

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU

**WP(C) No. 2554/2021**

**CM No. 8803/2021**

Reserved on: 25.04.2023

Pronounced on: 12.05.2023

**Shamim Ahmed**

...Petitioner(s)

Through: Mr. Sarfaraz Hamid Rather, Advocate

**Vs.**

**UT of JK and Ors.**

...Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR JUSTICE WASIM SADIQ NARGAL, JUDGE**

**ORDER**

**.05.2023**

**Per Wasim Sadiq Nargal-J**

01. The petitioner in the instant petition is aggrieved of and has assailed the Judgment and Order dated 1<sup>st</sup> July, 2021 passed by the Central Administrative Tribunal (CAT), Jammu, (for short "**CAT**") in T.A.No. 5061/2021 (SWP No. 945/2010), by virtue of which, the T.A.(Writ Petition) filed by the petitioner against the order of discharge has been dismissed, as such, he seeks issuance of writ, order or direction in the nature of:-

*"i). Certiorari, quashing Judgment and Order dated 1<sup>st</sup> July, 2021, passed by the Central Administrative Tribunal (CAT) Jammu in T.A. No. 5061/2021 (SWP No. 945/2010), by virtue of which, the T.A. (writ petition) filed by the petitioner against the order of discharge has*

*been dismissed without following principle of natural justice.*

*ii) Certiorari, quashing Order No. 457/2009 dated 31<sup>st</sup> October, 2009 issued by the respondent no. 3 virtue of which, the petitioner has been discharged without enquiry and without following principle of natural justice.*

*iii). Mandamus, commanding the respondents to reinstate the petitioner into service retrospectively with all consequential benefits.”*

02. Before advertng to the grounds of challenge taken in the instant writ petition, a brief factual matrix leading to the filing of present writ petition is reproduced as under:-

**Factual Matrix**

03. The petitioner was initially appointed as Constable in the Jammu and Kashmir Armed Police and, as per the stand of the petitioner, he has joined his duties on 23<sup>rd</sup> February, 1993. And after more than one year of his service, while discharging the duties, he became ill in the month of May, 1994 and, accordingly, he after informing his immediate senior officers, left for his home to seek proper medical treatment. The petitioner thereafter resumed his duties on 5<sup>th</sup> July, 1994 and subsequently, a departmental enquiry was initiated against him, however, no charge sheet was ever served upon him nor he was afforded any opportunity of being heard, therefore, the enquiry was conducted in flagrant violation of Rule 359 of Jammu and Kashmir Police Rules. The further case set up by the petitioner in the writ petition is that the said enquiry officer was, however, made aware of the reason of absence from duty by the petitioner, who while agreeing with those reasons

recommended that the period of absence of the petitioner be treated as “*Dies Non*”

04. The further case of the petitioner is that the respondent no. 3, after receiving the recommendation of enquiry officer, has issued the show cause against the petitioner as to why he should not be discharged from the service. Moreover, as the ill luck would have it, the petitioner again fell ill and sought permission from his senior officers on 6<sup>th</sup> September, 1994, which was ultimately granted in his favour. Besides this, the petitioner remained under medical treatment and resumed his duties on 7<sup>th</sup> November, 1994, where he came to know that he had already been discharged from services by the respondent no. 3 vide Order No. 666 of 1994 dated 2<sup>nd</sup> November, 1994.

05. Feeling aggrieved of aforesaid order of discharge, the petitioner has filed writ petition, which was registered as SWP No. 390/2002 and the same was disposed of by this Court vide Order dated 22<sup>nd</sup> May, 2009. For facility of reference, operative part of aforesaid Judgment is reproduced as under:-

*“...For the above stated reasons, this petition is allowed, the impugned Order No. 666/1994 dated 2<sup>nd</sup> November, 1994 passed by the respondent no. 3 is quashed. The respondents are given liberty to pass order either under Rule 187 of J&K Police Manual in case they so choose or they may conduct regular enquiry. It is further made clear the petitioner is not entitled to any salary from the date he was discharged till passing of this Judgment. Disposed of...”*

