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WP-4242-2016

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 19th OF JUNE, 2026

WRIT PETITION No. 4242 of 2016

RAM AVTAR SHARMA

Versus

THE STATE OF MADHYA PRADESH THR AND OTHERS

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Appearance:

Shri Raj Bahadur Singh Tomar - Advocate for the petitioner .

Shri G.K. Agarwal - Govt. Advocate for the State.

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ORDER

This petition, under Article 226 of the Constitution of India, has been filed seeking following relief(s):-

"7.1 That, charge sheet and whole proceedings of inquiry may kindly be quashed.

7.2 That, impugned order of punishment No. F-13-37/2015/P-2/31 Bhopal dated 02-01-2016 passed by respondent No. 1 contained in Annexure P/15 be quashed.

7.3 That, any other relief which this Hon'ble Court deems fit be also awarded along with cost R. 20000."

2. Learned counsel for the petitioner submitted that the petitioner was discharging duties on the post of Executive Engineer during 14.10.2009 to 02.11.2011 in the Water Resources Division, District Bhind. The respondent no.1 alleged against the petitioner that he committed irregularities, for which a charge sheet dated 08.02.2012 was served on the petitioner under Rule 14 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966.



The petitioner submitted a detailed reply to the charge sheet on 03.03.2012 and denied the charges. Thereafter, no action had been taken by the disciplinary authority; therefore, the petitioner submitted W.P. No. 2759/2013, which was decided on 9.1.2014, directing the respondent to take a decision on the reply of the petitioner. Thereafter, about one year from the order of the Court, respondent no.1 appointed an Enquiry Officer and Presenting Officer vide order dated 3.1.2015.

3. Learned counsel for the petitioner submitted that thereafter, the statements of the petitioner and other witnesses were recorded by the Enquiry Officer. Thereafter, the Presenting Officer submitted his brief, and the petitioner also submitted his brief. Subsequently, the Enquiry Officer concluded the enquiry and submitted the enquiry report before the disciplinary authority. The disciplinary authority issued a show cause notice dated 14.07.2015 and supplied the enquiry report to the petitioner. The petitioner filed his representation/reply against the show cause notice on 19.07.2015.

4. Thereafter, respondent no.1 obtained confirmation/approval from the PSC through their letter dated 16.11.2015 on the tentative punishment. Subsequently, respondent no.1 passed the impugned order of punishment dated 02.01.2016, whereby 5% of the pension amount was withheld for three years.

5. Learned counsel for the petitioner submitted that the advice from the Madhya Pradesh Public Service Commission (MPPSC) should have been supplied in advance. The respondents have not supplied the advice of the



MPPSC to the petitioner, and it is submitted as per the judgments of Hon'ble Supreme Court in the case of **S.N. Narula vs. Union of India and others**, reported in (2011) 4 SCC 591 , and the case of **Union of India and others vs. R.P. Singh**, reported in (2014) 7 SCC 340.

6. Learned counsel for the petitioner further placed reliance upon Rule 30 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, and submitted that as per the aforesaid rules, every order, summons, notice, and other process made or issued under this rule shall be served in person on the government servant. Despite the aforesaid, the copy of the advice of PSC has not been supplied by the respondents. Learned counsel for the petitioner further submitted that the charges levelled against the petitioner are not included in the definition of misconduct, as there is no *mens rea* on the part of the petitioner, and submitted that as per the judgments of the Supreme Court in the case of **Inspector Prem Chand Vs. Govt. of NCT of Delhi and others** reported in (2007) 4 SCC 566 and as the Division Bench judgment passed in the case of **S.D. Bind v. Union of India and Others**, 2015 (1) M.P.L.J. 74, carelessness, negligence, or mistake does not come within the definition of misconduct.

7. Learned counsel for petitioner further submitted that the impugned order dated 02/01/2016 is non-speaking and unreasoned order, without considering the facts and ground mentioned by the petitioner in his reply, the impugned order has been passed. In the impugned order, the respondents have mentioned that vide order dated 15.12.2015, the Cabinet had already considered the case of petitioner, but the copy of minutes/order dated



15.12.2015 has not been supplied to the petitioner, even that has not been enclosed by the respondents in their reply also, therefore, the impugned order is non-speaking and unreasoned order.

