



2026:AHC-LKO:3

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

AFR

WRIT - A No. - 9297 of 2023

Emp No. 50408115448 Prahalad

.....Petitioner(s)

Versus

Union Of India Thru. Secy. Ministry Of Railway
New Delhi And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Pradeep Kumar
Counsel for Respondent(s)	:	A.S.G.I.

**Reserved on 06.10.2025
Delivered on 05.01.2026**

Court No. - 27

HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

1. Heard learned counsel for the petitioner and learned Additional Solicitor General of India for the opposite parties/ Union of India and perused the record.

2. By means of instant writ petition under Article 226 of the Constitution of India, the petitioner has sought the following relief:-

"(i) Issue a directions, order or writ in the nature of CERTIORARI thereby set-aside/quash the letter/order dated 03.04.2023, which is being annexed as Annexure No.-1 to this Writ Petition.

(ii) Issue a writ, order or directions in the nature of MANDAMUS commanding the opposite party concerned to grant the benefit of MACP-I and MACP-II to the applicant in view of order dated पी/लख/254/ एमएसीपी/10 dated 14.12.2010 since 01.09.2006 (issued by opposite party No.-2) and order dated पी/लख/254/ एमएसीपी/18/2046 dated 24.01.2019 (issued by opposite party no.-2)."

3. Learned counsel for the petitioner submits that the petitioner was

initially appointed in the security department in the North-Eastern Railway Lucknow Division, Lucknow, on 27/11/1983, and after rendering 39 years, 7 months, and 3 days of service, he got superannuated on 30/06/2023. After superannuation, the petitioner's Pension Payment Order was issued, a copy of which has been filed as Annexure No. 3 to the petition. The petitioner completed all assignments entrusted to him by his superior authorities with full devotion and dedication. During his service period, the petitioner was falsely implicated in Case No. 268 of 1993, under section 3 of the R.P.(UP) Act at Police Station RPF (MG) District-Gonda, which was registered as State versus Ram Raksha and others. However, after due adjudication, the learned Additional Chief Judicial Magistrate, Railway, Gonda, finally decided the said criminal case on 10/08/2001, whereby the petitioner was acquitted in the said case. A copy of the judgment of the trial court dated 10/08/2001 has been filed as Annexure No. 4 to the petition. The service record of the petitioner was throughout blameless, except in the said case in which he was falsely implicated.

4. Learned counsel for the petitioner submits that vide letter no. पी/लख/254/एमएसीपी/4/23 dated 03.04.2023 passed by respondent no.-2, the benefit of MACPS (First MACP since Dated 16.11.2012 and Second MACP since Dated 16.11.2022) had been reduced in the Level 04 @ Rs. 2400/- and in the Level 05 @ Rs. 2800/- respectively.

5. Learned counsel for the petitioner has also submitted that after thorough perusal of the said letter, petitioner found vide order dated पी/लख/254/एमएसीपी/10 dated 14.12.2010 since 01.09.2006, petitioner had been granted MACP-I on attaining the service period of 20 years and vide order dated पी/लख/254/ एमएसीपी/18/2046 dated 24.01.2019 issued by opposite party no.-02, petitioner had been granted MACP-II @ Rs. 4200/- on attaining the service period of 30 years since 24.01.2019 but pursuant to suspension period of 10 years 11 months and 09 days and effect of order dated 01.03.2004 to stop the payments for 05 years, his both of MACPS benefits had been cancelled vide letter/order dated 03.04.2023 and he had been granted the MACPS benefits in the reduced pay level, which is illegal and arbitrary in manner.

6. He next submitted that due to a reduction in pay scale of benefits of MACP-1 and MACP-II, the petitioner is suffering from financial hardship and he has been deprived off from the benefits of the same despite of proving him not guilty in the criminal case which was the basis of the reduction of his MACP benefits.