**Arguments on behalf of the petitioner:-**

06. Mr. Sarfaraz Ahmad Rather, learned counsel, appearing for the petitioner, submits that after passing of the aforesaid Judgment dated 22<sup>nd</sup> May, 2009, the matter was examined by the respondents on their own, but the petitioner was never associated with enquiry and finally an order came to be passed by the respondents vide Order No. 457 of 2009 dated 31<sup>st</sup> October, 2009, by virtue of which, the petitioner was again discharged w.e.f. 7<sup>th</sup> September, 1994 on the ground that *'the petitioner had not proved to be a good police officer keeping in view his conduct during his probation period.'*
07. Feeling aggrieved of aforesaid order of discharge dated 31<sup>st</sup> October, 2009, the petitioner has once again knocked the door of this Court by way of second round of litigation and filed writ petition, which was registered as SWP No. 945/2010 on various grounds including the ground that the order of discharge was penal in nature and not a simpliciter discharge, inasmuch as, the same was passed on basis of misconduct by attaching stigma to the aforesaid order of discharge. Learned counsel for the petitioner has vehemently argued that the stigma was required to be enquired into by conducting detailed enquiry and providing an opportunity of being heard to the petitioner and in the instant case, admittedly, no enquiry whatsoever, was conducted before issuing the order impugned dated 31<sup>st</sup> October, 2009.

08. Learned counsel further submits that in view of the enactment of J&K Reorganization Act, 2019 and subsequent establishment of Central Administrative Tribunal, the aforesaid writ petition came to be transferred to the CAT, Jammu Bench, vide Order dated 4<sup>th</sup> March, 2021, and, accordingly, the petition was listed before the CAT on 1<sup>st</sup> July, 2021 at Serial No. 8, in which, inadvertently, the name of counsel for the petitioner was wrongly mentioned as Shri N.P.Kotwal, Advocate. However, the fact of the matter is that petitioner has never engaged Shri N.P.Kotwal, Advocate, as his counsel. It is further submitted that the above named Advocate has since passed away on 11<sup>th</sup> April, 2021. Learned counsel for the petitioner further submits that neither the petitioner nor his counsel was informed about the listing of case on 1<sup>st</sup> July, 2021, and on the said date the matter was heard in ex-parte in absence of the petitioner and, accordingly, the writ petition came to be dismissed vide Order dated 1<sup>st</sup> July, 2021, which is impugned in the present writ petition.

09. It is argued by learned counsel for the petitioner that the Judgment impugned has been passed without affording an opportunity of being heard to the petitioner and the same is in violation of principles of natural justice. It is further argued by learned counsel for the petitioner that petitioner has been continuously contesting his case since 2<sup>nd</sup> November, 1994, when he was discharged from his service. However, after a long 27 years of litigation, the petitioner

was not heard when the matter was taken up for final disposal and he has been condemned unheard due to the inadvertent mistake on the part of Registry of the CAT and this has caused grave prejudice to the petitioner. Learned counsel for the petitioner has also urged that in the earlier round of litigation, the order of discharge was held to be bad and, accordingly, the respondents have again passed the order of discharge by attaching stigma to the aforesaid order and the said discharge order, as per the stand of the petitioner, is not a discharge simpliciter, but attaching stigma to the aforesaid order, which is penal in nature and cannot be passed without conducting any enquiry under the provisions of law and without affording an opportunity of being heard to the petitioner. The further stand of the petitioner is that no reasonable opportunity has been given to him before passing the order impugned nor stigma attaching to the aforesaid order has been enquired into by the respondents, therefore, the order impugned cannot sustain the test of law and is liable to be quashed.

10. Learned counsel for the petitioner submits that the foundation of passing of the order of discharge is based on the allegations of misconduct, as such, the respondents were under legal obligation to have conducted a detailed departmental enquiry, which has not been done in the present case. In that view of the matter, the order impugned cannot sustain the test of law and is liable to be quashed.



**Arguments on behalf of respondents.**

11. *Per contra*, the objections have been filed on behalf of respondent no. 3, in which, a specific stand has been taken that the petitioner has absented un-authorizedly on his own will w.e.f. 1<sup>st</sup> May, 1994 and resumed his duties on 6<sup>th</sup> July, 1994 i.e., after remaining absent from duties for 64 days and it is for this grave misconduct of the petitioner, a departmental enquiry was initiated against him by the then Coy Commander C Coy of the Unit. The further stand of the respondent no. 3 is that the Enquiry Officer conducted the enquiry in accordance with Rule 359 of Jammu and Kashmir Police Manual, therefore, the plea of the petitioner that he was not served with charge sheet is baseless. It is further submitted that petitioner is misleading the Court as well as the department as he was served with charge sheet and reply from him was also received. It is also stated in the objections that a baseless and concocted story has been narrated by the petitioner that he became ill in the month of May, 1994, and after informing his immediate senior officer he left for his home to seek medical treatment, whereas in the reply of the charge sheet of the instant enquiry, the petitioner has deposed that one person resident of Nowshera came to him and informed him that his mother was seriously ill and, accordingly, he proceeded to his home without seeking proper permission from his senior officer.