8. *Per contra*, the learned counsel for respondents submitted that all necessary provisions laid down under the Rules 1966 have been complied with, and as such there is no violation of any sub-rule of Rules 1976. It is further submitted that the charges leveled against the petitioner are serious in nature as no action was taken by the petitioner for cleaning and maintenance of canal, and the petitioner has not maintained and cleaning of canals, and did not take any interest and remained negligent. It is further submitted that the petitioner has not complied the direction, and did not achieve the target which has been prescribed by the higher authority. It is further submitted that on the basis of documentary evidence and statement recorded before the Enquiry Officer, it was proved that targeted figure was not achieved, hence the Enquiry Officer has not committed any error in submitting the report that the charge is proved. It is further submitted that petitioner was supplied with all material documents as required from time to time, and petitioner actively participated in the departmental proceedings and cross-examined the witnesses of prosecution, and the copy of statement of witnesses were supplied to the petitioner and all the necessary provisions laid down under the rules have been complied with. Learned counsel for respondents further submitted that the petitioner has not stated that what prejudice has been caused to him for not supplying the copy of advice of the MPPSC.

9. Heard both the counsel and perused the record.



10. Upon perusal of the record, it is evident that the petitioner was posted and discharged duties on the post of Executive Engineer in the Water Resources Division, District Bhind, during the period from 14.10.2009 to 02.11.2011. Alleging certain irregularities committed during the aforesaid tenure, a charge-sheet dated 08.02.2012 was issued to the petitioner under Rule 14 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. The petitioner submitted a detailed reply on 03.03.2012 denying all the charges levelled against him. However, no further action was taken by the disciplinary authority for a considerable period. Consequently, the petitioner approached this Court by filing W.P. No.2759/2013, which was disposed of on 09.01.2014 with a direction to the respondents to take a decision on the petitioner's reply. Thereafter, the disciplinary authority appointed an Enquiry Officer and a Presenting Officer vide order dated 03.01.2015.

11. The record further reveals that the Enquiry Officer conducted the departmental enquiry and recorded the statements of the petitioner as well as other witnesses. Upon completion of the evidence, the Presenting Officer submitted his written brief and the petitioner also submitted his defence brief. Thereafter, the Enquiry Officer concluded the enquiry and submitted his report to the disciplinary authority.

12. It is further borne out from the record that the disciplinary authority sought consultation from the Madhya Pradesh Public Service Commission regarding the proposed punishment and obtained its concurrence vide communication dated 16.11.2015. Thereafter, the disciplinary authority



passed the impugned order dated 02.01.2016 imposing the penalty of withholding 5% of the petitioner's pension for a period of three years. The advice rendered by the Madhya Pradesh Public Service Commission was not supplied to the petitioner before the passing of the final order of punishment. The petitioner has specifically raised the grievance that the non-supply of such advice deprived him of an opportunity to submit an effective representation against the same. The record reflects that Rule 30 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 contemplates service of every order, summons, notice and other process issued under the Rules upon the government servant concerned. Despite the aforesaid provision, the advice tendered by the Public Service Commission was not furnished to the petitioner.

13. It is also the case of the petitioner that the allegations levelled against him do not constitute misconduct in the strict legal sense, inasmuch as there is no material to establish any deliberate or intentional wrongdoing on his part. The petitioner has asserted that mere negligence, carelessness or an error of judgment, in the absence of any element of mens rea, would not amount to misconduct.

14. The judgment passed by the Apex Court in the case of **S.N. Narula Vs. Union of India and others**, reported in (2011) 4 SCC 591 has been followed by the Apex Court in the case of **Union of India and others Vs. R.P.Singh**, reported in (2014) 7 SCC 340. In the case of **R.P. Singh (supra)** in para- 12, 21 and 23 has held as under :

“12. We will be failing in our duty if we do not take note of the submission of Mr. W.A. Qadri that the decision in **S.N.**



Narula case is not an authority because the Tribunal has set aside the order of the disciplinary authority on the ground that it was a nonspeaking order. Be that as it may, when the issue was raised before this Court and there has been an advertence to the same, we are unable to accept the submission of Mr. Qadri. The said decision in S.N. Narula case is an authority for the proposition that *the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of the punishment.*

21. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor. There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said Article mandatory. As we find, in T.V.Patel's case, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. *An Inquiry Report in a disciplinary proceeding is required to be furnished to the delinquent employee* so that he can make an adequate representation explaining his own stand/stance. That is precisely what has been laid down in the B.Karunakar case.”