7. He further submits that in view of the litigation in pay scale, MACP I and MACP-II, the petitioner's benefits have already been affected, which is a gross violation of Section 300A of the Constitution of India. Once he has been acquitted of all the criminal charges by the trial court, the question of his suspension is not sustainable.

8. He next submitted that the acquittal order in criminal case was passed on 10/08/2001, but afterwards, the respondents deliberately resumed the departmental inquiry and appointed an inquiry officer on 05/11/2002, and accordingly, the impugned order was passed on 01/03/2004, which was passed in the following manner:-

'रेसुब अधिनियम 1987 की सूची 111 में प्रदत्त अनुशासनिक अधिकारों को प्रयोग करते हुए श्री प्रहलाद की वार्षिक वेतनवृद्धि पांच वर्ष के लिए स्थायी रूप (डब्ल्यू०आई०पी०) संची प्रभाव से रोकने के दंड से दंडित करता हूं। इस आदेश के विरुद्ध अपील तीस दिन के अन्दर मंसुआ / लखनऊ को किया जा सकता है। इनकी निलम्बन अवधि दि. 17.7.92 से 06.7.2002 की समयावधि का नियमन निलम्बन में नियमित किया जाता हैं। "

9. He also submits that while passing the aforesaid order dated 01/03/2004 same set of facts and evidence were taken in the departmental proceedings, which were already taken in a criminal proceeding and there is no difference between the two. Hence, after acquittal of the petitioner of the criminal charges, continuing the departmental inquiry and awarding punishment therein against the petitioner is totally illegal, unjust, and arbitrary. Moreover, the order dated 3/4/2023 was passed in the aforesaid matter on the verge of the petitioner's retirement/ superannuation, i.e. 30/06/2023, wherein the effect of the order dated 1/3/2004 has been applied retrospectively, which is as under:-

शुद्धि-पत्र

वरि० मंडल सुरक्षा आयुक्त / रेसुब / कार्यालय / लखनऊ के कार्यालय आदेश : संख्या पी/लख / 254/ एमएसीपी / 10 दिनांक 11.12.2010 के द्वारा 20 वर्ष सेवा पूर्ण करने की सूची के क्रमांक 08 पर अंकित श्री प्रहलाद, कान्सटेबिल / रेसुब / बादशाहनगर वर्तमान हे०कां० गोंडा को दिनांक 01.09.2008 से एमएसीपी का लाभ तथा इस कार्यालय के कार्यालय आदेश संख्या पी/लख/254/ एमएसीपी /18/2046, दिनांक 24.01.2019 के द्वारा 30 वर्ष की सेवा पूर्ण होने पर दिनांक 22.11.2014 से 4200/- एमएसीपी का लाभ दिया गया था।परन्तु उक्त कर्मचारी की निलम्बन अवधि 10 वर्ष 11 माह 09 दिन निलम्बन में नियमित हुई है तथा 05 वर्ष स्थाई रूप से वेतनवृद्धि रोकने के दंड का आदेश दिनांक 01.03.2004 को प्रभावी करते हुए इन्हे उक्त दिये गये दोनो एमएसीपी के लाभ को निरस्त करते हुए इन्हे निम्न प्रकार एमएसीपी का लाभ दिया जाता है:--

1- प्रथम एमएसीपी दिनांक 16.11.2012 लेवल-04 में रु. 2400/-

2- द्वितीय एमएसीपी दिनांक 16.11.2022 लेवल-05 में रु. 2800/- "

10. Due to the effect of said order dated 3/4/2023, the benefit of MACP (first ACP on 16/11/2012, and second ACP on 16/11/2022), which was provided to him, had been reduced to Lavel-4 and Lavel-5 to the tune of Rs.2400 and Rs. 2800 respectively, without any statutory authority like rules, object, or regulations. Thus, the petitioner has been deprived of all financial benefits and terminal benefits in an illegal manner.

