IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No. 6429 of 2019

Date of decision: 6.3.2023

Mohinder Singh. **…Petitioner.**

Versus

The Himachal Road Transport Corporation & others. **…Respondents.**

Coram
The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner. ***Ms.Reeta Hingmang, Advocate.***

For the Respondents: ***Mr.Raman Jamalta, Advocate.***

Vivek Singh Thakur, Judge (oral)

Petitioner had approached erstwhile HP State Administrative Tribunal against his removal from service vide Office Order dated 8.9.2015 passed by Regional Manager, HRTC Baijnath by filing Original Application No. 5262 of 2015, which was admitted by the erstwhile Administrative Tribunal on 22.6.2017. After abolition of said Tribunal, Original Application was transferred to this Court and registered as CWPOA No. 6429 of 2019 i.e. present petition.

2. Undisputed facts in present case are that petitioner was appointed as a Driver in Baijnath Unit of Himachal Road Transport Corporation (for short 'HRTC') on regular basis on 4.3.2000. On 21.6.2008 he was driving bus No. HP 53 A-7503, enrouted from Amritsar to Baijnath and when bus was entering the bus stand of Pathankot, it collided with Motor Cycle, causing death of Motor Cycle rider, leading to registration of FIR No. 65 dated 21.6.2008 under Sections 279, 304-A of

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

the Indian Penal Code against the petitioner, in furtherance whereof petitioner was subjected to trial and was convicted vide judgment dated 3.5.2012 by Judicial Magistrate First Class, Pathankot and, thereafter, Appeal, Revision and Special Leave Petition preferred by him before Sessions Judge Gurdaspur Punjab, High Court of Punjab and Haryana and Supreme Court, respectively, were dismissed and ultimately he had to undergo imprisonment for a period of 9 months 20 days w.e.f. 8.8.2014 to 28.5.2015 and before serving the aforesaid sentence he served HRTC till 8.8.2014 and after serving the sentence he approached the authorities for submitting his joining report alongwith copies of judgments passed in Criminal Case, whereupon he was served a notice dated 9.6.2015 for showing cause that why he should not be removed from the service invoking provisions of Rule 19 of CCS (CCA) Rules, 1965 and after filing response, he was removed from the service vide Office Order dated 8.9.2015.

3. It is undisputed that after the accident, Works Manager, HRTC Pathankot had inquired the matter and recorded the statement of petitioner (driver) and conductor deputed with him and had submitted his inquiry report to Regional Manager HRTC Baijnath alongwith rough sketch of accident scene, concluding therein that Motor Cyclist was overtaking the bus from the left side i.e. opposite to the driver side and had succeeded partly, but was crushed under the front right tyre, with his opinion that petitioner was not at fault as he could not see Motorcycle overtaking from left (wrong) side as because of low height of Motor Cycle, it was not in the visibility area of the bus driver.

4. It is also admitted that the Motor Cyclist was serving in Indian Air Force and was resident of Visakhapatnam and his dependants had filed petition before MACT Visakhapatnam as MOP No. 307 of 2009, titled as Smt. N. Aruna Kumari and others Vs. Mohinder Singh and another.

5. Counter filed by the HRTC in Motor Accident Claim petition, placed on record alongwith MA No. 1000 of 2019, also remained undisputed, wherein Regional Manager HRTC Baijnath had responded as under:-