23. We have referred to the aforesaid decision in B. Karunakar case in extenso as we find that in the said case it has been opined by the Constitution Bench that *non-supply of the enquiry report is a breach of the principle of natural justice. Advice from the UPSC, needless to say, when utilized as a material against the delinquent officer, it should be supplied in advance.* As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence.”

15. Thus, as per this judgment, advice from UPSC should be supplied in advance and if the same is not done, the enquiry is vitiated on the count of



violation of natural justice and *in the present case, advice from MPPSC has not been supplied in advance, hence, the enquiry is vitiated on account of violation of natural justice.*

16. As per Rule 30 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (in short “Rules, 1966”), every order, notice and other process made or issued under these rules shall be served in person on the Government Servant concerned or communicated to him by registered post despite the aforesaid Rules, copy of enquiry reports have not been supplied to the petitioner. The relevant provision of the Rules, 1966 reads as under:

“30. Service of orders, notice etc. Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.”

17. It is a settled position in law that when a discretion is vested in an authority to exercise a particular power, the same is required to be exercised with due diligence, and in reasonable and rational manner. The Hon'ble Supreme Court in catena of decisions has reiterated time and again the necessity and importance of giving reasons by the authority in support of its decision. It has been held that the face of an order passed by a *quasi judicial* authority or even by an administrative authority affecting the rights of parties must speak. The affected party must know how his case or defence was considered before passing the prejudicial order.

18. The decision of the Hon'ble Supreme Court in the case of *State of Punjab v/s. Bandip Singh and others* reported in (2016) 1 SCC 724 is relevant to quote. In the said decision, it had been held by the Hon'ble



Supreme Court that every decision of an administrative or executive nature must be a composite and selfsustaining one, in that it should contain all the reasons, which prevailed on the official taking the decision to arrive at his conclusion.

19. In the same judgment in Paragraph 7, the Hon'ble Supreme Court clarifies that the Government does not have carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons. Paragraph 7 of the said decision is quoted as under:-

“7. The same principle was upheld more recently in Ram Kishun v. State of U.P. (2012) 11 SCC 511 : (2013) 1 SCC (Civ) 382. However, we must hasten to clarify that the Government does not have a carte blanche to take any decision it chooses to; it cannot take a capricious, arbitrary or prejudiced decision. Its decision must be informed and impregnated with reasons.

This has already been discussed threadbare in several decisions of this Court, including in *Sterling Computers Ltd. v. M & N Publications Ltd* (1993) 1 SCC 445, *Tata Cellular v. Union of India* (1994) 6 SCC 651, *Air India Ltd. v. Cochin International Airport Ltd.* (2000) 2 SCC 617, *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.* (2006) 11 SCC 548 and *Jagdish Mandal v. State of Orissa* (2007) 14 SCC 517” 31.

20. Also, the decision of the Hon'ble Supreme Court in the case of **Kranti Associates Pvt. Ltd. and another v/s Masood Ahmed Khan and others** cited in (2010) 9 SCC 496 highlights this point. The Hon'ble Supreme Court in paragraph 15 opined that the face of an order passed by a quasi judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the inscrutable face of a sphinx. In paragraph



47 the Honb'le Supreme Court summarized its discussion. The relevant sub-paragraphs of the said summary are quoted as under:-

“47. Summarising the above discussion, this Court holds:

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz torija v. Spain (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions”.

The impugned order is also a non-speaking and unreasoned order. Further, when the matter was referred to the MPPSC for obtaining concurrence, no opportunity of hearing was afforded to the petitioner.