11. Learned Counsel for the petitioner lastly submitted that while passing the impugned order dated 3/4/2023, the respondent has not mentioned any rules/regulations/ statutory provisions under which the effect of the order dated 1/3/2004 has been applied retrospectively and on this ground alone the petition deserves to be allowed. The respondents have not clarified in the counter affidavit that if the punishment order was passed on 1/3/2004, then why the effect of the same has been given after 19 years, that too, when the petitioner was on the verge of superannuation and only two months were left of his retirement, which clearly shows that the impugned order was passed with ulterior motive and only to harass the petitioner with a view to deprive him of terminal benefits owing to his superannuation. Hence, if the said punishment order dated 1/3/2004 will be effected, then the respondent can deduct an amount accordingly which is illegal and arbitrary in manner.

12. Learned Counsel for the petitioner has placed reliance on the judgments of the Apex Court passed in Civil Appeal No.5848-49 of

2014 in **Dev Prakash versus State of U.P. Cooperative Institutional Services Board**, decided on 30.06.2014 and in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another** passed in Civil Appeal No.1906 of 1999 decided on 30.03.1999 and the judgement of this Court in the case of **Prem Kumar Tripathi Vs. The State of U.P. and another** [Natural Citation No. 2024:AHC 47778], **Ram Lal Vs. State of Rajasthan and others**, Civil Appeal No. 7935 of 2023 (S.C.)

13. Per contra, Learned Counsel for the respondents/ Union of India has placed reliance on the counter affidavit and submitted that upon completion of 30 years of service, the petitioner was given the benefit of the Modified Accumulated Career Progression Scheme (MACP) on grade pay of Rs. 4200/-, however, vide order dated 1/3/2004, the benefit of regularization of service of the petitioner for suspension period of 10 years, 11 months, and 9 days were regularized and a direction was issued to withhold the increment in pay scale for five years and the benefit of MACP given to him previously was also cancelled, which is in accordance to law and there is no infirmity in the same. During the service period of the petitioner, a case under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 was registered against the petitioner in which the petitioner was tried in Crime No.03 of 1992, Case No. 268 of 1993 by the Additional Chief Judicial Magistrate, Railways, Gonda, along with co-accused, in which petitioner was acquitted on giving him the benefit of doubt . In that case , Railways Protection Force,Gonda had filed a complaint against the petitioner, Ram Raksha and after conducting the investigation, FIR was lodged against the petitioner at Police-Station RPF (MG) District- Gonda vide Case crime no. 03 of 1992. During investigation, charge against the petitioner was found true and as such, a departmental inquiry was initiated against him by the Assistant Security Commissioner (RPF), Gonda under Rule 153 of the Railway Security Force Rules, 1987 and the charge sheet was issued against him. However, the inquiry proceedings remained stayed till the conclusion of the trial by the court vide the judgment dated 10/8/2001. The inquiry officer in departmental proceedings against the petitioner found that the charges were proved against the petitioner as such by his report dated 1/1/2004. The inquiry officer submitted his report to the

Assistant Security Commissioner (RPF) Lucknow, who, after examining the inquiry report vide order dated 1/3/2004 awarded punishment to the petitioner for withholding annual increments for five years in pay/salary with cumulative effect. The petitioner preferred a departmental appeal against the order dated 1/3/2004 before Senior Divisional Security Commissioner, Railways Protection Force, Lucknow which was dismissed by the appellate authority by the order dated 2/11/2004. Copies of the orders are annexed with the counter affidavit.

14. He lastly submitted that the acquittal of the petitioner was passed by the competent court by giving him the benefit of doubt, puts no restriction or embargo in conducting the departmental inquiry against a delinquent employee under the direction of the competent authority. In the case of the petitioner also, the competent authority exercising the power granted under Scheduled III of R.P.F. Rules 1987, awarded punishment to the petitioner as his guilt was found to be proved in the inquiry conducted by the inquiry officer. The Railway Protection Force is a disciplined armed force in which highest discipline is required to be maintained by its officials. The acquittal of the petitioner in criminal trial was not honorably, but by giving him benefit of doubt.

