IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 13328 of 2022

KULDEEP SINGH TOMAR

Versus

THE STATE OF M.P. & ORS.

Appearance:

Mr. Nirmal Sharma - Advocate for the petitioner.

Ms. Monica Mishra – Panel Lawyer for the respondents/State.

Whether approved for reporting: Yes/No.
Reserved for order on: 01/09/2025

O R D E R
(Passed on 04/09/2025)

The petitioner has invoked Article 226 of the Constitution of India challenging the order, dated 02.06.2022 (Annexure P/1), whereby he has been dismissed from service exercising powers under Article 311(2) of Constitution of Indian and regulation 221 of M.P. Police Regulations.

[2]. The facts necessary for decision of this case are that the petitioner was appointed as Constable (GD) vide order, dated 31.05.2018 (Annexure P/2) and at the relevant time, he was posted at Police Line, Gwalior. The appointment of the petitioner was on probation for a period of two years. It is not in dispute that even though the initial probation period of two years is over, the order of confirmation has not yet been passed by the respondents.

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[3]. On 29.04.2022, one Smt. Ravita Vanshkar lodged an FIR against the petitioner for offence punishable under Sections 376 of IPC & Section 3(2)(v), 3(1)(w)(i) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Consequently, vide order, dated 02.05.2022, (Annexure P/6) the petitioner was placed under suspension. A preliminary enquiry was thereafter conducted by City Superintendent of Police Murar, Gwalior.

[4]. Based upon the findings given in the preliminary enquiry report, a show cause notice was issued to the petitioner on 24.05.2022 (Annexure P/7). A perusal of show cause notice goes to show that the petitioner was alleged to have committed grievous offence like rape against the complainant and has thus violated the Police Service Conditions. It was also alleged that the petitioner has exhibited indecent conduct before public in general which has tarnished the image of police department. It is further alleged in the show cause notice that his further continuance in service is not in the interest of the police department because it will adversely affect the employees particularly the women employees of the police department. The action of dismissal from service under Article 311(2)(b) of Constitution of India was proposed against him. The petitioner gave detailed reply to the show cause notice explaining the circumstances in which the aforesaid criminal case was registered. Immediately thereafter the impugned order was passed by respondent no.3 thereby dismissing petitioner from service based upon the findings recorded in the preliminary enquiry report as also the allegations made

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in the FIR. The petitioner is thus before this Court challenging the order, dated 02.06.2022.

[5]. The learned counsel for the petitioner, challenging the impugned order, submitted that the order of dismissal of service is stigmatic and punitive and, therefore, could not have been passed without conducting enquiry. It is his submission that the dismissal from service is a major misconduct under The Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966 and, therefore, the punishment could not have been imposed upon him without adopting the procedure under Rule 14 of CCA Rules. He further submitted that the respondent no.3 erred in accepting the allegations made against the petitioner in FIR as gospel truth and imposed punishment of dismissal from service without realizing that there is no finding of guilt recorded against the petitioner and even Challan was not filed before the Magistrate. The learned counsel placed reliance upon the Apex Court judgment in the case of **Anoop Jaiswal Vs. Govt. of India & Anr.** reported **(1984)2 SCC 369** as also in the case of **Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre For Basic Sciences, Culcutta & Ors.** reported in **(1999)3 SCC 60**.

[6]. Referring to the order passed by this Court in M.Cr.C. No.30166 of 2022, learned counsel for the petitioner submitted that the very foundation of passing of the impugned order of dismissal from service does not exist now inasmuch as it has been found that no offence has been committed by the petitioner. He, therefore, submits that impugned order is liable to be quashed on this ground also.

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[7]. On the other hand, counsel for the respondents supported the impugned order and submitted that the petitioner exhibited the act of gross indiscipline which made him unbecoming of a member of disciplined force. It is her submission that the petitioner since was on probation, it was not incumbent upon the respondents to conduct departmental enquiry. It is her submission that the petitioner has been discharged simplicitor during the period of probation and the impugned order is not stigmatic or punitive. The learned counsel further submitted that the FIR has been registered against the petitioner for a serious offence involving moral turpitude and because of the same, the petitioner does not deserve to continue in police force. It is her further submission that the act of petitioner has tarnished the image of police department. The learned counsel placed reliance upon Apex Court judgment in the case of **Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh** reported in **1999(1) SCC 246**, **Union of India & Ors. Vs. Mahaveer Singhvi** reported in **(2010)8 SCC 220** .