21. Rule 8 of the Pension Rules provides for pension subject to future good conduct. Sub-rule (3) of Rule 8 reads as under :

“(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is



prima facie guilty of grave misconduct, it shall before passing an order under subrule (1) :-

(a) Serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

22. As per said rules, if the pensioner is prima facie guilty of grave misconduct, then upon giving notice proposing action taken against him. The pension, after considering representation, if any submitted by him, can be withheld. The grave misconduct has been defined under Explanation attached to sub-rule (5) of Rule 8 of the Pension which reads as under :

“(5) An appeal against an order under subrule (1), passed by any authority other than the Governor, shall lie to the Governor and the Governor shall in consultation with the State Public Service Commission pass such order on the appeal as he deems fit.

Explanation.-in this rule,-

(a) the expression “serious crime” includes a crime involving an offence under the Official Secrets Act, 1923 (No.19 of 1923);

(b) the expression “grave misconduct” includes the communication or disclosure of any secret official code or pass word or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, while holding office under the Government so as to prejudicially affect the interests of the general public or the security of the country.”



23. As per this explanation, grave misconduct includes the communication or disclosure of any secret official code. In the present case, no such allegation has been made against the petitioner. It is further to be noted that before withholding the pension, no notice or any opportunity of hearing was given to the petitioner. The charges leveled against the petitioner are petty in nature and in short all the charges relates to the allegation that the petitioner did not achieve the targets. As it does not involve any financial implication, the punishment of withholding 5% pension for a period of three years appears to be harsh and disproportionate.

24. In the case of **Dr. Shyam Sharma Vs. State of M.P. and others** reported in 2015 (2) MPLJ 458, Principal Seat at Jabalpur has held as under:-

14. As has been pointed out, after retirement of a Government servant what would be circumstances on account of which pension can be withdrawn, are not indicated in the rules. Only in such case where the enquiry is initiated after retirement the circumstances are shown in Rule 9(2)(b) of the Rules. If the said analogy is applied in the present case, the misconduct of the petitioner even if proved, would not attract a major penalty of removal or dismissal from service had the petitioner remained in service. Even otherwise, there is no charge of financial irregularity levelled against the petitioner and loss to the Government. Therefore, provisions of Rule 9(4)(c) of Rules would not be attracted. As such the order of withholding 50% pension of the petitioner cannot be sustained.

25. In the case of **Saroj Kumar Shrivastava Vs. State of M.P. and others** reported in 2015 (2) MPLJ 568, Principal Seat at Jabalpur has held as under:-

“13. In context of the aforesaid, it has to be examined whether allegations made against the petitioner were said to



be proved to the extent that a major penalty of dismissal from service could have been imposed on him if all such charges were found proved. The findings as recorded by the enquiry officer in the case in hand is nothing, but admission of the guilt of the petitioner only because he has not appeared before the enquiry officer despite notice. Even the ex parte proceedings were not done in the said departmental enquiry against the petitioner expeditiously. The finding was recorded that because witnesses were not coming forward because of the long lapse of time and pendency of the departmental enquiry, it was deemed that allegations made against the petitioner are admitted by him. By no stretch of imagination, such a finding of the enquiry officer can be treated as a proof of the misconduct of the petitioner. Even the gravity of the misconduct was not discussed. The State authority has said only this much that a loss of Rs.50,000/- was caused to the State Government on account of improper working of the petitioner. How such a loss was caused and how the petitioner alone was responsible for such a loss is also not discussed nor was found proved. In such a departmental enquiry, there was no basis to hold that the alleged misconduct of the petitioner was such grave that he would have been removed from service had he remained in service and would not have retired. Therefore, in view of the discussions made herein above, even the penalty of withholding of 50% pension for a period of five years could not have been imposed on the petitioner.

26. Similar controversy has already been decided by the Principal Seat of this Court in the case of **R.K. Jain Vs. State of M.P. and another** [W.P. No.1916/2012, decided on 26.11.2014] and against the said order, the appeal preferred by the State, i.e. W.A. No.537/2017 has been dismissed by order dated 21.07.2017 and SLP (Civil) No.37447/2017 arising out of the order dated 21.07.2017 has also been dismissed by the Hon'ble Supreme Court by order dated 09.01.2018.