15. From the perusal of the record, it reveals that the petitioner was initially appointed in the Railway Protection Force, North Eastern Railways, Lucknow Division, Lucknow, on November 27, 1983, and superannuated on June 30, 2023. After superannuation, Pension Payment Order was issued to the petitioner on July 3, 2023. For the purpose of pension, his pay-band was mentioned as Level-V, and basic pay plus grade pay was computed Rs.38,100/-. The service period is shown as November 23, 1983, to June 30, 2023. It appears that a criminal case was registered against the petitioner vide Criminal Case Number 3 of 1992, under Section 3 of the R.P.(UP) Act at Police Station RPF (MG) District-Gonda in relation to an incident dated July 17, 1992. Co-accused Head Constable Ram Raksha, R.P.F./OP CDR Yard, told the RPF officials that on the night of July 16, 1992, he along with constable Prahlad (petitioner) had stolen one tin of mustard oil by each containing 15 kg. of mustered oil in each tin from a wagon standing in the Marshaling Yard. Two tins of mustard oil, which were recovered from the Government

Quarter of Ram Raksha and stolen property were sealed in the presence of witnesses of the railway protection force officials. A complaint was lodged by the RPF officials against accused Ram Raksha and Prahlad (petitioner) under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. During trial, as many as 13 witnesses were produced in support of the charges leveled against both the accused persons. The learned trial court, after appreciating the evidence adduced by the prosecution and considering the statements of the accused persons under Section 313 of the Cr.P.C. raised suspicion on the entire prosecution version and observed that both the accused were falsely implicated by the witnesses due to prior enmity. Neither the sender of the goods nor the receiver had lodged any complaint for shortage of consignment. The charges leveled against the accused could not be proved beyond doubt, and therefore, they were entitled to the benefit of the doubt. With the above findings, the learned trial court acquitted both the accused, Ram Raksha and Prahlad (petitioner) from the said charges vide judgment and order dated August 10, 2001.

16. It appears that no appeal was preferred by the Union of India against the said acquittal. After lodging of the criminal case against the petitioner, a departmental inquiry was instituted against the petitioner but later on, it was kept in abeyance in view of the pendency of the criminal case in the same matter. After the judgment of acquittal, the inquiry was resumed by the railways. After nominating Sri Umesh Singh, Inspector, Railway Protection Force, Lucknow City on 05/11/2002, who submitted an inquiry report on 01/01/2004. The petitioner filed his representation against the inquiry report on 25/01/2004, which was rejected by the disciplinary authority. In the disciplinary inquiry, it was found that a total 1188 tins of mustard oil were being transported in a railway wagon. A shortage of two tins was detected. Two tins of mustard oil were recovered from the residence of Head Constable Ram Raksha on the pointing out of both employees, Ram Raksha and Prahlad bore the same marka and print the brand name which were shown in the consignment of 1188 tins of mustard oil. During the inquiry, Head Constable Shri NK Yadav, Inspector In-charge, Head Constable Shri Navel Kishore Singh, Constable Bachha Ji Shah, Constable Ram Kripal Singh, and Inspector Sri

S.P. Mishra supported the departmental case and deposed against the delinquent constable, Prahlad (petitioner).

17. The disciplinary authority/ Assistant Security Commissioner, Railway Protection Force, Lucknow, after considering the inquiry report found that Constable Prahlad was guilty of the serious charge of committing theft of railway property and exercising the disciplinary powers vested with him under Railway Protection Force Act, 1987 of Schedule (I) awarded a punishment of withholding annual increments for 5 years with cumulative effect and his suspension period from 17/07/1992 to 06/07/2002 was regularized. The petitioner filed a departmental appeal before the Senior Divisional Security Commissioner, Railway Protection Force, Lucknow, which was dismissed on 02.11.2004, and the punishment given by the disciplinary authority was affirmed. The disciplinary appellate authority had not given the benefit of acquittal of the petitioner by the criminal court in the matter on the ground that he was acquitted by giving the benefit of the doubt. The petitioner was granted MACP-I on 04/01/2010, with effect from 01/09/2006 on completing 20 years of service, and MACP-II on 24/01/2019, completing 30 years of service on the grade pay of Rs.4200/-. However, pursuant to a suspension period of 10 years, 11 months, and 9 days and in view of a punishment order dated 01/03/2004, both of his MACP's benefits were cancelled by letter/order dated 03/04/2023. He has been granted MACP's benefits in reduced pay level by a corrigendum letter dated 03/04/2023 issued by the Senior Security Commissioner, Railway Protection Force, Lucknow as cited above. The petitioner has filed the present petition against the said corrigendum letter dated 03/04/2023.