[8]. During the pendency of this petition, the petitioner filed an application (I.A. No.8295/2023) for taking additional facts and documents on record being. The copy of order, dated 21.06.2023 passed by this Court in M.Cr.C. No.30166 of 2022 has been brought on record wherein this Court has quashed the FIR registered against the petitioner which was the basis of dismissal of the petitioner. In the ultimate paragraph, this Court held as under;

> "In the present case as discussed above, since on the basis of uncontroverted allegations made in the FIR do not disclose the commission of any offence and make out a case

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> against the accused, this Court is of the view that no purpose will be served in proceeding with the matter further. Consequently, the charge-sheet as well as consequential criminal proceedings arising out of Crime No.271 of 2022 registered at Police Station Gole Ka Mandir, District Gwalior for offences punishable under Sections 376 of IPC and Sections 3(2)(v) and 3(1)(w)(i) of SC/ST Act are hereby quashed."

[9]. The respondents have also filed an application (I.A. No.12474/2024) for taking certain facts/documents on record. Alongwith this application, the respondents have brought on record another FIR registered against the petitioner on 02.12.2024 for offences punishable under Section 75(2) of BNS and Section 7/8 of POCSO Act. This FIR has been registered at the instance of a girl aged about 15 years. Referring to the aforesaid FIR, learned counsel for the respondents submitted that the subsequent conduct of the petitioner exhibits his criminal mentality and, therefore, no interference is warranted by this Court in the present writ petition.

[10]. Considered the arguments and perused the record.

[11]. Admittedly, the impugned order of dismissal of service of the petitioner has been passed without conducting any enquiry. The order has been passed based upon the preliminary enquiry conducted by CSP Murar, Gwalior as also based upon the allegations made against the petitioner in FIR registered at the instance of Smt. Ravita Vanshkar. The relevant paragraph of the impugned order is reproduced as under:

> "नव आरक्षक 2976 कुलदीप सिंह तोमर द्वारा किये गये उक्त अपकृत्य के बाद अब पुलिस सेवा में उसका बना रहना पुलिस विभाग के हित में नहीं है। क्योंकि इसके आचरण का प्रतिकूल प्रभाव पुलिस विभाग के अन्य कर्मचारियों पर भी पड़ेगा, वहीं महिला आवेदिकाओमें पुलिस विभाग के प्रति घृणा का भाव उत्पन्न होगा। आरक्षक के कृत्य से जहाँ एक ओर आम जनता में पुलिस की छवि

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धूमिल होती है, वहीं दूसरी ओर बलात्कार के आरोपी के साथ कर्तव्य स्थल पर कार्य करने में महिला पुलिसकर्मी भी अपने आप में असहज मेहसूस करेंगी। जो पुलिस विभाग के लिए बिल्कुल भी उचित नहीं है। नव आरक्षक 2976 कुलदीप सिंह तोमर द्वारा प्रारम्भिक पुलिस सेवा के दौरान ही उपरोक्तानुसार अपकृत्य प्रदर्शित किया गया है, आरक्षक के इस आचरण से उसके एक अच्छे पुलिस अधिकारी बनने की सभी संभावनाएं समाप्त हो चुकी है।

विवेचना में अभी तक आयी साक्ष्य व फरियादिया के व्दारा माननीय न्यायालय में दिये गये कथन से मुझ पुलिस अधीक्षक को यह पूर्ण समाधान हो चुका है कि इस प्रकरण में अब आगे किसी प्रकार की और जांच कराना एवं साक्ष्य संकलित कराया जाना तार्किक न होकर प्रकरण में आगे ऐसी जांच करना युक्ति-युक्ति रूप से व्यावहारिक भी नहीं है।

नगर पुलिस अधीक्षक, मुरार, जिला ग्वालियर द्वारा की गयी जांच संकलित साक्ष्य एवं माननीय न्यायालय में फरियादिया के कथन के अध्ययन से मुझ अधोहस्ताक्षरकर्ता को यह समाधान हो गया है कि उक्त कर्मचारी के महिला संबंधी आपराधिक कदाचरण से जहाँ एक ओर पुलिस विभाग की छवि आम जनता में धूमिल हुई वही ऐसे आपराधिक चरित्र वाले व्यक्ति का पुलिस विभाग जैसे अनुशासित बल, जिसका मुख्य ध्येय लोक सुरक्षा, देशभक्ति एवं जनसेवा ही है, में बने रहना कतई उचित नहीं है।

