Before Sandeep Moudgil, J.

UNION OF INDIA AND OTHERS — *Appellants*

versus

KAMALJEET SINGH — *Respondent*

LPA No. 2359 of 2017 (O&M)

August 26, 2022

Constitution of India, 1950—Art. 51—Central Police Reserve Force Rules, 1955, Rl. 29(d)—Letter Patent Appeal—Officer's three annual increments stopped—DIGP (CRPF) further dismissed him from service—Appeal and revision dismissed Singh Bench in CWP 20155 of 2013 set aside the punishment orders—Orders did not deal with the inquiry report in detail—The show cause notice issued at the initial stance was qua two personnel but dismissal orders were against 4 constables—Held, the order passed by the revisional authority were non speaking orders—When such orders of grave consequence are passed, a well reasoned order dealing with all the issues should be considered while imposing extreme punishment of dismissal. The orders of the Single Judge upheld—Present appeal dismissed.

Held, that though we are in agreement with the counsel for the Union of India that the powers of revision could have been exercised by the Appellate Authority, though done at a belated stage in the present case, we are of the considered opinion that the reasons given by the learned Single Judge that the said power was not available cannot be held to be sustainable in view of the provisions of Rule 29 (d) as reproduced above.

(Para 25)

Further held, that the impugned order dated 15.06.2009, duly conveyed on 01.08.2009 by the Commandant, dismissing the appeal was not justified and the same cannot be sustained. Similarly, the subsequent order in appeal dated 23.04.2010 (Annexure P-12) 07.05.2013 (Annexure P-16) also cannot stand the test of judicial scrutiny and, accordingly, we do not find any fault in the order of the learned Single Judge, for the reasons noticed hereinabove.

(Para 26)

Shivoy Dhir, Senior Panel Counsel, *for the appellants-UOI*.

Rajeev Anand, Advocate,for the respondent.

G.S. SANDHAWALIA, J.

(1) Consideration in the present letters patent appeal at the instance of Union of India is regarding the relief granted by the learned Single Judge to the writ petitioner, whereby the order dated 15.06.2009 (P-10) passed by the Deputy Inspector General of Police (DIGP), CRPF, Chandigarh, who had enhanced the punishment from the stoppage of three annual increments with cumulative effect to the dismissal from service in pursuance of show cause notice issued on 25.02.2009 (Annexure P-7). The orders in appeal dismissing the appeal on 23.04.2010 (Annexure P-12) and the dismissal of the revision on 07.05.2013 (Annexure P-16) by the Special Director General, CRPF, Jammu & Kashmir Zone were also set aside in CWP No.20155 of 2013 on 17.08.2017.

(2) The reasoning given by the learned Single Judge was that the Appellate Authority has no power to enhance the penalty under Rule 28 of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as '1955 Rules') and only the power under Rule 29 (d) is of revision. Therefore, a finding was recorded that the Appellate Authority had exceeded its jurisdiction in invoking the revisional provision instead of restricting its power under Rule 28 while dealing with the appeal. It was, accordingly, held that the Revisional Authority had thereafter affirmed the void order as such and, therefore, directions were given to reinstate the writ petitioner within a period of 3 weeks and calculate arrears of pay and disburse the same within a period of 3 months.

(3) Counsel for the Union of India has, accordingly, referred to the provisions of Section 29 (d) of the 1955 Rules to submit that the DIG may call for the records of award of any punishment and enhance the same. It is, accordingly, submitted that as per the proviso an opportunity was to be given orally or in writing as to why the punishment should not be enhanced and the said procedure was followed. Therefore, the order of the learned Single Judge was not sustainable to the extent whereby the finding has been recorded that the Appellate Authority did not have the power toenhance the sentence. It is, accordingly, pointed out that since the appeal was pending before the DIG (P), therefore, he was justified to exercise the power under Rule 29 (d) of the 1955 Rules and the impugned order suffered from an infirmity, as the provisions of the Rule have not been correctly kept in mind.

(4) Mr. Rajiv Anand, counsel for the respondent on the

other hand has submitted that revisional power cannot be exercised at any point of time by the DIGP on its own motion and not on the appeal filed against the order of the punishment which had initially been imposed. It was pointed out that the repeated representations had been filed against the stoppage of three annual increments and the Appellate Authority had woken up from its slumber to invoke the provisions of Rule 29 (d). It was submitted that the disciplinary authority noticed that there was a dispute regarding the manner in which the incident had taken place and had come to the conclusion that the superior officers version was not liable to be accepted and there was some manipulation of the medical record and there was contradiction in the statements of the said officer, who had used unparliamentary language against the company personnel. Therefore, keeping in view the cumulative effect and the fact that the appellant was of a young age and also the fact that unparliamentary language had been used by the superior officer, the stoppage of three annual increments was commensurate regarding the incident and the extreme order of dismissal from service was wrongly passed by the DIG.