18. On perusal of the inquiry report as well as the judgment of acquittal passed by the Additional Chief Judicial Magistrate, Railway Gonda, it appears that the main witnesses in the disciplinary proceedings, Inspector In-charge Shri N.K. Yadav, Head Constable Naval Kishore Singh, Constable Bachha Ji Sahah, and Inspector S.P. Mishra, were common witnesses in both the criminal as well as departmental proceedings. Therefore, in a nutshell, it is found that criminal proceedings, as well as departmental proceedings were initiated against the petitioner but later on the departmental proceedings were kept in abeyance due to the

pendency of the criminal case in regard to the same charges. After acquittal of the petitioner from the criminal charges in the year 2001, departmental proceedings were resumed in the year 2002 which culminated against the petitioner and he was found guilty of misconduct and he was awarded the major punishment of withholding annual increment for 5 years with cumulative effect. Subsequently, prior to two months of the petitioner's retirement, the impugned corrigendum letter was issued by the competent authority on 03/04/2023 with regard to the same misconduct, his two MACPs granted in the year 2010 and 2019 which were granted to him after the finality of his punishment in departmental proceedings in the year 2004 were cancelled.

19. In some of the case law cited by learned counsel for the petitioner on behalf of the petitioner, the legal proposition is reiterated that in the absence of a specific rules/ provisions, no departmental proceedings can be continued against an employee, nor any deduction can be made from his retirement benefits, once he retires from service while the departmental inquiry is pending against him.

20. Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble the Supreme Court in the case of **G.M. Tank vs. State of Gujarat and another**, (2006) 5 SCC 446, decided on 10/5/2006. In that case, the accused was charged under Section 5(1)(e) of the Prevention of Corruption Act, with allegations that the appellant having been found in possession of disproportionate assets. Learned Special Judge had acquitted the appellant of the said charge, holding that the prosecution had failed to prove the charge leveled against the appellant and thus the appellant could not be held guilty of the said offense. This acquittal was by way of complete exoneration and not by giving the benefit of doubt. The respondents had not challenged the order passed by the learned Special Judge acquitting the appellant before any forum, and therefore, the order passed by the learned Special Judge had reached its finality and become a final conclusion. He joined the service in the year 1983 as an Overseer. A departmental inquiry was ordered against him as the movable and immovable properties of the appellant were disproportionate to his known source of income. A departmental inquiry was ordered, and as per

the inquiry report dated 31/3/1980, the appellant was found guilty of the charges. The respondent, by order dated 21/10/1982, passed an order of dismissal from service as punishment. Against the said dismissal order, the appellant filed a writ petition before the High Court. The Learned Single Judge had come to the conclusion that there was sufficient evidence against the appellant and dismissed the petition. Against the order of the learned Single Judge, the appellant preferred an LPA and raised the relevant contentions. The Division Bench dismissed the LPA by confirming the order passed by Learned Single Judge. The said decision was challenged before Hon'ble the Supreme Court by filing special leave petition. The Supreme Court had set aside the judgment and order passed by the Learned Single Judge as well as the judgment and order passed in LPA by the Division Bench, and held that as the appellant had retired, therefore, we deemed it proper to set aside the order of dismissal without back wages. The Apex Court has observed as follows:-

