

(2016) 01 JH CK 0124

In the Jharkhand High Court

Case No : L.P.A. No. 328 of 2014 with I.A. No. 375 of 2016 with I.A. No. 6253 of 2015

State of Jharkhand

APPELLANT

Vs

Satyendra Kumar

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Jharkhand Police Manual — Rule 663

Citation : (2016) 3 JBCJ 601 : (2016) 3 JLJR 429

Hon'ble Judges : Mr. D.N. Patel and Mr. Amitav K. Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Ajit Kumar, AAG, Mr. Kumar Sundaram, Advocate, for the Appellants; M/s Devesh Krishna and Priyanka Bobby, Advocates, for the Respondents

Final Decision : Allowed

Judgement

D.N. Patel, J. (Oral)—This Letters Patent Appeal has been preferred against the judgment and order, delivered by the learned Single Judge in W.P.(S) No. 3277 of 2013 dated 13th November, 2013 whereby, the writ petition preferred by respondent no.1 was allowed and the order of dismissal dated 14.10.2012 and the appellate order dated 07.04.2013 were quashed and set aside and the appellant was directed to reinstate respondent no.1 with full back wages.

2. Factual Matrix

Public advertisement was issued on 13th January, 2004 and the applications were invited for the post of Constable by the State of Jharkhand.

Those, who were Home Guards they can also apply for the post in question. Last date of submission of application was 15th February, 2004.

Respondent no.1 (original petitioner) filled up the form and as per column 10 of the said application form there was need to annex certificate of Home Guard.

The respondent enrolled as a Home Guard and was getting his training. His training was to be completed on 15th March, 2004.

The training period was of 45 days and during the course of training of Home Guards the respondent (original petitioner) filled up the form and submitted the same and instead of certificate of Home Guard, identity card of Home Guard was annexed.

The respondent cleared all types of tests and ultimately, was appointed on the post of Constable under the reserved seats for Home Guards.

As per Rule 663 of the Jharkhand Police Manual enacted under Section 7 to be read with Section 12 of the Police Act, 1861 for appointment on the post of Constable, Trained Home Guard can be appointed and if a candidate is Trained Home Guard there will be 50% reservation.

The training of the respondent (original petitioner) was going on as on last date of application i.e. on 15th February, 2004 and instead of certificate of Home Guard, identity card of Home Guard was annexed and got the benefit of 50% reservation quota.

When the identity card was sent for verification, it was found that the respondent (original petitioner) had never completed the training at all of Home Guard as on 15th February, 2004, which was the last date for preferring an application, for the post of Constable, in pursuance of the public advertisement dated 13th January, 2004.

Therefore, charge-sheet dated 27th March, 2012 was issued upon the respondent which is annexed at Annexure-3 to the memo of this L.P.A.

Thereafter, enquiry was conducted and after giving adequate opportunity of being heard to the respondent ultimately, charges levelled against the respondent-delinquent employee were held as proved, as per the enquiry officer report dated 30th August, 2012 (Annexure-6 to the memo of this L.P.A.)

The disciplinary authority issued 2nd show cause notice dated 8th September, 2012 (Annexure-7 to the memo of this L.P.A.) and after again giving adequate opportunity of being heard the disciplinary authority i.e. the Superintendent of Police, Seraikella-Kharsawan dismissed the respondent from the services of police vide order dated 14th October, 2012 (Annexure-9 to the memo of this L.P.A.).

The respondent-delinquent employee preferred departmental appeal before the Deputy Inspector General, Kolhan Range, Chaibasa, who dismissed the appeal of the respondent vide order dated 7th April, 2013, which is at Annexure-11 to the memo of this LPA.

Hence, respondent no.1 (original petitioner) preferred writ petition being W.P.(S) No. 3277 of 2013 challenging the order of dismissal dated 14th October, 2012 (Annexure-9 to the memo of this L.P.A.) as well as the order, passed by the

Appellate Authority dated 7th April, 2013 (Annexure-11 to the memo of this L.P.A.).

The writ petition was allowed by the learned Single Judge vide order dated 13th November, 2013 and hence, the original respondent i.e. the State of Jharkhand has preferred this Letters Patent Appeal.

3. Arguments canvassed by the counsel for the appellants:

Learned Additional Advocate General of the State has submitted that no error has been committed by this appellant in holding the enquiry and adequate opportunity of being heard was given to the respondent. The charge-sheet was given, thereafter enquiry officer was appointed and on the basis of the evidence on record, Enquiry Officer has given his report dated 30th August, 2012.