> "*2. It is submitted that the bus bearing No. HP 53A 7503 belonging to this respondent, driven by first respondent never hit the motor cycle driven by Sri Nagulapati Kishore Kumar on 22-06-2008 as alleged in the petition. As such this respondent or the first respondent are not liable to pay any compensation jointly and severally, much less and compensation claimed in the present application to the petitioners.*
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> *2to4. … …. …*
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> *5. It is submitted that the first respondent was deployed as driver of bus No. HP 53A 7503 which was plied on Amritsar-Baijnath bus route. Sri Ramesh Chand was performing the duty of conductor in the said bus. It is submitted that at about 4 P.M on 21-06-2008 when the first respondent was driving the bus towards Patankot bus terminal, the deceased was coming on the motor cycle in the opposite direction and the said motor cycle at that time is on the side of the bus where conductor is sitting. At that time the conductor blew the whistle signaling the first respondent to stop the bus. Immediately the first respondent stopped tine bus, switched off the engine of the bus and got down from the bus. After getting down from the bus this respondent noticed that the motorcyclist felt down on the ground as the motor cycle on which he is travelling skidded on a heap of stones and the bus driven by the first respondent has not hit the motorcyclist. The first respondent was driving the vehicle in the first gear as he has to negotiate a curve to enter into the bus terminal and the*

speed of the bus at that time would be between 2 to 3 Kilometers per hour. Immediately the first respondent along with the conductor on humanitarian grounds took the motorcyclist to hospital in a three wheeler but he succumbed to death in the hospital. As such the allegations in the petition that the accident occurred on 22-06-2008 because of the rash and negligent driving of the first respondent without following the traffic rules is absolutely false."

6. Present petition was filed before erstwhile Tribunal on 24.12.2015 on the grounds that removal of the petitioner from service, despite having been sentenced for the same offence once, is illegal, arbitrary, discriminatory, unjustified, unconstitutional and violative of Articles 14 and 16 of the Constitution of India; petitioner has a right to continue in the job as on conviction in criminal case does not warrant automatic dismissal from the service; and as a result of illegal and arbitrary act of the respondents, petitioner has been made to suffer financially and socially.

7. In order to substantiate plea of the petitioner, learned counsel for the petitioner has relied upon pronouncement of Punjab and Haryana High Court in ***Om Prakash Vs. The Director Postal Services***, reported in ***AIR 1973 PH 1*** and order dated 2.3.2015 passed by High Court of Punjab and Haryana in ***CWP No. 18117 of 2013,*** **titled as** ***Dhani Ram Vs. U.H.B.V.N and another.***

8. Removal of petitioner from service has been justified by the respondents, in view of provisions of Rule 19 of CCS (CCA) Rules, 1965, with submission of learned counsel for the respondents that after an employee is convicted and sentenced, employer has a right to remove

him from service as provided under clause (i) of Rule 19 of CCS (CCA) Rules, 1965.

9. To substantiate the plea of respondents, learned counsel for the respondent has referred pronouncements of the Supreme Court in ***Shankar Dass Vs. Union of India and another (1985) 2 SCC 358; Union of India and another Vs. Tulsiram Patel, (1985) 3 SCC 398; State of Haryana Vs. Balwant Singh, (2003) 3 SCC 362; Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank, (2010) 8 SCC 573.***

10. In similar circumstances, referring pronouncement of three Judges Bench of the Supreme Court in ***Union of India Vs. P.D. Yadav, (2002) 1 SCC 405***, two Judge Bench of the Supreme Court in ***Balwant Singh's*** case referred supra has observed as under:-

> *"6. A three-Judge Bench of this Court in Union of India v. P.D. Yadav (2002) 1 SCC 405, while dealing with more or less a similar contention with regard to double jeopardy, has held thus: (SCC p. 425, para 25)*
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> > *"25. A contention, though feebly, was advanced on behalf of some of the respondents that forfeiture of pension in addition to the punishment imposed under Section 71 of the Army Act amounted to double jeopardy. In our view, this contention has no force. There is no question of prosecuting and punishing a person twice for the same offence. Punishment is imposed under Section 71 of the Army Act after trial by Court Martial. Passing an order under Regulation 16(a) in the matter of grant or forfeiture of pension comes thereafter and it is related to satisfactory service. There is no merit in the contention that the said Regulation is bad on the ground that it authorized imposition of a double penalty; may be in a given case, penalty of cashiering or dismissal from service and the consequential forfeiture of pension may be harsh and may cause great hardship but that is an aspect which is for the President to consider while exercising his discretion under the said Regulation. May be in his discretion, the President may hold that the punishment of cashiering or dismissal or removal from service was sufficient having regard to circumstances of the case and that a person need*