12. In the objections, it is further stated that after restoration of health of mother of the petitioner, he reported back for duty and forgot to bring the medical documents of his mother. The Enquiry Officer after conducting the enquiry had recommended that the period of absence of the petitioner be treated as '*Dies-Non*' on the basis of no work no pay. The further stand of the respondent no. 3 is that the recommendation made by the Enquiry Officer does not commensurate with the gravity of offence, as such, a show cause notice was served upon the petitioner as to why he should not be discharged from services and was directed to reply the notice within a period of seven days. It is also stated in the objections that instead of replying to the show cause notice, the petitioner again absented unauthorizedly on 7<sup>th</sup> September, 1994 and, accordingly, he was informed through concerned police station to resume his duties, but the petitioner neither resumed his duties nor he informed the department with regard to his ailment. As per the stand of the respondent no. 3, the petitioner did not resume his duties up to 2<sup>nd</sup> November, 1994 and his whereabouts were also not known and no information with regard his ailment was ever supplied to the concerned Battalion. Accordingly, the respondents had no other option, but to discharge the service of the petitioner, as he was on probation and did not prove to be a good officer during the probation period, as such, the order impugned came to be passed against him.



**Legal Analysis and discussion.**

13. Heard learned counsel for the parties at length and perused the record.
14. We have gone through the Order dated 1<sup>st</sup> July, 2021, passed by the CAT as also the order of discharge, which was subject matter before the CAT. From the perusal of the Order dated 31<sup>st</sup> October, 2009, issued by the respondent no. 3, vide which, the petitioner was discharged from the services from the date he remained absent i.e., 7<sup>th</sup> September, 1994 in terms of Rule 187 of J&K Police Manual by attaching stigma to the aforesaid order on the ground that he had not proved to be a good police officer. Besides, much emphasis has been laid down on the conduct of the petitioner during his probation period in the aforesaid order. As a matter of fact, the earlier writ petition which was filed by the petitioner challenging the order impugned dated 2<sup>nd</sup> November, 1994 passed by the respondent no. 3 stood quashed and the respondents were given liberty to pass orders either under Rule 187 of J&K Police Manual in case they so choose or conduct regular enquiry. The respondents, in pursuance to the Judgment passed by this Court in SWP No. 390/2002, without conducting the detailed enquiry, discharged the petitioner from the services w.e.f. 7<sup>th</sup> September, 1994, by relying upon the Rule 187 of the Jammu and Kashmir Police Manual by attaching stigma to the aforesaid order on the ground that **“he had not proved to be a good officer and his conduct did not remain**

satisfactory during the probation period". Admittedly, the petitioner was appointed as constable on 22<sup>nd</sup> February, 1993, and was on probation for a period of three years and the said probation was to be completed in February, 1996, and after completion of probation period, the petitioner ought to have been confirmed as a regular constable, but vide Order dated 2<sup>nd</sup> November, 1994, the petitioner was discharged from the services during the probation period w.e.f. 7<sup>th</sup> September, 1994, which order was subject matter in SWP No. 390/2002. The said writ petition was disposed of in terms of Order dated 22<sup>nd</sup> May, 2009, whereby, the order of discharge dated 2<sup>nd</sup> November, 1994 passed by the respondents stood quashed and the respondent were given liberty to pass orders either under Rule 187 of Jammu and Kashmir Police Manual in case they so choose or they may conduct regular enquiry. In that view of the matter the order impugned dated 31<sup>st</sup> October, 2009, in the instant case, is in flagrant violation to the Judgment passed by this Court. The respondents without application of mind and in a haste manner, have discharged the petitioner retrospectively w.e.f. 7<sup>th</sup> September, 1994. It is not so, even the order impugned is not a simpliciter, but punitive in nature, wherein the respondents have specifically mentioned the reasons for such discharge by attaching stigma that the petitioner had not proved to be good police officer. The language and the expression used in the order of discharge is stigmatic in nature and the petitioner has been

categorized as a bad police officer, which renders the impugned discharge order bad in the eyes of law. The rights of the petitioner are guaranteed under Article 311 of the Constitution of India. The expression used in the impugned order on the face of it is stigmatic and would disentitle the petitioner to seek an employment in future. Such type of order can be passed only, when regular departmental enquiry is conducted. But, admittedly, in the present case, no enquiry was conducted pursuant to the Judgment passed by this Court in SWP No. 390/2002 and in absence of departmental enquiry being conducted in such type of cases, the petitioner cannot be thrown out by way of a stigmatic order.