(5) It was further submitted that it was a case where the writ petitioner had already undergone the loss of one increment by the time the order of dismissal was passed and also the period of suspension from 15.06.2007 till 04.06.2008 was not to be counted for calculation of pension, annual increment and leave, which was commensurate with the issue and the said facts have not been properly examined by the Appellate Authority, who had chosen notto exercise its revisional power prior to the filing of the appeal andthe representation which had been given. It was further argued that there was no power of revising the punishment as such under Rule28 of the 1955 Rules.

(6) A perusal of the paper-book would go on to show that the writ petitioner was enlisted as a Constable in the Central Reserve Police Force (hereinafter called 'CRPF') on 07.09.2001 at Pinjore and was allocated Force No.015234644. After completing of his initial training at Neemuch (Madhya Pradesh), he was posted withthe 84 Battalion CRPF. While deployed with the Company 'D' for election duties in U.P., an incident took place of misbehaviour, manhandling of the Assistant Commandant while staying in Vinobha Bhave Inter College Prem Nagar, District Sultanpur. The writ petitioner and three others were placed under suspension from 15.06.2007 and the following charge-sheet was issued against them:-

"Article-1

That the below named personnel of this Bn. while working as Constable being the member of Force acted in a way of disobedience of orders and lack of devotion to duty and other misconduct, misbehavior which include misbehavior and manhandling with Sh. Daya Ram Sandey Asstt. Comdt. (IRLA-5608) at his residence on 22-5-07when the D/84 Bn. while at stay in Vinobha Bhave Inter College Prem Nagar Distt. Sultanpur UP during 2007 UP General Assembly Elections which is a punishable offence under clause 11(1) of CRPF act 1949.

1. 015234644 Sepoy/ GD Kamaljeet Singh
2. 005230191 Sepoy/ GD Satish Kumar
3. 941445206 Sepoy/GD Mo Amin Vani
4. 015281018 Sepoy/GD Malkhan Singh"

(7) Surender Kumar, 2nd In Command, who was appointed as Inquiry Officer had given his report dated 29.06.2007, which was found to be shortcoming in nature and the same was cancelled and orders were passed for denovo inquiry on 14.11.2007. Resultantly, inquiry report (Annexure P-2) was submitted wherein charges were held to be proved against the four delinquent Sepoys.

(8) The writ petitioner submitted his objections to the said report on 08.05.2008 (Annexure P-2), wherein the disciplinary authority, 2nd In Command examined the said inquiry in detail. Vide office order dated 05.06.2008 (Annexure P-3) he came to the conclusion that the 'D' Company had reached for duty at the Vinobha Bhave Inter College, Prem Nagar, District Sultanpur on 22.05.2007 at 10:30 AM where the arrangements for stay have been made. The examination of students was going on and the Company had to wait outside in the courtyard. The Company personnel, however, had started going inside and the Assistant Commandant objected and reprimanded the personnel from going inside and asked them to fall in. He had apparently abused the whole company by using unparliamentary language and then kept the Company personnel standing in the scorching sun for 45 minutes. The writ petitioner who was attached with another platoon had been asked to present in the orderly room. After the Assistant Commandant had attended the meeting in the office of S.P., Fatehpur, he had returned at night and had gone to his room in

the college. At 10:00 PM 40-50 personnel had gathered outside his room to talk to him about the abuse given to others in the morning.

(9) It was noticed that it could not be confirmed whether there was any manhandling of the Assistant Commandant by the fourcharged personnel and the statement of HC Prem Lal Sharma was treated as doubtful and self contradictory. It was, however, noticed that the said witness had admitted that the incident had occurred due to the clumsy words and abuses used by the Assistant Commandant. It was also noticed that the writ petitioner had protected the said superior officer for 7-8 days due to the sensitive Gujjar Reservation Movement, after the said incident with their weapons and, thus, it shows personal relations with the above said officer. The medical report produced by the said superior officer was held to be manipulated and prepared on a ordinary piece of paper, which was doubtful and the factum that the officer got himself checked on 24.05.2007, but the report which had been produced was made on 23.05.2007 and a letter had written to the medical officer on 22.05.2007.