The charges levelled against the respondent have been proved. Even 2nd show cause notice was given before the disciplinary authority passed an order imposing the punishment, thereafter the respondent has also preferred departmental appeal. Thus, there is no procedural defect in holding the enquiry and in giving adequate opportunity of being heard to the respondent.

It is submitted by the State-Additional Advocate General that this Court is not sitting in an appeal against the enquiry officer's report and hence, this aspect of the matter has not been properly appreciated by the learned Single Judge.

Learned Additional Advocate General of the State has submitted that the respondent had applied for the post of Constable and when he was filling up the form, it was the duty of the respondent to supply the correct facts to the State. As per column 10 of the application form it was the duty of the respondent (original petitioner) to point out that he has no certificate of Home Guard, but, deliberately and with all purposes for misguiding and defrauding the State, identity card of Home Guard was annexed. It is true that the State has to take work from honest hand and few may be dishonest. Honest may be lethargic and dishonest may be enthusiastic. There may be permutation and combination of these types of officers in the State, partly due to inadvertence and partly due to negligence, the immediate action could not be initiated by this appellant-State against the respondent and the respondent was wrongly appointed as a Constable, but, the fact remains that the respondent has misguided the State as he has failed to give Home Guard certificate as required under column 10 of the application form and he has also misrepresented the fact before the State and later on upon verification, it was found out that as on the last date of application i.e. on 15th February, 2004, he had not completed the training of Home Guard and hence, wrongly the form was filled up. This was charge no.1 upon the respondent which has been held as proved by the Enquiry Officer.

It is also contented by the Additional Advocate General of the State that as per Rule 663(x) of the Jharkhand Police Manual, enacted under Section 7 to be read with Section 12 of the Police Act, 1861, those Home Guards, who are trained will

have reservation of 50% for the post of Constable. Thus, this is a conditional reservation. Training is conditional for these types of reservation. Admittedly, respondent had not completed the training of Home Guard as on the last date of filling up of the form i.e. on 15th February, 2004. The respondent completed his training on 15th March, 2004, but, wrong facts were supplied in his application and hence, wrongly he availed the benefit of reservation of 50% of the total seats of the Constable which were reserved for the Trained Home Guards. "Identify Card" and the "Training Certificate" are not synonyms of each other. The learned Single Judge has failed to appreciate this aspect of the matter as stated in para-8 of the impugned judgment. In Hindi language, as used in the advertisement published on 13th January, 2004, the words used were (इजे.के.के.ई=*), whereas the respondent-delinquent employee had annexed इजे.के.के.ई=*. Thus, instead of "Certificate" of Home Guard, "Identity Card of Home Guard was annexed. This is what is mentioned in para-9 of the impugned judgment. The learned Single Judge has allowed the writ petition mainly on the ground that instead of certificate इजे.के.के.ई= , identity Card इजे.के.के.ई= can also be submitted. This is an error apparent on the face of the record. Training has direct nexus with 50% reservation. Training of Home Guards is a condition precedent for 50% reservation. Identity Card can be given, those who are taking training whereas, Certificate of Home Guards can be given only upon successful completion of training and therefore, aspiring candidates especially those, who are claiming 50% reservation for Home Guards have to give certificate इजे.के.के.ई= of Home Guards and not mere identity card इजे.के.के.ई= . This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

Learned Additional Advocate General for the State has also taken this Court to various columns of the application form including column-9 and 10. Column-9 relates to Scheduled Castes and Schedule Tribes certificate to be supplied by those candidates, who are seeking benefit of the reservation for Scheduled Castes and Scheduled Tribes and Backward Classes etc. and Column-10 of the application is for those candidates, who are seeking reservation for the Home Guards. Nonetheless, fact remains that in both the eventualities, i.e. for those, who are claiming benefit under Schedule Castes and Scheduled Tribes reservation or under the column-10 for Home Guards, they have to supply "Certificate" and not the "Identity Card". This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