15. It is well settled law that right to life and personal liberty is one of the fundamental rights guaranteed to a person under Article 21 of the Constitution of India, which would include right to livelihood, as such, before taking any action with a view to put an end to the services of the petitioner, it requires a reasonable opportunity to be given to the petitioner to put forth his case so as to comply with the universally accepted principles of natural justice, which has not happened in the present case. Since, the services of the petitioner has been brought to an end by virtue of a stigmatic order, which can be held to be a punitive in nature and violative of his Constitutional right and, as such, the order can be passed only after subjecting the incumbent to a regular enquiry. The finding recorded in the order of

discharge is based on allegation of misconduct, as such, the respondents were under legal obligation to conduct a regular enquiry by affording an opportunity of being heard to the petitioner, which, in the present case, has not been done. In that view of the matter, the order of discharge cannot sustain the test of law.

16. The issue as to whether a probationer can be terminated or his services can be dispensed with without conducting the enquiry was considered by the Hon'ble Supreme Court in case titled *Shamsher Singh vs. State of Punjab and Anr.* reported in AIR, 1994 SC 2192( 7 Judges' Bench), wherein it was held that decisive factor in the context of discharge of a probationer from service is the substance of the order and not the form in determining whether the order of discharge is stigmatic or not or whether the same formed the motive for or foundation of the order.
17. The same view was reiterated by the Hon'ble Supreme Court in case titled *Redhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd and Anr.* reported in (1992) 2 SCC 21 followed by a decision rendered in case titled *Nehru Yuva Kendra Sangathan vs. Mehbub Alam Laskar* reported in (2008) 2 SCC 479 and decision rendered in case titled Union of India and Ors. vs. Mahaveer C.Singhvi reported in (2010) 8 SCC 2020. In Mahaveer C.Singhvi's case cited above, a plea was taken that the respondent had been discharged from service by a simple order of discharge without a stigma, therefore, being

a probationer he was not entitled to protection of Article 311 (2) of the Constitution of India. The said argument was repelled noting the fact that due to allegations only he was discharged and the Special Leave Petition challenging the order of the High Court was dismissed with costs of Rs. 25,000/-.

18. Admittedly, no enquiry was conducted to prove alleged misconduct of petitioner with regard to his unauthorized absence by the respondents. On this count also, the stigmatic order cannot sustain the test of law and this aspect of the matter has not been gone into in detail by the CAT, as such, the order passed by the CAT is liable to be quashed.

19. Reliance is placed on the Judgment passed by the Division Bench of this Court dated 13<sup>th</sup> August, 2015 in case titled State of J&K vs. Ramesh Lal in LPA (SW) No. 156/2005 reported in 2015(4) JK (HC) 95, wherein, the order passed by the Single Bench by setting aside the order of discharge was upheld by directing the appellants to implement the same within a period of two months.

20. We are fortified by the Judgment passed by the Hon'ble Supreme Court dated 28<sup>th</sup> January, 2020 in Civil Appeal No. 777/2020 reported in 2020 Latest Case Law 89 SC in ***Dr. Vijaykumaran C.P.V. vs. Central University of Kerala and Ors***, wherein it was observed as under:-

*“.. The above decision is, in our review, a clear authority for the proposition that the material which amount to stigma need not be contained in the order of*

*termination of the probationer but might be contained in any document referred to in the termination order or in its annexurer. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted.*

*“...One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld ...”*

*“...In such cases, a regular inquiry or departmental action as per service rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence...”*

*“... We have no hesitation in concluding that the impugned termination order dated 30.11.2017 is illegal being ex-facie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules...”*

21. In the present case, all the aforesaid three elements are attracted and it can safely be concluded that the order impugned is ex-facie stigmatic and punitive in nature, which can be issued only after subjecting the incumbent to a regular enquiry as per the service rules. The petitioner has been discharged from his services by placing reliance on



Rule 187 of the Jammu and Kashmir Police Manual. For facility of reference, the same is reproduced as under:-