(10) Thus, doubt was raised on the truth of the incident and even the x-ray report which was done from Swai Man Singh Hospita, Jaipur on 08.06.2007 and the report was that no injury had been found on the head and a minor swelling and scratch had been found on the index finger of his right hand. Thus, a finding was recorded that it could not be ascertained whether the concerned officer received injury during the incident on 22.05.2007. It was noticed that company commander as such was competent to take action under the rules against the personnel, but he had tried to conceal his own fault and failed to take disciplinary action against the personnel. Therefore, a finding was arrived at that the disciplinary authority did not agree with the report of the inquiry officer regarding the charges as such which were stated to be proved beyond any doubt. The same was on the ground that there was no eye witness who could prove that the superior had been manhandled and it was held that there was only circumstantial evidence and 40-50 personnel had gathered outside the room of the superior on account of the clumsy words used by him during day time.

(11) It was noticed that various communications had been addressed by superior officers not to use unparliamentary language while talking to personnel. Therefore, keeping in view the said fact the benefit of doubt was given, keeping in view the young age of the Sepoys and the fact that their families would be affected and there was

rampant unemployment. Therefore, while exercising powers under Section 11 (1) of the Central Reserve Police Force Act, 1949 (hereinafter referred to as '1949 Act') read with Rule 27 of the 1955 Rules, the stoppage of increments for three years was imposed upon three Sepoys, whereas Sepoy Mohd. Amin Vani was awarded the penalty of quarter guard confinement for 28 days i.e. from05.06.2008 to 02.07.2008. The stoppage of three increments with cumulative effect which was imposed upon them included the increments earned during that period which would not be due in future. The period of suspension was to be treated from 15.06.2007 to 04.06.2008 and during that period no other pay and allowances would be due to them. The period of suspension was not to be counted for calculation of pension, annual increment and leave.

(12) Being aggrieved against the said punishment imposedby the Commandant, the writ petitioner filed an appeal on 30.06.2008 (Annexure P-4) before the Deputy Inspector General of Police, CRPF, Chandigarh that it was not fair and that the period of suspension be treated as duty period in order to save him from pecuniary loss. Another communication dated 09.08.2008 (Annexure P-5) was addressed to the Inspector General of Police, CRPF, Chandigarh while giving reference to the earlier appeal. The revision was then preferred on 02.12.2008 (Annexure P-6) on account of the inaction on the earlier appeals filed to the Inspector General of Police while giving reference to the earlier appeals filed.

(13) Thus, it would be clear that the revisional authority did not exercise its powers under Rule 29 (d) till that period and never called for the records. The revisional authority as defined under Rule 29 (d) would also be Deputy Inspector General of Police who was also the appellate authority under Rule 28. Rule 29 of the 1955 Rules reads as under:-

> "**29. Revision**.—(a) A member of the Force whose appeal has been rejected by a competent authority may prefer petition for revision to the next Superior Authority. The power of revision may be exercised only when in consequence of some material irregularity, there has been injustice or miscarriage of justice or fresh evidence is disclosed.
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> (b) The procedure prescribed for appeals under sub-rules
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> (c) to (g) of rule 28 shall apply mutatis mutandis to

petitions for revision.

(c) The next superior authority while passing orders on arevision petition may at its discretion enhance punishment: Provided that before enhancing the punishment the accused shall be given an opportunity to show cause why his punishment should not be enhanced:

Provided further that an order enhancing the punishment shall, for the purpose of appeal, be treated as an original order except when the same has been passed by the Government in which case no further appeal shall lie, and an appeal against such an order shall lie—

(i) to the Inspector General, if the same has been passed by the Deputy Inspector General; and

(ii) to the Special Director-General or Additional Director-General heading zone, if the same has been passed by the Inspector General; and

(iii) to the Director General if the same has been passed by the Special Director-General or Additional Director-General heading zone; and

(iii) to the Central Government, if the same has been passed by the Director General.]

(d) The Director General or Special Director-General or the Additional Director-General heading the zone or the Inspector-General or the Deputy Inspector General may call for the records of award of any punishment and confirm, enhance, modify or annual the same, or make or direct further investigation to be made before passing such orders:

Provided that in a case in which it is proposed to enhance punishment, the accused shall be given an opportunity to show cause either orally or in writing as to why his punishment should not be enhanced."