It is also submitted by the learned Additional Advocate General for the State that even if there is some laches in the public advertisement, but, if the rules require for reservation of Home Guards that candidate must be Trained Home Guards, the rule shall prevail upon the advertisement. Rule 663(x) of Jharkhand Police Manual prescribes conditional reservation i.e. if there is a Trained Home Guard and if he applies for the post of Constable then only there will be 50%

reservation. The word "Trained" is not mentioned in the public advertisement, which is at Annexure-1 to the memo of this Letters Patent Appeal, but, that does not mean that Rule 663 of the Jharkhand Police Manual is not applicable. Rule shall always prevail over the advertisement and shall be binding to the respondents as well as the appellants. Mere error in the public advertisement cannot rule out the applicability of the Rules. To fortify this contention, counsel for the State has relied upon the decision of Hon'ble Supreme Court reported in (2006) 9 SCC 507. This aspect of the matter has not been properly appreciated by the learned Single Judge while deciding the writ petition and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

4. Arguments canvassed by the counsel for the respondents:

Counsel appearing for respondent no.1 submitted that no error has been committed by the learned Single Judge while allowing the writ petition vide order dated 18th January, 2014.

Counsel for respondent no.1 (original petitioner) has submitted that those, who are Home Guards for them there is a reservation of 50% for the post of Constable and looking to the definition of a word "Home Guard", enshrined in Section 2(a) of the Jharkhand Home Guards Act, 2005, means a person who is enrolled as such under the Act, 2005.

It is submitted by the counsel for the respondent that on the last date of submission of the application form i.e. on 15th February, 2004, the respondent was already enrolled as Home Guard. This aspect of the matter has been properly appreciated by the learned Single Judge.

It is submitted by the counsel for the respondent that charges levelled against this respondent are not proved. Never any false and fabricated certificate was annexed by the respondent with his application for the post of Constable. With open eyes the respondent appointed as a Constable and for 7 years the respondent has worked as Constable and before appointment the respondent has completed the training of Home Guard. This aspect of the matter has been properly appreciated by the learned Single Judge while allowing the writ petition.

Counsel for the respondent has also submitted that after 7 years the action has been initiated by the appellant-State and this is a very long delay on the part of the appellant for initiating the departmental proceedings. This aspect of the matter has been also properly appreciated by the learned Single Judge and hence, this Letters Patent Appeal may not be entertained by this Court.

It is submitted by the counsel for the respondent that as per column-10 of the application form only certificate about the number of the Home Guard and district was to be supplied and nothing beyond that and therefore, identity card ifjp; i= was annexed instead of certificate of Home Guard izek.k i= and hence, this Letters Patent Appeal may not be entertained by this Court.

Counsel for the respondent submitted that during course of enquiry, a list of witnesses, which is to be examined, was given, but, the same was not allowed and hence, no adequate opportunity of being heard was given to the respondent.

5. Reasons:

Having heard counsels for both the sides and looking to the facts and circumstances of the case, we hereby, quash and set aside the judgment and order, passed by the learned Single Judge in W.P.(S) No. 3277 of 2013 dated 13th November, 2013 mainly on the following facts and reasons:

(i) The appellant-State issued public advertisement on 13th January, 2004 for the post of Constable, which is at Annexure-1 to this Letters Patent Appeal. As per column-9 and 10 of the application form there are several types of reservations including Scheduled Castes, Scheduled Tribes, Backward Classes as well as 50% reservation for the Home Guards, for which certificates were required to be supplied to those candidates, who were seeking such reservation.

(ii) Respondent no.1 (original petitioner) applied for the post of Constable and in column-10 of the said application form, he had given details of his "identity card" of Home Guard, instead of "certificate" of Home Guard. This certificate of Home Guard is being given after the completion of training whereas, the respondent had never completed the said training of Home Guard and therefore, he had given only identity card which is normally being given to all the candidates, who are taking training for their entry purposes in the particular confined area where the training is going on and for such other allied purposes.

(iii) The respondent (original petitioner) misguided the State and played fraud with the State and instead of certificate of Home Guard he had given identity card. The advertisement was in Hindi Language. As per column-10 of the application form ^izek.k i=* of Home Guard was to be given whereas, the respondent has given identity card i.e. ^ifjp; i=* and has got appointment on the post of Constable under the reservation of 50%. Fraud vitiates the whole selection process of the respondent (original petitioner). It ought to be kept in mind that the State is taking work from honest hands as well as dishonest hands. Few may be honest and lethargic and few may be dishonest and enthusiastic. There may be combination of these types of officers with the State and therefore, the respondent got the appointment on the post of Constable though he had not completed the training of Home Guards and though he had no certificate of Home Guard.