अतः भारतीय संविधान के अनुच्छेद 311(2)(ख) के प्रावधानानुसार तथा म०प्र० पुलिस रेग्यूलेशन के पैरा कमांक 221 में प्रदत्त शक्तियों का प्रयोग करते हुए मैं अधोहस्ताक्षरकर्ता **नव आरक्षक 2976 कुलदीप सिंह तोमर**, पुलिस लाईन, ग्वालियर को आदेश दिनांक से **"विभागीय सेवा से पदच्युत" (Dismiss) करता हूँ।** नव आरक्षक की निलंबन अवधि दिनांक - 02.05.22 से आदेश दिनांक तक को निलंबन में शुमार किया जाता है, इस अवधि में नव आरक्षक जो प्राप्त कर चुका है, उसके अतिरिक्त कुछ भी देय नहीं होगा।"

[12]. It is thus not disputed that the impugned order has been passed without conducting any enquiry and is based upon preliminary enquiry conducted by CSP, Murara, Gwalior and the statement of complainant given during investigation. The respondent no.3 has invoked provisions of Article 311(2) of Constitution of India and Regulation 221 of M.P. Police Regulation. The issue for consideration is as to whether the impugned punishment order could have been passed without conducting departmental enquiry or not?

[13]. This Court had an occasion to deal with the similar issue in the case of **Ravi Sharma (Deleted) Through Lrs (I) Smt. Aarti Sharma**

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& Ors. Vs. The State of M.P. & Ors. (W.P. No.8489 of 2023) wherein this Court did not approve the action taken in the similar manner against the employee of the police department. Relevant portion of the said judgment is reproduced hereunder;

> **"4.** Thus, the impugned order of punishment is found to have been passed without conducting the departmental enquiry. Respondents have tried to justify their action by invoking provision of Article 311 (2) of the Constitution of India which provides that where the authority empower to dismiss or remove a person or to reduce him in rank, is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry, the incumbent can be dismissed or removed or reduced in rank without conducting any enquiry. The aforesaid provision of the Constitution of India is apparently not attracted in the facts of the case inasmuch as there was no impediment in conducting the departmental enquiry against the petitioner. The language used in Article 311(2) is "It is not reasonably practicable to hold such enquiry" would mean that conducting enquiry is not possible. If the observations made by the Disciplinary Authority in the impugned order is seen, it is the opinion of the authority that enquiry is not required to be conducted. It is not his finding that the enquiry is not possible. Thus, apparently provisions of Article 311(2) of the Constitution of India are not available with the respondents authorities to pass the impugned order."

[14]. Considering the aforesaid, the action of the respondent no.3 in dismissing the petitioner without conducting departmental enquiry solely taking shelter of Article 311(2)(b) of Constitution of India is not sustainable in law. Likewise, Regulation 221 of Police Regulation only prescribe penalties which can be imposed but does not authorize respondent no.3 to inflict such punishment without conducting enquiry. The impugned order passed by respondent no.3 without conducting enquiry, based upon preliminary enquiry conducted by CSP and the

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statement of complainant given during investigation, is not sustainable in law.

[15]. The learned counsel for the respondents tried to support the impugned order by submitting that since the petitioner was a probationer, the regular departmental enquiry was not required to be conducted and the respondent no.3 was competent to discharge him from service based upon the FIR registered. Therefore, the next issue for consideration before this Court is as to whether impugned order is an order of discharge simplicitor or is punitive/stigmatic and could have been passed without conducting enquiry?

[16]. The extract of the impugned order is reproduced hereinabove which goes to show that it is not an order of discharge simplicitor. Various findings have been given in the order with regard to conduct of the petitioner. The respondent no.3 has relied upon the preliminary enquiry conducted by CSP Murar and has also referred to various allegations made against the petitioner in the FIR. The observations made in the impugned order go to show that the order is not discharge simplicitor but is punitive and stigmatic. More so, the respondent no.3 has passed the impugned order invoking provisions of Article 311(2)(b) of Constitution of India as also Regulation 221 of M.P. Police Regulations which shows that the respondent no.2 never intended to simply discharge the petitioner but the action has been taken against the petitioner by way of punishment.

[17]. During the course of argument, the respondent's counsel tried to justify the impugned action by stating it to be a discharge simplicitor.