27. Now, coming to the issue whether charges framed against petitioner come under the definition of misconduct?



28. As per charges mentioned in the impugned order, they do not come within the definition of misconduct. As per the Division Bench judgment passed in the case of **S.D. Bind v. Union of India and Others, 2015 (1) M.P.L.J. 74**, at best, the act of petitioner may fall under the category of carelessness or negligence. The relevant extract of order passed in the case of **S.D. Bind (supra)** is reproduced below for ready reference and convenience:-

15. That apart, another aspect of the matter warrants consideration. The irregularities which is found against the petitioner is only nonfollowing of certain procedure in the matter of awarding contract. The question is as to whether such an irregularity in the matter of following the procedure can be termed as a misconduct. The Supreme Court has considered the aforesaid aspect in the case of **Union of India v. J. Ahmed, (1979) 2 SCC 286 : AIR 1979 SC 1022** which has been followed again by the Supreme Court in the case of **Inspector Prem Chand v. Govt, of National Capital Territory of Delhi, (2007) 4 SCC 566**, wherein it has been held by the Supreme Court that merely lack of efficiency, failure to attain the highest standard of administrative ability or negligent or careless want of dealing with a matter on one isolated may not constituted a misconduct for which punishment can be imposed.

16. In the present case apart from the fact that the Division Bench has made the observations as reproduced hereinabove and interfered with the imposition of cost, it found that there was certain discrepancy in the guidelines laid down and, therefore, in paragraph 9 fresh guidelines for future action was issued. Once this is the factual scenario then merely because the petitioner failed to follow the guidelines for once, it cannot be said that the petitioner has committed misconduct in the matter. At best action of the petitioner may fall in the category of careless or negligence in the matter of dealing with the case once an isolated occasion and if the principles laid down by the Supreme Court as indicated in the case of **J. Ahmed (supra)** is applied, we are of the considered view that allegations levelled even do not amount to misconduct for which action can be taken.



29. There is nothing on record which shows that petitioner had ill-motive while exercising his quasi judicial function. Thus, the act of petitioner cannot be termed as misconduct as per the judgment rendered by Hon'ble Apex Court in the case of **Inspector Prem Chand Vs. Govt. of NCT of Delhi and others** reported in (2007) 4 SCC 566, para 12 of which is quoted below for ready reference and convenience:

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India v. J. Ahmed* [(1979) 2 SCC 286 : 1979 SCC (L&S) 157] whereupon Mr Sharan himself has placed reliance, this Court held so stating: (SCC pp. 292- 93, para 11)

“11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pearce v. Foster* [(1886) 17 QBD 536, 542 : (1886-90) All ER Rep Ext 1752]). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)* [(1959) 1 WLR 698]). This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur* [(1959) 61 Bom LR 1596] and *Satubha K. Vaghela v. Moosa Raza* [10 Guj LR 23] . The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:



‘Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct’.”

30. From this analysis and keeping in view the fact that for imposition of penalty of withholding of pension the findings were not properly recorded, the orders impugned cannot be sustained. Pension is a proprietary right as has been held by the Courts in several pronouncements. Such a proprietary right is not required to be taken away without following proper procedure of law. If such a drastic penalty of withholding of pension is required to be imposed on any such Government servant, definite finding is required to be recorded with respect to the gravity of the misconduct and the ultimate result of the said misconduct, whether it would have been resulted in dismissal from service, had the Government servant remained in the employment, and then only penalty aforesaid is required to be imposed. As nothing is found in this respect, no such consideration is done by the respondents while imposing penalty on the petitioner, the order dated 02.01.2016 cannot be sustained.

31. Resultantly the petition is allowed. The order dated 02.01.2016 (Annexure P/15) is hereby quashed. The respondents are directed to pay the aforesaid arrears of pension with interest @ 6% per annum from the date of entitlement till the date of actual payment within a period of three months from the date of receipt of a certified copy of this order. In the event that the respondents fail to comply with the aforesaid direction within the stipulated three-month period, they shall be liable to pay interest on the aforesaid amount at an enhanced rate of 12% per annum from the date of entitlement



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till the date of actual payment. At the time of filing of present petition, the age of petitioner was 62 years in the year 2016 and now the age of the petitioner is 72 years, therefore, no liberty to take any fresh action is granted to the respondents.

32. With the aforesaid observations, the present petition stands disposed of.

(ANAND SINGH BAHRAWAT)
JUDGE

vpn/-