*“187. Discharge of inefficient:- A constable, who is found unlikely to prove an efficient police officer, may be discharged by the Superintendent at any time within three years of enrollment.”*

22. From the perusal of aforesaid Rule, it is manifestly clear that by invoking Rule 187 of the J&K Police Manual, discharge of an incumbent during probation period obviously would mean that he is not found fit to continue in service on the basis of materials which are available before the authority. Therefore, a person can be discharged under Rule 187 by way of discharge simplicitor though the motive may be because of omission and commission on the part of the incumbent. However, it is not necessary to mention those omissions and commissions in the termination or discharge order. In case any such reason is given in the discharge order showing the deficiency in the service of the incumbent, it would amount to be stigmatic and if such a discharge order is put to challenge, may not sustain on the ground being stigmatic. However, if the discharge order is simply passed without mentioning the deficiency of an incumbent, it would be a discharge simplicitor in which event such a discharge order can be sustained.

In the present case, the authorities apparently invoked Rule 187 which entitles the authority to discharge a constable who is found and is likely to prove an inefficient

officer yet if the said reason is mentioned in the discharge order, which otherwise is not required to be mentioned for the purposes of issuing the discharge order, such a discharge order qualified by the deficiencies would be stigmatic even if invoked under Rule 187, and cannot be sustained in law.

23. The respondents by virtue of order dated 2<sup>nd</sup> November 1994, has discharged the petitioner from services, which was quashed by this Court in the earlier round of litigation in SWP No. 390 of 2002. The respondents have invoked the provisions of Rule 187 of Jammu and Kashmir Police Manual and in the aforesaid order a finding was recorded to the effect that petitioner was absconding. It was specific stand of the petitioner before the writ court in the earlier round of litigation that such finding can only be recorded after thorough enquiry. This argument of the petitioner was accepted by the writ court and accordingly, quashed the impugned discharge order with liberty to the respondents to pass order either under Rule 187 of J&K Police Manual in case they so choose or they may conduct regular enquiry. However, the respondents have exercised the first option and passed the impugned order on the same ground which was rejected by this Court in the earlier round of litigation. Rule 187 can be invoked only if the department does not intend to stigmatize the concerned person, such power can be exercised within a period of three years i.e., from the date of enrollment and not otherwise. Admittedly, in the

present case the reliance has been placed by the respondents on Rule 187 of Jammu and Kashmir Police Manual, which is not applicable to the case of petitioner as the aforesaid rule can be applied only within 3 years of enrolment and not after 15 years. This aspect of the matter has not been correctly appreciated by the CAT and has dismissed the TA. No. 5601/2021 by holding that the respondents have simply discharged the petitioner from the services without attaching any stigma to him.

24. No doubt under Rule 187 of the Jammu and Kashmir Police Manual, a Superintendent of Police has powers to discharge the probationer within a period of three years of enrolment, if he is of the view that the incumbent does not prove himself to be a good police officer. Since the finding recorded in the order impugned casts a stigma on the career of the constable and there would be an impediment for the petitioner to secure his future employment, therefore, the provisions of Article 311 of the Constitution of India are attracted in the present case. The discharge order should have been passed by affording an opportunity of being heard to the petitioner and also by issuing a show cause notice against him, which, in the present case has not happened and, accordingly, the order impugned cannot sustain the test of law.

25. In the similar facts and circumstances, the Hon'ble Supreme Court in para 3 of the Judgment reported in AIR 1995 SC 984 has been pleased to observe as under:-

*“It would thus be clear from the order of discharge that it is not an order of discharge simpliciter. On the other hand, the S.P. Considered the record and found him to be habitual absentee, negligent to his duty and indisciplined. The findings of habitual absence and indiscipline necessarily cast stigma on his career and they would be an impediment for any of future employment elsewhere. Under those circumstances, the principles of natural justice do require that he should be given an opportunity to explain the grounds on which the S.P. Proposes to pass an order of discharge and then to consider the explanation submitted by the police officer. Then the S.P. is competent to pass appropriate orders according to the rules. Since this part of the procedure had not been adopted, the order of discharge is vitiated by manifest error of law.*

*7. It shall be quite relevant to quote under as to what has been held in the judgment captioned Kulbir Singh Sanina v. State of JK and Anr. reported in SLJ 1989 J&K page 43.*

*“Rule 187 of the Police Rules does not give an arbitrary power to the appointing authority to remove any employee of the police without observing the principles of natural justice, which is minimal requirement to hold an employee liable for removal from service, who has been appointed on a clear vacancy and has been put on probation of three years from the date of appointment.”*