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However, neither from the impugned order nor from the averments made in the return filed by respondents, it appears to be an order of discharge simiplicitor. For ready reference, the following averments have been made in paragraphs 6.B & 6.D of the return:

> **"6.B** That, **the impugned order is stigmatic** and full-fledged enquiry is not required because there is no dispute that the FIR has been registered and after considering the statements of victim in the preliminary enquiry, the conclusion has been drawn and, therefore, so also taking into consideration that the petitioner was engaged in the disciplinary force like Police, such conduct is not expected from him and it also dent a image of Police in the general public and, therefore, the impugned order has been rightly passed by terminating the services of the petitioner therefore, the judgment of Prakash Chandra Kein is not applicable in the present facts and circumstances of the case.
>
> **6.D** That, there is no full-fledged enquiry as enshrined under Rule of 14 of the M.P. CCA Rules, 1966 is required because the FIR lodged is not disputed and since in the preliminary enquiry it has also been gathered that the conduct and the allegations made in the FIR have dented the reputation of the Police and, therefore, the petitioner who was engaged on probation, such conduct is not expected from the employee who was engaged in the disciplinary force like Police therefore, there is no violation of principles of natural justice while passing the impugned order and the impugned order has been rightly passed within the four corners of Police Regulation as well as CCA rules."

[18]. Considering the aforesaid averments made in the return, there is no iota of doubt that the impugned action has been taken against the petitioner by way of punishment. The order is found to be stigmatic and punitive in nature.

[19]. At this stage, it is profitable to refer to various decisions cited by learned counsel for the parties.

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[20]. The learned counsel for the petitioner placed reliance upon the Apex Court judgment in the case of **Anoop Jaiswal (supra)**. The Apex Court held in paragraph 12, 13 & 15 as under;

> **"12.** It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.
>
> **13.** In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the gymnasium and acting as one of the ringleaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ringleaders were not seriously taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.
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> *** *** ***
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> **15.** A narration of the facts of the case leaves no doubt that the alleged act of misconduct on June 22, 1981 was the real foundation for the action taken against the appellant and that

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> the other instances stated in the course of the counter-affidavit are mere allegations which are put forward only for purposes of strengthening the defence which is otherwise very weak. The case is one which attracted Article 311(2) of the Constitution as the impugned order amounts to a termination of service by way of punishment and an enquiry should have been held in accordance with the said constitutional provision. That admittedly having not been done, the impugned order is liable to be struck down. We accordingly set aside the judgment of the High Court and the impugned order dated November 9, 1981 discharging the appellant from service. The appellant should now be reinstated in service with the same rank and seniority he was entitled to before the impugned order was passed as if it had not been passed at all. He is also entitled to all consequential benefits including the appropriate year of allotment and the arrears of salary and allowances upto the date of his reinstatement. The appeal is accordingly allowed."

[21]. Justice Krisha Iyer has dealt with the similar issue in the case of **Samsher Singh Vs. State of Punjab** reported in **(1974)2 SCC 831** wherein, it has been held in paragraph 160, 161 as under;

> **160.** Thus we see how membranous distinctions have been evolved between an enquiry merely to ascertain unsuitability and one held to punish the delinquent — too impractical and uncertain, particularly when we remember that the machinery to apply this delicate test is the administrator, untrained in legal nuances. The impact on the 'fired' individual, be it termination of probation or removal from service, is often the same. Referring to the anomaly of the object of inquiry test, Dr Tripathi has pointed out
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> > "The 'object of inquiry' rule discourages this fair procedure and the impulse of justice behind it by insisting that the order setting up the inquiry will be judicially scrutinised for the purpose of ascertaining the object of the inquiry."
>
> Again, could it be that if you summarily pack off a probationer, the order is judicially unscrutable and immune? If you conscientiously seek to satisfy yourself about allegations by some sort of enquiry you get caught in the coils of law, however, harmlessly the order may be phrased. And so, this sphinx-complex has had to give way in later cases. In some cases the rule of guidance has been stated to

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be ‘the substance of the matter’ and the ‘foundation’ of the order. When does ‘motive’ trespass into ‘foundation’? When do we lift the veil of ‘form’ to touch the ‘substance’? When the Court says so. These ‘Freudian’ frontiers obviously fail in the work-a-day world and Dr Tripathi's observations in this context are not without force. He says:

> “As already explained, in a situation where the order of termination purports to be a mere order of discharge without stating the stigmatizing results of the departmental enquiry a search for the ‘substance of the matter’ will be indistinguishable from a search for the motive (real, unrevealed object) of the order.