(iv) As per Rule 663x of the Jharkhand Police Manual, enacted under Section 7 to be read with Section 12 of the Police Act, 1861, it is required that if any candidate is seeking 50% reservation for the post of Constable he may be ^izf"kf{kr* i.e. Trained Home Guard. The respondent, whose training of Home Guard completed on 15th March, 2004, has applied on 15th February, 2004 i.e. during course of the training and therefore, he was not entitled to the appointment under 50% of the reserved quota of Home Guards. This aspect of

the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

(v) In column-10 of the application form clearly word 'Certificate' has been used whereas, the respondent has given 'Identity card'. "Certificate" of Home Guard and "Identity card" are absolutely different from each other. Certificate of Home Guard is being given after successful completion of training, whereas, identity card is given before training for entry purposes, library purposes, if any, and such other allied purposes, but, certainly and admittedly, the respondent had no certificate of Home Guard as on the last date of his application i.e. on 15th February, 2004 and hence, the respondent has misguided the State. As per his application, he has wrongly availed the benefit of reservation. This aspect of the matter has not been properly appreciated by the learned Single Judge looking to paragraph no.9 onwards of the impugned judgment and order.

(vi) It is submitted by the counsel for the respondent that there is delay in taking action against the respondent by the State and the delay is of approximately 7 years and hence, Letters Patent Appeal may not be entertained by this Court. We are not accepting this contention of the respondent mainly for the reason that:

(a) the State is not a sole proprietorship type of concern. State is a very big concern and it always takes time in verification of the documents. It takes time to unearth, a fraud played by the employee.

(b) as stated herein above, the State is taking work from honest hands and dishonest hands. Few may be honest and lethargic and few may be dishonest and enthusiastic. There may be permutation and combination of these type of officers and therefore, when there is any cheating, fraud, misrepresentation and that too by documents, it takes time to unearth these types of fraud, cheating, misrepresentation etc. and therefore, there is bound to be a delay to bring on surface, the fraud, cheating or misrepresentation of similarly situated candidates, including the respondent. It always takes time by the State in verification of several documents. Sometimes intimation of fraud, cheating or misrepresentation are given by the other similarly situated candidates or sometimes information is supplied to the State by dissatisfied souls i.e. those who are not selected for the post of Constable. If the late information are supplied to the State then also it takes time to find out the correct facts about a candidate.

(c) there may be slightly lethargic approach on the part of the few officers of the State, but, that cannot be treated as premium to the dishonest respondent, who has supplied deliberately incorrect facts in writing and has mislead the sovereign body i.e. State of Jharkhand.

(d) when any employee is trying to get employment in a Police i.e. disciplinary force, he cannot be a dishonest in his behaviour with the State.

(f) fraud vitiates every proceedings and State is bound to take time to unearth the fraud.

-for the aforesaid reasons, we are not accepting the ground of delay as canvassed by the counsel for the respondent for initiating action against the respondent.

(vii) Looking to the procedure followed by the appellant-State there is no procedural laches in holding the departmental enquiry. Charge-sheet was given on 27th March, 2012 to the respondent, Enquiry Officer was appointed, adequate opportunity of being heard was given to the respondent and Enquiry Officer gave his report dated 30th August, 2012 (Annexure-6 to the memo of this LPA). Thereafter, 2nd show cause notice was given before taking decision upon the quantum of punishment and the disciplinary authority passed an order of dismissal of respondent dated 14th October, 2012 (Annexure-9 to the memo of this LPA) against which departmental appeal was preferred by the respondent, which was also dismissed by Deputy Inspector General, Kolhan Range, Chaibasa vide his order dated 7th April, 2013 (Annexure-11 to the memo of this LPA). Looking to the report given by the Enquiry Officer, it is based on evidence on record. It cannot be said that Enquiry Officer's report is baseless. There is no procedural lapse in holding the Enquiry. The enquiry conducted by the appellant-State is legal and valid.

(viii) Counsel appearing for the respondent has submitted that the list of witnesses was given by him for examination, but, the examination of these witnesses were not allowed by the Enquiry Officer. This ground is canvassed in the High Court for the first time, but, looking to the appeal memo before the departmental appellate proceeding i.e. before Deputy Inspector General, Kolhan Range, Chaibasa, this contention was never raised. The contention canvassed by the counsel for the respondent is fresh and novice and is also not supported by any documentary evidence. No document has been supplied by the respondent to the effect that such list of witnesses was given to the Enquiry Officer and it was received by the Enquiry Officer. Bare allegation has got no value in the eye of law unless the said document has been received by the Enquiry Officer. This plea was never taken before the appellate authority. Hence, this contention that no adequate opportunity of being heard was given to the respondent has no substance at all, on the contrary, adequate opportunity of being heard was given to the respondent-delinquent employee and even during appeal stage also before the Deputy Inspector General, Kolhan Range, Chaibasa further adequate opportunity of being heard was given. In fact, the whole case of the appellant is based upon documentary evidence which has been supplied by the respondent while preferring application for the post of Constable.