"In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

21. Learned counsel for the petitioner has also placed reliance on another judgment of the Apex Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines and another**, AIR 1999 SC 1416. In the aforesaid case, Hon'ble Apex Court considered the question "whether departmental proceedings and proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously?" The Hon'ble Supreme Court held that it is a question which crops up perennially earlier in service matter and held that once again arisen in this

case. Appellant was appointed as Security Officer in a Government undertaking by Kolar Gold Field at Karnataka on 31/10/1983. On 2/6/1985, a raid was conducted by the Superintendent of Police at the house of the appellant from where some gold items were recovered, therefore, on the same day an FIR was lodged at the police station and the criminal case was registered against him, who was placed under suspension on 3/6/1985. The next day i.e. 4/6/1985, a chargesheet was issued, proposing a regular departmental inquiry with regard to the recovery of the said articles from his house. In reply to the chargesheet, he prayed by way of representation that the departmental proceedings initiated against him, may be dropped till conclusion of the criminal proceedings on the basis of the FIR lodged against him at the police station. His representation was rejected on 19/6/1985. The disciplinary authority, on the basis of the inquiry report, dismissed the appellant from service by order dated 7/6/1985. On 03/02/1987, the judgment in the criminal case was pronounced, and the appellant was acquitted with categorical findings that the prosecution had failed to establish its case. This judgment was communicated by the appellant to the respondents on 12/09/1987 with the request that he may be reinstated, but the respondents by a later dated 03/03/1987, rejected the request of the appellant on the ground that he had already been dismissed from service upon completion of a departmental inquiry which was conducted independently in the criminal case and therefore, the judgment passed by the Magistrate is of no consequence. The order of dismissal passed by the respondents was challenged in a departmental appeal which was rejected by the appellate authority on 22-7-1987. The appellant filed a writ petition before the High Court, which was allowed by the Learned Single Judge with the finding that the departmental proceedings and the criminal proceedings, being based on the same set of facts, the departmental proceedings should have been stayed till the result of the criminal case. Since in the criminal case, the appellant had already been acquitted, and the prosecution's case was not found established, the respondents could not legally refuse reinstatement or consequent wages to the appellant, while directing the reinstatement of the appellant. The High Court gave liberty to the respondents to initiate fresh proceedings against the appellant after perusing the judgment passed in the criminal case. This

judgment was, however, set aside by Division Bench in a Letter Patent Appeal filed by the respondents. This judgment came in Appeal before the Supreme Court. Hon'ble the Supreme Court, for the reasons cited in the judgment, allowed the appeal and set aside the impugned judgment passed by the Division Bench of the High Court and upheld the judgment of the learned Single Judge, in- so- far as it related to purported to allow the writ petition. However, the Apex Court quashed the liberty granted to the respondents by the Learned Single Judge to initiate a fresh disciplinary proceedings against the appellant. In the peculiar circumstances of the case, especially having regard the facts that the appellant is undergoing this agony since 1985, despite having been acquitted by the criminal court in the year 1987. The Apex Court directed the reinstatement of the appellant forthwith on the post of Security Officer with all allowances from the date of suspension till his reinstatement within three months.

22. Hon'ble the Supreme Court cited its earlier judgment in the case of **Deputy Manager, Andhra Pradesh State Road Transport Corporation versus Yusuf Miyan**, 1997 (2) SCC 699, wherein it was held that there is no bar in proceeding simultaneously with the departmental proceedings and the trial of the criminal case unless the charge in the criminal case is of a grave nature involving complicated question of facts and law, if the departmental proceedings and criminal cases are based on identical and similar sets of facts and the charge in the criminal case against the delinquent employee is of a grave nature, which involves a complicated question of law and fact, it would be desirable to stay the departmental proceedings during the conclusion of the criminal case. Whether nature of charge in a criminal case is grave, and whether complicated questions of fact and law are involved in the case will depend upon the nature of offence, nature of case launched against an employee on the basis of evidence and material collected during the investigation or reflected in the charge sheet.