Failure to appreciate this relationship between motive (the real, but unrevealed object) and form (the apparent, or officially revealed object) in the present context has led to an unreal interplay of words and phrases wherein symbols like ‘motive’, ‘substance’, ‘form’ or ‘direct’ parade in different combinations without communicating precise situations or entities in the world of facts.

161. The need, in this branch of jurisprudence, is not so much to reach perfect justice but to lay down a plain test which the administrator and civil servant can understand without subtlety and apply without difficulty. After all, between ‘unsuitability’ and ‘misconduct’, ‘thin partitions do their bounds divide’. And, over the years, in the rulings of this Court, the accent has shifted, the canons have varied and predictability has proved difficult because the play of legal light and shade has been baffling. The learned Chief Justice has, in his judgment, tackled this problem and explained the rule which must govern the determination of the question as to when termination of service of a probationer can be said to amount to discharge simpliciter and when it can be said to amount to punishment so as to attract the inhibition of Article 311. We are in agreement with what the learned Chief Justice has said in this connection. So far as the present case is concerned, it is clear on the facts set out in the judgment of the learned Chief Justice that there is breach of the requirements of Rule 7 and the orders of termination passed against the appellants are, on that account, liable to be quashed and set aside.

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[22]. Further, the Apex Court in the case of **Dipti Prakash Banerjee (supra)** has dealt with similar issue and has held in paragraph 21 as under;

> **"21.** If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

[23]. A bare reading of aforesaid legal proposition goes to show that if the foundation of passing the order is misconduct allegedly conducted by employee, the order is vitiated for want of regular departmental enquiry. In the facts of this case, there is not even a contest on this issue that the allegations made against petitioner are the foundation for passing impugned order. Therefore, in absence of petitioner's conviction in the criminal case and for want of departmental enquiry, the impugned order cannot sustain judicial scrutiny.

[24]. The learned counsel for the respondents placed reliance upon the judgment of the Apex Court in the case of **Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh** reported in **1999 (1) SCC 246**. This was a case of suppression of information regarding criminal antecedents at the time of recruitment and, therefore, would not have any

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applicability in the facts of the present case. She also placed reliance upon the Apex Court judgment in the case of **Union of India & Ors. Vs. Mahaveer Singhvi** reported in **(2010)8 SCC 220** wherein, it was held by the Apex Court that satisfaction of the employer regarding suitability of the probationer to continue in service is subjective. There cannot be any doubt with regard to aforesaid legal proposition. Likewise, in the case of **State of U.P. vs. Shyam Lal Sharma** reported in **(1971)2 SCC 514**, the Hon'ble Apex Court has explained the distinction between a stigmatic and non-stigmatic order of compulsory retirement. However, as has been observed hereinabove, since the action taken against the petitioner has been found to be stigmatic and punitive, the ratio of these judgments is of no help to the respondents.

[25]. At this stage it is profitable to mention here that the FIR registered against the petitioner was the very foundation of impugned action taken against him. The said FIR has already been quashed by this Court holding that no offence, as alleged, has been committed by the petitioner. Therefore, on this ground also, the impugned action taken by respondent no.3 is liable to be quashed.

[26]. The learned respondents' counsel pointed out that during pendency of this petition, another FIR has been registered against the petitioner for offences punishable under POCSO and BNS. The petitioner's counsel in response, submitted that this FIR is also registered at the behest of Smt. Ravita Vanshkar inasmuch as the complainant of this FIR is close relative of Smt. Ravita Vanshkar. There is no such material available on record to support this contention of

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petitioner's counsel. However, the subsequent FIR would not have any relevance for adjudicating the validity of impugned order inasmuch as the same is not the foundation for passing of the same. Moreso, as of yet, it is only an allegation against the petitioner and there is no finding of guilt recorded against the petitioner. In future, if any finding of guilt is recorded against the petitioner, the respondents are at liberty to take action in accordance with law.

[27]. In view of the discussion made above, this Court is of the considered opinion that impugned order, dated 02.06.2022, (Annexure P/1) is not sustainable in law and is liable to be and is accordingly quashed. The respondents are accordingly directed to reinstate the petitioner in service with all consequential benefits.

[28]. With the aforesaid, the petition stands allowed and disposed of.

(ASHISH SHROTI)
JUDGE

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