not be deprived of his right to pension. A crime is a legal wrong for which an offender is liable to be prosecuted and punished but only once for such a crime. In other words, an offender cannot be punished twice for the same offence. This is demand of justice and public policy supports it. This principle is embodied in the well-known maxim nemo debet bis vexari, (si constat curiae quod sit) pro una et eadem causa meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others. Article 20(2) expressly provides that: "No. one shall be prosecuted and punished for the same offence more than once." Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law. In the proceedings before General Court Martial, a person is tried for an offence of misconduct and whereas in passing order under Regulation 16(a) for forfeiting pension, a person is not tried for the same offence of misconduct after the punishment is imposed for a proven misconduct by the General Court Martial resulting in cashiering, dismissing or removing from service. Only further action is taken under Regulation 16(a) in relation to forfeiture of pension. Thus, punishing a person under Section 71 of the Army Act and making order under Regulation 16(a) are entirely different. Hence, there is no question of applying principle of double jeopardy to the present case."

7. Under these circumstances, 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….."

11. In view of aforesaid settled exposition of law, plea of the petitioner that for already having sentenced for the same offence once, penalty upon him cannot be imposed by the employer invoking provisions of CCS (CCA) Rules, is not sustainable.

12. Relevant provision of Rule 19 of CCS CCA Rules reads as under:-

"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

(i) 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:"

13. The aforesaid provision is based upon the provisions of Article 311 of the Constitution of India, which reads 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 ins 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.*
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> *(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."*

14. Dealing with clause (a) of second provision of Article 311 of the Constitution of India, which is paramateria to Rule 19(i) of CCS (CCA) Rules the Supreme Court in *Tulsiram Patel's* case, referred supra, has observed 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's 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 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 government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all 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 and another, (1985) 2 S.C.C. 358, 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."

15. In ***Sushil Kumar Singhal'*** case, referred supra, the Supreme Court has observed that conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against him or to take appropriate steps for his dismissal/removal only on the basis of conviction. However, in this case employee was dismissed from service on the ground that offence committed by petitioner therein was an offence involving moral turpitude, and moral turpitude was summarized by the Supreme Court as under:-

"23. "Moral Turpitude" means [Per Black's Law Dictionary (8th Edn., 2004)] :-

"Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude--such as fraud or breach of trust…. Also termed moral depravity….

'Moral turpitude means, in general, shameful wickedness- so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.' "

24. In Pawan Kumar Vs. State of Haryana & Anr., (1996) 4 SSC 17, this Court has observed as under:-

"12. `Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

The aforesaid judgment in Pawan Kumar (supra) has been considered by this Court again in Allahabad Bank & Anr. Vs. Deepak Kumar Bhola, (1997) 4 SCC 1; and placed reliance on Baleshwar Singh Vs. District Magistrate and Collector, AIR 1959 All. 71, wherein it has been held as under:-

"The expression `moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act

and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

25. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked, and base activities."

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 a reasonable opportunity to 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 b 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 particular service to which the government servant belongs.

5-A(c) Cases falling under Rule 19 (ii): A question has been raised whether in a case where Clause (b) of the second proviso to Article 311 (2) of the Constitution is invoked, the Disciplinary Authority may dispense with the issuing of charge-memo listing the charges. Clause (b) is attracted in a case where the Disciplinary Authority concludes "that it is not reasonably practicable to hold such an inquiry". The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under-

> *"It is not necessary that a situation which makes the holding an inquiry not reasonably practicable should exist before the*

disciplinary inquiry is initiated against Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of charge-sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the Disciplinary Authority would be entitled to apply Clause (b) of the second proviso because the word 'inquiry' in that clause includes part of an inquiry."