23. The Supreme Court in the case of **Capt. M. Paul Antony** (supra), has already pointed out earlier that the criminal case and also a departmental proceeding were based on an identical set of facts, namely" the raid and conduct at the appellant's residence and the recovery of

incriminating articles therefrom." The findings recorded by the inquiry officer, a copy of which has been placed before us, indicates that the charges framed against the appellant were sought to be proved by the police officer and punch witnesses who had conducted raid at the house of the appellant and had affected the recovery. The inquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, after considering all the evidence, came to the conclusion that no search was ever conducted nor any recovery was made at the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In these situation, therefore, where the appellant has been acquitted by a judicial pronouncement, with the findings that the raid and recovery at the residence of the appellant were not proved, it would be unjust, unfair, and apprehensive to allow the findings recorded in an ex-parte departmental proceedings to stand, since the fact and evidence in both proceedings, namely, the departmental proceedings and the criminal case, were the same without there being an iota of difference the distinction, which is usually drawn as witnesses in departmental proceedings and the criminal case, the burden of proof would not be applicable to the instant case.

24. In **Ram Lal Vs. State of Rajasthan and others**, Civil Appeal No.7935 of 2023, Hon'ble Supreme Court in a reported judgment dated 04.12.2023 observed that the appellant was an Constable with the Rajasthan Armed Constabulary, 9th Battalion, Jodhpur. He was appointed on 15.12.1991. A FIR was lodged on 02.09.2022 against him under Sections 420,467,468 and 471 IPC . Soon thereafter on 02.04.2003, a charge-sheet in a departmental enquiry was also issued. The charges against the appellant that he had altered his date of birth in his 8th standard mark-sheet so as to project himself as having attained majority at the time of the recruitment. The disciplinary authority, by an order dated 31.03.2004 dismissed the appellant from service.. The appellate authority also dismissed the appeal. Attempts to have the order reviewed and the penalty reconsidered were also in vain. At the criminal trial, the trial court convicted the appellant for the offence under Section 420 IPC and sentenced him to undergo for the same . However, learned Additional

District & Session Judge, Jodhpur in appeal acquitted the appellant. The appellant, thereafter, represented for his reinstatement. Subsequently, he filed a writ petition for quashing the dismissal order. Learned Single Judge dismissed the writ petition by holding that the standard of proof in a criminal proceeding and departmental proceeding is different. He found no infirmity in the order of the disciplinary authority. The writ appeal filed by the appellant was also dismissed by the High Court. Hon'ble the Apex Court framed two questions for consideration;

- (a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified ?
- (b) On the facts of the case, what is the effect of the acquittal, ordered by the appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry ?.

Hon'ble the Supreme Court answered the question no.1 in affirmative and hold we are satisfied that the disciplinary proceedings are vitiated and deserves to be quashed. In answer of question no.2 Hon'ble Supreme Court observed that the very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. A reading of entire judgment of the appellate court clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge. Expression like "benefit of doubt" and "honorably acquitted" used in the judgments are not to be understood as magic incantations. The court of law will not be carried away by the mere use of such terminology. The Court in judicial review is obliged to examine the substance of the judgment and not got by the form of expression used. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. Hon'ble Supreme Court further observed as under:-

"We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence. As held by this Court, a fact is said to be

"disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190]."

25. In the present case, the impugned corrigendum letter was issued by the competent authority at the verge of retirement of the petitioner whereby, both the MACPs granted to him after completion of requisite service were canceled. A service certificate has been issued to the petitioner after his retirement, after deducting both the MACPs earlier granted to him on 03.07.2023. MACP-I and MACP -II were granted to the petitioner long after the awarding of punishment to him in regard to misconduct attributed to him as he was found guilty of committing theft of railway property during the course of transportation which was delivered by the railways for transportation by the consignor. There is a gap of 19 years between the final culmination of the disciplinary proceedings against the petitioner in the year 2004 and awarding him aforementioned punishment by the impugned corrigendum letter dated 03/04/2023. Although in the criminal proceeding the petitioner was acquitted by giving the benefit of the doubt, yet the learned trial court observed that the charges were not proved against him. The benefit of two MACPs were granted to the petitioner after the culmination of the criminal and disciplinary proceedings; former in favor of the petitioner and the latter against him. Thus, it will be presumed that on the grant of MACPs, the appointing authority was well aware of the outcome of the criminal as well as departmental proceeding concluded in respect of the petitioner.

