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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.11128-11129 OF 2013
(@ S.L.P. (C) No.18447-18488 of 2013)
With
I.A.5-6 OF 2015
UNION OF INDIA & OTHERS â¬ ¦â¬ ¦â¬ ¦â¬ ¦..APPELLANT(S)
VERSUS
ABDUL RASHID â¬ ¦â¬ ¦â¬ ¦â¬ ¦..RESPONDENT(S)
O R D E R
1. Applications for early hearing of the appeals are allowed. Appeals are taken up forthwith, by consent.
2. These appeals have been instituted against the judgment of the learned Single Judge dated 9 th February, 2012 passed in SWP No.990/2009 and also the Division Bench dated 27 th November, 2012 in LPA No.143/2012 of the High Court of Jammu & Kashmir at Srinagar.
3. Briefly stated, the respondent was posted as Driver with 183 Bn, CRPF. While on duty, he caused an accident which resulted in serious injuries to a 15 year old boy. After that accident, while taking the injured to the civil hospital in the same vehicle caused another fatal accident resulting in death of two persons and serious

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injuries to three other persons. In this connection, regular departmental inquiry was instituted under Section 11(1) of the CRPF Act, 1949 read with Rule 27 of CRPF Rules, 1955. As the charges were proved, punishment of removal from service was awarded vide order dated 7 th May, 2009. Aggrieved by that decision the respondent preferred an appeal under Rule 28 of CRPF Rules, 1955. The appellate authority rejected the said appeal vide order dated 17 th August, 2009. The respondent then filed writ petition in the High Court of Jammu and Kashmir at Srinagar bearing SWP No.990/2009. The appellants filed reply affidavit to oppose the said writ petition in which factual aspects were noted to highlight the seriousness of the charge proved against the respondent. The learned Single Judge, however, referred to those facts to allow the writ petition and direct the authorities to permit the respondent to resume his duty; with liberty to the appellants to reconsider the question of punishment and to the respondent to challenge any future orders that may be made by the authority. The learned Single Judge presumably intended to confine the matter to the question of proportionality of punishment. Against this decision, however, the respondent filed Letters Patent Appeal. That was dismissed by the Division Bench as not maintainable, on the finding that it was against an order passed on the basis of consent given by the learned counsel for the parties.
4. Being aggrieved, the appellants have preferred these appeals. Principal grievance of the appellants is that the appellants had

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resisted the writ petition and not agreed for reconsideration of the quantum of punishment. In that the charges against the respondent were serious and duly proved in the inquiry; and that finding has been confirmed by the appellate authority. Further, the punishment awarded was commensurate with the seriousness of the charge as proved against the respondent. The respondent, on the other hand, submits that the appellants having consented to examine the question of proportionality of punishment cannot be permitted to resile from that position. Indisputably, the respondent has not challenged the view taken by the Division Bench that the order passed by the learned Single Judge was based on agreement or consent given before the learned Single Judge.
5. Having heard the learned counsel for the parties, the first

question that needs to be answered is: whether the appellants had consented to reconsider the question of quantum of punishment? From the reply affidavit filed by the appellants to oppose the writ petition, portion whereof has been extracted by the learned Single Judge in the impugned judgment, there is nothing to indicate that any such concession has been given in writing. For, the relevant portion of the reply affidavit reproduced in the impugned judgment of the learned Single Judge, merely refers to the factual aspects which were reckoned by the authorities in the departmental inquiry against the respondent. Even if the order of the learned Single Judge was to be interpreted liberally, in our view, no specific statement of the counsel for the appellants who had appeared

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before the learned Single Judge - of having given any such consent to set aside the order of removal and to call upon the competent authority to reconsider the question of proportionality of punishment, can be discerned. Indeed, the appellants did not file any appeal against the order of the learned Single Judge nor moved any application for recall of that order. Admittedly, the respondent had questioned the said order by filing Letters Patent Appeal, which, as aforementioned, has been dismissed by the Division Bench as not maintainable. The appellants, therefore, have been justly advised to challenge these decisions in the present appeals.

6. We are of the considered opinion that the order passed by the learned Single Judge, at best, would mean that the writ petitioner had confined his arguments to the quantum of punishment. However, there is nothing in that order to indicate that the counsel for the appellants had in fact consented for setting aside the order of removal from service or agreed to reinstate the respondent in service. Thus understood, it is open to the appellants to question the approach of the learned Single Judge; and as the respondent had filed appeal against the same decision before the Division Bench, it has become necessary for the appellants to challenge both the decisions by way of these common appeals. The Division Bench has not considered the matter on merits; and, in our opinion, the learned Single Judge has not given any reason as to why the quantum of punishment in the fact situation of the present case can be said to be excessive and impermissible.

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7. In the peculiar factual matrix of the case at hand and in order to do substantial and complete justice to the parties we deem it appropriate to set aside both the decisions of the learned Single Judge as well as of the Division Bench and instead restore the writ petition filed by the respondent to its original number for being decided afresh on merits by the High Court. We leave all questions open to be decided in the remanded petition afresh.

8. The parties may appear before the High Court within two months from the date of passing of this order and request the High Court to take up the restored (remanded) writ petition and decide the same expeditiously.

9. Appeals are disposed of on the above terms with no order as to costs.

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(T.S. THAKUR)

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(A.M. KHANWILKAR)

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(DR. D.Y. CHANDRACHUD)

New Delhi;
July 29, 2016.

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ITEM NO.16 COURT NO.1 SECTION XVIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A. 5-6/2016 in Civil Appeal No.11128-11129/2013
UOI & OTHERS Appellant(s)
VERSUS
ABDUL RASHID Respondent(s)
(for early hearing and office report)
Date : 29/07/2016 These applications were called on for hearing today.
CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
For Appellant(s)

Mr. Gaurav Sharma, Adv.
Ms. Anil Katiyar, Adv.
Mr. B. Krishna Prasad, Adv.
For Respondent(s)
Ms. Ashmita Singh, Adv.
Mr. Shakeel Sarwan Wani, Adv.
Ms. Priyadev Shinee Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R
Applications for early hearing are allowed.
The civil appeals are disposed off in terms of the signed order.
(Ashok Raj Singh) (Veena Khera)
Court Master Court Master
(Signed Order is placed in the file)