26. The ratio laid down in the aforesaid referred Judgment is that when the order of discharge is stigmatic, then without enquiry, the same cannot be passed even against the probationer by invoking the power under Rule 187 of the Jammu and Kashmir Police Manual. Since the allegation of misconduct constitute the foundation of the action taken in the present case, the decision taken by the competent Authority can be nullified on the ground of violation of Rules of natural justice. We are also fortified by the observations of Division Bench Judgment of this Court rendered in case titled *Kuljeet Singh vs. State of JK and Ors. reported in 2014 (1) JKJ 382*. The relevant para of the Judgment is taken note of:-

*“However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.”*

27. Thus, in the light of aforesaid analysis and discussion, we conclude as under:-

a. That Rule 187 of the Jammu and Kashmir Police Manual can be pressed into service only in the eventuality when a constable is found unlikely to prove an efficient police officer and can be discharged by the Superintendent at any time within three years of enrolment and not otherwise. Admittedly, the respondents have placed reliance on the aforesaid Rule after expiry of the aforesaid

period of three years. Accordingly, Rule 187 of the Jammu and Kashmir Police Manual was not applicable to the case of the petitioner.

*b.* The powers under Rule 187 can be invoked only against a probationer within a period of probation i.e., three years from the date of enrolment and not to a permanent employee after a period of 15 years from the date of his appointment. It cannot be assumed that after 15 years the petitioner continued to be a probationer and can be discharged by invoking the powers under Rule 187 of the Jammu and Kashmir Police Manual, as the petitioner has since become a regular constable on the establishment of the police department after completion of probation period.

*c.* The services of petitioner is protected under Article 311(2) of the Constitution of India and the procedure as envisaged under the aforesaid Constitutional provision was required to be followed by giving an opportunity of being heard to the petitioner and also by issuing show cause notice to him, which, in the present case has not happened and thus, the order impugned cannot sustain the test of law.

*d.* The petitioner has been discharged by virtue of order impugned by way of a stigmatic order by incorporating that **“he had not proved to be a good**



*officer and his conduct did not remain satisfactory during the probation period*” and the stigma was required to be enquired into by conducting a detailed enquiry and providing an opportunity of being heard to the petitioner. In absence of any enquiry being conducted or providing an opportunity of being heard to the petitioner, the order impugned cannot sustain the test of law as the stigma attached to the aforesaid order will haunt the petitioner for all times to come for his future employment.

*e.* The order impugned is in flagrant violation of the direction issued by this Court in the earlier round of litigation in SWP No. 390/2002, wherein the stigmatic order of discharge was quashed by this Court by giving liberty to the respondents to pass orders either under Rule 187 of J&K Police Manual in case they so choose or conduct regular enquiry. The respondents without conducting the enquiry have invoked the provisions of Rule 187 of J&K Police Manual, which was not applicable to the case of the petitioner. Thus, the action of the respondents in issuing the order impugned is contemptuous and the same is in flagrant violation of Order/Judgment passed by this Court in the earlier round of litigation in SWP No.390/2002.

*f.* The punishment of discharging the petitioner from services is major 7and not

commensurate to the gravity of the allegations leveled against him and the major punishment being disproportionate to the allegations leveled against the petitioner by way of order impugned, cannot sustain the test of law.

**Conclusion.**

28. For the forgoing reasons and in view of the discussions made above, we find merit in this petition and the same is, accordingly, allowed. The impugned order dated 1<sup>st</sup> July, 2021, passed by the Central Administrative Tribunal (CAT), Jammu is set-aside/quashed, as a necessary corollary whereof, the order of discharge dated 31<sup>st</sup> September, 2009 issued by the respondent no. 3 shall also stand quashed/set aside. The respondents are directed to reinstate the petitioner with immediate effect. The petitioner is also held entitled to all the consequential benefits minus monetary benefits retrospectively from the date he joined his services i.e., w.e.f., 23<sup>rd</sup> February, 1993, as this Court is not aware whether the petitioner during the intervening period was gainfully employed elsewhere or not.

**(WASIM SADIQ NARGAL)**  
**JUDGE**

**(N.KOTISWAR SINGH)**  
**CHIEF JUSTICE**

**SRINAGAR**

**12.05.2023**

*"Shamim Dar"*

**Whether the Judgment is speaking? Yes/No.**

**Whether the Judgment is reportable? Yes/No**