, the authority resorted to dismissing the petitioners from service.

31. The above clearly demonstrates that the disciplinary authority took into consideration the conduct of the petitioners, i.e., them being involved in the commission of an offence under the provisions of the NDPS Act, which led to their conviction.

Obviously, the involvement of police Constables in commission of offences under the NDPS Act, being a serious matter, the authority, in the considered view of this Court, rightly ordered the dismissal of the petitioners from service by invoking the provisions of clause (a) of the second proviso to Article 311(2) of the Constitution of India.

32. In the peculiar facts of these cases, it cannot be said that the penalty imposed upon the petitioners is grossly excessive or out of proportion, which are the factors to be taken into consideration by the Authority while imposing the punishment.

33. Clause (a) of second proviso to Article 311(2) of the Constitution of India authorizes the authority to dispense with the inquiry and impose the punishments mentioned in the said clause in the case of conviction.

34. The conviction of a government servant can be for commission of various offenses. A government servant may be convicted for rash and negligent driving or for having committed a monetary offense, or in a case of physical scuffle with a third person, etc., etc. It is in the backdrop of this fact that as obviously all government officials are not going to be convicted for commission of same or similar offenses, that safeguards have been pointed out, both by the Hon'ble Supreme Court in *Tulsiram Patel's*

judgment (supra) as well as by the Central Government in terms of Office Memorandums of the year 1985 as well as of the year 2022. However, providing of these safeguards, as have been enunciated by the Hon'ble Supreme Court of India as also in the office memorandums issued by the Central Government, have to be applied in the factual matrix and circumstances of each and every case.

35. It is in this backdrop that a caveat has been put that while imposing penalty upon a civil servant, the authority has to take into consideration the fact that the same should not be grossly excessive or out of proportion to the offense(s) committed.

36. Herein, in the present two cases, the offence committed is under the provision of the NDPS Act. The convicts happen to be employees of the police department. In other words, the constables of the police department themselves have been convicted for the commission of offense under the provisions of the NDPS Act. The protectors of law themselves have become violators of law and those who have the onerous task placed upon themselves to check offenses under the NDPS Act and ensure that guilty are punished have been found indulging in the commission of offenses under the provisions of the NDPS Act.

37. Herein, it is not a mere case of allegation, but a fact

situation where both the petitioners have been convicted for having committed offenses under the NDPS Act by the Court of law. Therefore, this Court finds no infirmity in the orders under challenge.

38. Hon'ble Supreme Court of India in Civil Appeal No. 1804 of 2020, titled Life Insurance Corporation of India vs. Mukesh Poonamchand Shah, decided on 25th February, 2020, on the issue as to whether clause (a) of the second proviso to Article 311(2) of the Constitution of India can be resorted to during the pendency of an appeal against the judgment of conviction, has been pleased to hold as under:

"14 The position in this regard was elaborated upon in a judgment of a two judge Bench decision of this Court in [Dy Director of Collegiate Education \(Admn\) v S Nagoor Meera13](#), where Justice B P Jeevan Reddy speaking for the Court held:

"8. ... taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal." This Court specifically disapproved of the view of the Tribunal that until the appeal against the conviction was disposed of, action under clause(a) of the second proviso to [Article](#)

311(2) was not permissible. The Court held:

“10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.” This view has been reiterated in another two judge Bench decision of this Court in *K C Sareen v CBI*¹⁴. Justice K T Thomas, speaking for the Court, held:

“12. ...When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself...”

15. In *State of Haryana v Balwant Singh*¹⁵, the respondent, who was an employee of a public transport corporation, caused a death as a result of his rash and negligent driving. The Corporation had to suffer an award of the Motor Accident Claims Tribunal. Following the disciplinary enquiry, the employee was subjected to a punishment of a reduction of pay to the minimum of the time scale of a driver for four years. On the conviction of the employee for offences under Sections 279, 337, 338 and 304A of the Penal Code, his services were terminated. On this set of facts, a two judge Bench of this Court, speaking through Justice Shivaraj V Patil, rejected the argument based on the principle of double jeopardy and held:

“7... there was no question of the respondent suffering a double jeopardy. The aid of [Article 20\(2\)](#) of the Constitution of India was wrongly taken. [Article 20\(2\)](#) of the Constitution of India does not get attracted to the facts of the present case...” The Court held that when a major penalty was proposed to be imposed on the ground of the conduct of the employee which had led to conviction on a criminal charge, it was not necessary to take recourse of the provisions of Rules 7(1) and (2) of the Haryana Civil Services (Punishment and Appeal) Rules 1987 relating to the convening of an inquiry in which a reasonable opportunity of showing cause would have to be given.

16. The decision in *Lt Governor, Delhi v HC Narinder Singh*¹⁶, relied upon by the respondent, is clearly distinguishable. Unlike the present case, where the respondent was convicted of various criminal offences and subsequently, a notice to show cause was issued, in *HC Narinder Singh* there was no conviction based on a criminal charge. In the present case, following the conviction of the respondent by the Special Judge CBI, the appellant was acting within jurisdiction in issuing a notice to show cause under Regulation 39(4) of the 1960 Regulations. The learned single judge was correct in dismissing the special civil application filed by the respondent challenging the notice to show cause issued by the appellant. The judgment of the Division Bench restraining the appellant from taking a final decision on the show cause notice pending the disposal of the criminal appeal has no valid basis in law.

17. We accordingly allow the appeal and set aside the impugned judgment and order of the Division Bench dated 10 April 2018. As a consequence, we confirm the order and judgment of the learned single judge dismissing the Special Civil Application filed by the respondent. There shall be no order as to costs.”

39. Thus, in terms of the said judgment of the Hon’ble Supreme Court, the pendency of an appeal is also not an embargo as far as invocation of the provisions of clause (a) of the second proviso to article 311(2) of the constitution of India is concerned,

as the Hon'ble Supreme Court has held that what is relevant was the conduct of the government servant which led to his conviction on a criminal charge and as the government servant had been found guilty of corruption by a criminal Court, until said conviction was set aside by the Appellate or higher Court, it might not be advisable to retain such a person in service.

40. Accordingly, in light of the findings returned herein above, as this Court does not find any infirmity or illegality in the orders under challenge, in terms whereof the petitioners have been dismissed from service, the present writ petitions being devoid of any merit are dismissed. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

July 29, 2026
(narendar)