(ix) Once the departmental enquiry was held as legal and valid we have to verify the quantum of punishment.

(x) We are not sitting in an appeal against the conclusions arrived at by the

Enquiry Officer.

(xi) Looking to the nature of misconduct committed by the respondent the minimum punishment requires is dismissal which has been imposed by the appellate stage. The punishment of dismissal cannot be labelled as shockingly disproportionate nor it is unreasonably excessive. In fact this punishment is absolutely in consonance with the nature of misconduct proved against the respondent especially when the respondent is seeking employment in a disciplinary force i.e. police. Those who are playing fraud with the State or those, who are getting employment as a Constable by misrepresenting the facts and by giving false facts, after proving of those misconducts he has to be dismissed. Such type of Home Guards should go home.

(xii) Looking to Rule 663 of the Jharkhand Police Manual enacted under Section 7 to be read with Section 12 of the Police Act, 1861, there is a reservation of 50% of the total vacancy for the post of Constable, for those Home Guards who are trained.

The word "trained" i.e. [^]izf"kf{kr* was not mentioned in the advertisement dated 13th January, 2004, which is at Annexure-1 to the memo of this L.P.A. This may be an error on the part of the State. Nonetheless, the facts remains that the rule shall prevail over the advertisement. The rule is binding to everyone especially those who are seeking reservation for Home Guards for the post of Constable. If the respondent is seeking reservation and that too 50% of the total posts of vacancy then he had to be Trained Home Guards and as stated herein above as on the last date of his application dated 15th February, 2004 admittedly, the respondent was taking training and it was completed on 15th March, 2004 and therefore, he cannot get the benefit of 50% reservation of Home Guard, but, by misguiding the State by giving false facts to the effect that he has given his ifjp; i= instead of izek.k i= of Home Guard, he got appointment on the post of Constable under reserve quota. As stated herein above, always the State takes time to bring on surface the fraud, misrepresentation, cheating, conspiracy etc., but, that does not mean that delay is always fatal to the State and merely because after sometimes someone is summoned by the State, such a dishonest candidate should be continued in the services of the State and that too as a Constable. This aspect of the matter has not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

(xiii) It has been held by Hon''ble Supreme in the case of Malik Mazhar Sultan & Anr. v. U.P. Public Service Commission & others reported in (2006) 9 SCC 507 para 21 thereof reads as under:

"21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 172001 and 172002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service

can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.

(Emphasis supplied)

In view of the aforesaid decision, Rule 663 of the Jharkhand Police Manual was prevailing upon the advertisement and even though in advertisement, word "Trained Home Guard" is not mentioned, but, it is already mentioned in Rule 663 x (12), that those who are Trained Home Guard can claim 50% reservation of the total vacant posts of Constable.

(xiv) In advertisement only the "Home Guard" word is mentioned and therefore, the respondent has referred a definition under Section 2(a) of Jharkhand Home Guards Act, 2005. We are not accepting this argument canvassed by the counsel for the respondent mainly for the reason that Jharkhand Home Guards Act, 2005 brought into force after the application was preferred by the respondent for the post in question. Secondly, anybody can apply, those who are fulfilling criteria of eligibility for the post of Constable, but, if any candidate, who is claiming 50% reservation for the post of Constable as a Home Guard then as per Rule 663(x) (12) of Jharkhand Police Manual, the said candidate has to be Trained Home Guard and those, who are not Trained Home Guard can also apply for the post in question, but, they will be treated as a General Category Candidates. In the facts of the present case, the respondent was appointed in the reserve category of 50% for Home Guards and hence, he was wrongly appointed on the post of Constable because of his own wrongful facts given to the State. This aspect of the matter has not been properly appreciated by the learned Single Judge while allowing the writ petition being W.P.(S) No. 3277 of 2013 vide order dated 13th November, 2013 and hence, the said judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

(xv) It has been held by Hon'ble Supreme in the case of State of Chhattisgarh & others v. Dhirjo Kumar Sengar reported in (2009) 13 SCC 600 para 17, 18, 19 and 21 thereof read as under:

"17. It is in the aforementioned premise, the contention in regard to the breach of audi alteram partem doctrine must be considered. The principle of natural justice although is required to be complied with, it, as is well known, has exceptions (See Banaras Hindu University v. Shrikant.). One of the exceptions has also been laid down in S.L. Kapoor v. Jagmohan wherein it was held: (SCC p. 395, para 24)

"24.In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had

been observed. The nonobservance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs."