26. This fact is not disputed that the criminal proceedings as well as departmental proceedings were initiated against the petitioner in respect of the same set of facts and misconduct, in-as-much as potential witnesses, on whose evidence reliance was placed by the department, were produced in criminal charges by the prosecution. If we have a glance over the facts of the case, it is found that as per the allegations in the case , the petitioner along with co-accused Constable Ram Raksha, had stolen

one tin of mustard oil each from a railway wagon during transmission and each tin containing 15 kg of mustard oil. The tins of mustard oil were not recovered from the petitioner's house, but from the house of co-accused Ram Raksha allegedly on the pointing of the petitioner and the co-accused Constable Ram Raksha. Both tins were kept in separate plastic sacks, each containing one tin of mustard oil. It is also alleged that these tins were carried by the petitioner and co-accused on their respective bicycles to Railway Quarter No.284 B, allotted to Ram Raksha. Both the accused were seen transporting one plastic sack on the carrier of their bicycles at about 1:15 hours in the night by the witness PW3 Bachha Ji Shah, but the trial court has not placed reliance on the evidence of Bachha Ji Shah as it was not corroborated by the witness of PW-1 Sri N.K. Yadav. The trial court also found the recovery memo suspicious. The trial court also acquitted the petitioner and co-accused Ram Raksha by extending the benefit of doubt. In the judgment the incident was allegedly found doubtful and the court gave a finding that the prosecution has failed to prove the guilt of the accused beyond doubt.

27. In the present case, it appears that the impugned penalties were inflicted upon an employee for the same misconduct. One penalty was given in the year 2004 on culmination of the disciplinary inquiry against the employee, despite his acquittal in criminal charges on relation to the same misconduct and the other penalty was given by the impugned corrigendum letter dated 3/4/2023 without holding further inquiry a fresh for the proposed punishment by giving retrospective effect to the earlier punishment granted in the year 2004. It is also not clear as to whether any opportunity of hearing was given to the petitioner while inflicting the penalty of cancelling MACPs granted to him, subsequent to the infliction of the penalty for said misconduct way back to the year 2004, no statutory provisions have been cited in support of issuance the impugned corrigendum letter, dated 3/4/2023 as to why the penalty shown in the said letter has been inflicted upon the petitioner after a gap of 19 years in culmination of departmental proceedings against the petitioner in which a major penalty was inflicted upon him withholding annual increments for 5 years with cumulative effect, even after ignoring the acquittal of the petitioner in criminal charges based on the same misconduct. In the

absence of any statutory empowerment, it appears contrary to law to cancel two MACPs granted in the year 2010 and 2019 after conclusion of departmental inquiry by giving retrospective effect to the penalty imposed in the departmental proceedings way back in the year 2004, after lapse of 19 years by impugned order dated 03/04/2023, that too when the criminal court had already acquitted the petitioner for said charge based on same set of facts and that judgment of criminal court had attained finality.

28. Therefore, in view of the foregoing discussion and according due consideration of judicial authorities cited above, the impugned corrigendum letter, dated 3/4/2023, is quashed. The respondents are directed to grant benefit of MACP-I and MACP- II to the petitioner within three months in view of the earlier orders, dated 14/12/2010 and 14/1/2019, issued by them, whereby MACP-I and MACP-II were granted to the petitioner, respectively.

29. Consequently, the petition is **allowed**. However, there will be no order as to costs.

(Ram Manohar Narayan Mishra,J.)

January 5, 2026
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