



2026:DHC:1515-08



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision : 20.02.2026*
+ W.P.(C) 10380/2019
ASHOK KUMAR UPADHAYAPetitioner
Through: Mr. Himanshu Gautam, Adv.
versus
UNION OF INDIA AND ORS.Respondents
Through: Mr. Shekhar Kumar, SPC, UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO , J. (ORAL)

1. This petition has been filed with the following prayers:

- a. Issue a writ, order or direction in the nature of certiorari quashing/setting aside the impugned orders dated 21.08.2017 and 24.01.2019 passed by the Respondents*
- b. Issue a writ, order or direction in the nature of Mandamus declaring the disciplinary proceedings and consequential orders non-est in the eyes of law.*
- c. Issue a writ, order or direction in the nature of mandamus directing the Respondents to reinstate the Petitioner along-with all consequential benefits and emoluments.*
- d. Issue a writ order or direction in the nature of Mandamus directing the Respondents to dispose of my statutory representation dt. 17.08.2019 in accordance with law*
- e. Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. In effect the submission of Mr. Himanshu Gautam, learned counsel for the petitioner, is by drawing our attention to Annexure P-11 (at printed page 205), which is an order passed by the High Court of Jharkhand at Ranchi in the petition W.P.(S) No. 897/2006 filed by the petitioner against



the dismissal order dated 21.04.2003 which was dismissed by the High Court. The relevant paragraph nos. 8, 9 and 10 read as under:

“8. In view of the reasons stated in the foregoing paragraphs, the impugned order of punishment dated 21.04.2003 being confirmed by the appellate authority and the revisional authority vide orders dated 16.08.2003 and 10.05.2004 respectively, do not warrant any interference of this Court.

9. Accordingly, the writ petition sans merit is dismissed.

10. However, dismissal of the writ application shall not preclude the respondent authority to consider the representation of the petitioner dated 06.01.2006, alongwith enclosed photocopy of the judgment dated 17.11.2005 passed in S.T.No.666 of 2000, to pass an order in accordance with law, if not already passed.”

3. Suffice to state that the petitioner had taken the said order in an intra court appeal being LPA No. 378/2017 before the Division Bench. One of the submission on behalf of the petitioner was also that the petitioner having been acquitted by the Criminal Court is entitled to reinstatement.

4. The said plea was rejected by the Division Bench of the High Court vide order dated 12.03.2018. The relevant paragraph (viii) reads as under:

“VIII. Much has been argued by the counsel for the appellant that there is honourable acquittal in Sessions Case No.666 of 2000, and hence, order of dismissal passed by the disciplinary authority dated 21.04.2003, deserves to be quashed and set aside. We are not accepting this contention mainly for the reasons that:-

(a) charges on civil side and charges on criminal side are totally different. On criminal side the charge is under Section 307 of the Indian Penal Code, whereas, on civil side in departmental proceedings, the Charge is that the delinquent has committed gross misconduct, there is gross-indiscipline, there is gross-dereliction in performance of duty.

(b) standard of proof on criminal side is much strict,



i.e., offence ought to be proved beyond reasonable doubt, whereas on civil side in departmental proceeding, charges can be proved on the basis of preponderance of probabilities:

(c) we have perused the acquittal order passed in Sessions Case No. 666 of 2000. PW-1 PW-8, PW-9 and PW-10, have not supported the case of the prosecution. Thus, there is no honourable acquittal of this appellant-delinquent. Moreover, the 1st Additional Sessions Judge, Nalanda, has also observed that as there is no injury, there is no offence under Section 307 of the Indian Penal Code. This is the misconception of law in the mind of the 1st Additional Sessions Judge. Perhaps, there is total departure from the basic criminal jurisprudence. State has not preferred appeal. This is how the accused are enjoying the order of acquittal.

(d) The disciplinary authority's order dated 21.04.2003 is absolutely based on the Enquiry Officer's report wherein several witnesses have been examined. Adequate opportunity of being heard was given to the delinquent. The appeal and revision both were later on dismissed.

5. We find that the petitioner had approached the Supreme Court, challenging the order of the Division Bench, which also dismissed the SLP (C) diary no. 29194/2018 filed by the petitioner.

6. Mr. Gautam, by drawing our attention to paragraph 10 of the order of the learned Single Judge, wherein the learned Judge had made an observation about the filing of a representation, contends that pursuant thereto the petitioner had made a representation to the respondents which was rejected by the respondents vide order dated 21.08.2017.

7. According to him the rejection of the appeal by the Division Bench is clearly illegal inasmuch as the Division Bench has not looked into the fact



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that there was no evidence against the petitioner to prove the charges as were framed against the petitioner. More so, it is also his submission that when the criminal Court had rejected the case of the petitioner on identical foundational facts, the dismissal order issued by the authorities is liable to be set aside.

8. In fact, we find that in pursuance to the order of the learned Single Judge, the petitioner had made a representation to the authorities which was decided vide the impugned order dated 21.08.2017.

9. It is thereafter, only that the Division Bench has rejected his intra Court appeal vide order dated 12.03.2018. In other words, the order dated 21.08.2017 was in existence when the Division Bench had considered the appeal filed by petitioner against the order of the learned Single Judge dated 16.05.2017.

10. It must be said that the plea now sought to be urged by Mr. Gautam, has been urged and decided by the Division Bench in the intra court appeal being LPA No. 378/2017.

11. In view of the fact that the present petition is on the same cause of action which has been heard and decided by the Division Bench of the High Court of Jharkhand, and the appeal therefrom has been dismissed by the Supreme Court, the present petition is not maintainable and is accordingly dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 20, 2026/msh