(emphasis supplied)

18. Legality of grant of a valid appointment was dependent upon the proof that the respondent was the adopted son of Chittaranjan Singh Sengar. He not only failed to do so, the materials brought on record by the parties would clearly suggest otherwise. His application for grant of appointment on compassionate ground was rejected by the Joint Director of Education. He did not question the legality or validity thereof. He, it can safely be said, by suppressing the said fact obtained the offer of appointment from an authority which was lower in rank than the Joint Director viz. the Deputy Director. When such a fact was brought to the notice of the Deputy Director that the offer of appointment had been obtained as a result of fraud practised on the Department, he could, in our opinion, cancel the same.

19. The respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with.

21. In these cases, requirement to comply with the principles of natural justice has been emphasised. The legal principles carved out therein are unexceptional. But, in this case, we are concerned with a case of fraud. Fraud, as is well known, vitiates all solemn acts. (See *Ram Chandra Singh v. Savitri Devi*, *Tanna & Modi v. CIT* and *Rani Aloka Dudhoria v. Goutam Dudhoria*.) The High Court, therefore, must be held to have committed a serious error in passing the impugned judgment.

(Emphasis supplied)

In view of the aforesaid decision, no prejudice has been caused to the respondent because appeal was also preferred by the respondent and he was given adequate opportunity of being heard.

(xvi) It has been held by Hon^{ble} Supreme in the case of *Commandant, 22nd Battalion, Central Reserve Police Force, Srinagar, C/o 56/APO & others v. Surinder Kumar* reported in (2011) 10 SCC 244 para-11 to 14 thereof read as under:

"11. Section 12(1) of the Act provides that every person sentenced under this

Act to imprisonment may be dismissed from CRPF. The word "may" in Section 12(1) of the Act confers a discretion on the competent authority whether or not to dismiss a member of CRPF from service pursuant to a sentence of imprisonment under the Act and while exercising the discretion, the competent authority has to consider various relevant factors including the nature of the offence for which he has been sentenced to imprisonment.

12. In the present case, the acts of indiscipline of the respondent which have been established beyond doubt by the Assistant Commandant-cum-Magistrate are that the respondent left his party without permission while on duty in the operational area for 20 minutes and returned on his own and he got enraged when H.N. Singh, Assistant Commandant, decided to take him for medical examination when he found him to be in a state of intoxication and he snatched the AK47 rifle of H.N. Singh and pointed the barrel towards him and due to the intervention of Lachhi Ram, Assistant Commandant, an untoward incident was avoided. These acts of indiscipline were obviously prejudicial to the good order and discipline and when committed by a member of a disciplined force like CRPF were serious enough to warrant dismissal from service.

13. The Division Bench of the High Court has taken a view in the impugned order that as the respondent has been punished for imprisonment for a less heinous offence and only till the rising of the court, the punishment of dismissal was disproportionate. The Division Bench of the High Court failed to appreciate that for less heinous offences enumerated in Section 10 of the Act, a person was liable for punishment with imprisonment and under Section 12(1) of the Act every person sentenced under the Act to imprisonment was liable to be dismissed from CRPF. In other words, the legislative intent was that once a member of CRPF was sentenced to imprisonment under the Act, he was also liable for dismissal from service.

14. The Division Bench of the High Court, in our considered opinion, should have looked into the acts of indiscipline proved against the respondent for which he has been sentenced to imprisonment and then decided whether the dismissal of the respondent from service was disproportionate to the gravity of acts of indiscipline. As we have already held, the acts of indiscipline for which the respondent had been sentenced to imprisonment were serious and grave for a disciplined force. Therefore, the competent authority was right in imposing the punishment of dismissal from service.

(Emphasis supplied)

6. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we hereby, quash and set aside the judgment and order, passed by the learned Single Judge in W.P.(S) No. 3277 of 2013 dated 13th November, 2013. This Letters Patent Appeal is allowed and disposed of. All interlocutory applications are also disposed of, in view of the final order passed in the Letters Patent Appeal.