Article 311 (2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the procedure for disciplinary action against Government servants, The first step in that procedure is the service of a memorandum of charges or a charge-sheet, as popularly known, on the Government servant listing the charges against him and calling upon him, by a specified date, to furnish reply either denying or accepting all or any the charges. An inquiry hence commences under the service rules with the service of the charge-sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the Disciplinary Authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge-sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge-sheet would already have been served on the Government servant concerned.

…. ….. …..

10 (e) Conclusion: The preceding paragraphs clarify the scope of Clauses (a), (b) and (c) of the second proviso to Årt. 31 1 (2) of the Constitution, Rule 19 of CCS (CCA) Rules, 1965, and other service rules similar to it, in the light of the judgments of the Supreme Court delivered on 11-7-1985 and 12-9-1985. It is, therefore, imperative that these clarifications are not lost sight of while invoking the provision of the second proviso to Art. 311 (2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is

> *arbitrary or mala fide. So far as Clauses (a) and (c) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking Clause (b) of the second proviso to Art. 311 (2) or any similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable."*

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.

18. Undisputedly petitioner was having alternative remedy of filing Appeal/Revision against his impugned removal from the service.

Though he has claimed filing of appeal, but he has preferred present petition on 24.12.2015.

19. It has been claimed by petitioner that he filed an appeal before Divisional Manager, against his removal, on 2.12.2015.

20. In reply, dated 28.2.2017, filed on behalf of respondents, it has been stated that petitioner has approached the Tribunal without filing statutory appeal to Divisional Manager. The reply was filed on 30.3.2017. Thereafter petition was admitted on 22.6.2017 and remained pending adjudication before the erstwhile Tribunal and thereafter in this Court. The petitioner was having alternative remedy and, therefore, he had to exhaust the same before approaching this Court and petition may have been disposed on this ground only relegating him to exhaust the statutory remedy available to him, and the said order should have been passed at the initial stage. Petitioner was removed from the service in September, 2015 and he filed this petition in December, 2015. Thereafter, the petition was admitted and remained pending adjudication in the Court for about 7 years. Though this Court refrains and hesitates from entertaining the petition under Article 226 of the Constitution of India directly without exhausting the alternative remedy available under the statute, but this Court is not inhibited from entertaining the petition under Article 226 of the Construction for not availing alternative remedy, in the exceptional circumstances. No exceptional circumstance has been culled out in the petition or in rejoinder for not exhausting the alternative statutory remedy available to the petitioner. However, it is also a matter of fact that for availing the remedy available to the petitioner he approached an Advocate, who instead of guiding the petitioner appropriately to the best

of her wisdom filed Original Application before the erstwhile Administrative Tribunal, where, it appears that petition was admitted in routine manner and during arguments addressed before me learned counsel for petitioner submits that petition was filed by some other Advocate and she has been engaged at later stage.

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.

22. Keeping in view the entire facts and circumstances of the case, instead of deciding the matter on merits by dealing the contentions of the parties, present petition is disposed of with liberty and permission to the petitioner to approach the Appellate Authority by filing an appeal afresh, if advised so, for redressal of his grievance regarding removal from service and such appeal shall be preferred on or before 28th March, 2023 and in case such appeal is preferred by the petitioner, the same shall be decided by the Appellate authority on or before 15th May, 2023 and in case petitioner is still aggrieved, he shall exhaust

the remedy of revision or review as available under law and in case of filing, if need be, revision/review by the petitioner the said revision/review shall also be decided by the concerned authority within two months after filing of the same.

23. Needless to say the concerned appellate/revisonal/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.

24. It is clarified that this Court has not expressed any view on merits of rival contentions of parties, except on the plea of double jeopardy taken by the petitioner, which stands settled by the pronouncements of the Supreme Court referred supra. So far as plea with respect to punishment or quantum thereof is concerned, that shall be considered by concerned statutory authorities at appropriate time in appropriate appeal/revision/review, if any filed before them, in accordance with relevant law and pronouncements of the Supreme Court in that regard.

The petition stands disposed of in aforesaid terms, so also pending applications, if any.

(Vivek Singh Thakur),
Judge.

6th March, 2023
(Keshav)