(14) Apparently, on 25.02.2009 (Annexure P-7) a show cause notice was issued thereafter to the writ petitioner Kamaljit Singh and the other Sepoy Satish Kumar as to why the punishment should not be enhanced to dismissal from service while exercising the power under Rule 28 and 29 (d) of the 1955 Rules, on account of the fact that there

was manhandling/assaulting a Group-A Gazetted Officer of the force and therefore, the said persons were not fit to be retained in the force. While issuing the said show cause noticereference was made to the statement of the prosecution witnesses on the disciplinary inquiry file.

(15) The said show cause notice was replied on 14.03.2009 (Annexure P-8) on the ground that penalty imposed by the Commandant was not justified as it did not provide the benefit of doubt and the allegations had not been proved by the prosecution witnesses as produced by the department.

(16) The Appellate Authority vide order dated 15.06.2009 (Annexure P-10) in a non-speaking order passed the order of dismissal from service upon all the four personnel. The operative part of the said order reads as under:-

> "8. After having gone through the replies to Show Cause Notice furnished by above personnel, I find that though they claim to be innocent but failed to bring out any material evidence new fact in support of their claim. Therefore, the undersigned is fully convinced that punishment awarded to above personnel by the disciplinary authority i.e. Commandant 84 Bn. CRPF does not commensurating to the gravity of offence committed bythe above personnel to the extent of using criminal force and assault on their superior officer while on duty. Thishas reaffirmed my opinion that retention of these personnel in service will be detrimental to the good order and discipline of the force.
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> 9. Therefore, in exercise of the powers vested with the undersigned under Rule-28 of CRPF Rules, 1955 appeal preferred by No. 015234644 CT/ GO Kamaljit Singh and 005130191 CT/ GD Satish Kumar of 84 Bn against punishment awarded to them by the Commandant 84 Bn are hereby rejected. Further, in exercise of powers vested with the undersigned under Rule 29(d) of CRPF Rules, 1955 punishment of "Dismissal from Service" is imposed upon all the above Force personnel of 84 Bn i.e. No.015234644 CT/ GD Kamaljit Singh, 005130191 CT/ GD Satish Kumar, 015281018 CT/GD Malkhan Singh and No.941445256 CT/ GD Mohd Amin Wani. This order will take effect from the date, the copy of this order is served upon the above personnel."

(17) It is pertinent to notice that the said order does not deal with the inquiry report in detail as was done by the Commandant, which has been discussed in paragraph Nos.8 to 11 above. Rather the Appellate Authorty while exercising its revisional powers also had failed to notice that the one of the Sepoy Mohd. Amin Wani had been imposed the punishment of the Quarter Guard and, thus, while passing the dismissal order on account of the fact that his role was limited in comparison as noticed by the disciplinary authority and, thus, would have undergone the said period already, but inspite of that imposed the second order of punishment upon the said personnel of dismissal. The show cause notice issued on 25.02.2009 also goes on to show that it was only qua two personnel, but dismissal order is regarding four constables.

(18) Even otherwise, we are of the considered opinion that the order itself is non-speaking and the revisional authority had failed to consider the well reasoned order, which had been passed by the disciplinary authority. The same had taken into consideration all the facts in all respects and the manner in which the incident had taken place and the background of the said incident and how the superior officer as such had abused the company by using unparliamentary language in spite of the fact that there were instructions that Sepoys were not to be addressed in the said manner. These aspects were never gone into by the revisional authority while imposing the extreme punishment of dismissal upon the writ petitioner, who had then around 8 years of service.

(19) It is settled principle that when an order of such grave consequence is passed, it should have dealt with all the issues which were arising and noticed by the disciplinary authority and which were just brushed aside by the Appellate Authority while exercising its power of revision and imposing the extreme punishment of dismissal. Reference can be made to the judgment of the Apex Court passed in ***Divisional Forest Officer, Kothagudem and others*** *versus* ***Madhusudhan Rao***[1], wherein it was held that reviewing authority will give reasons while rejecting the revision/appeal since a judicial function is being performed. In the said case, the Apex Court was dealing with the order of the Division Bench of the High Court wherein the order of the Tribunal had been upheld directing the respondents to be reinstated in service. It was, accordingly, held that though detailed reasons may not have been given for agreeing and confirming an order

[1] (2008) 3 SCC 469

passed by the appellate authority, but the delinquent officer is entitled to know at least the mind of the appellate or revisional authority for dismissing theappeal and the same should come forth.

(20) In the present case it is to be noticed that there were no reasons given for the order while enhancing the punishment, apart from the fact that the inquiry authority as such had come to the conclusion that the charges had been proved and that the superior officer had been assaulted, but the same as noticed above had been discussed by the Commandant to the contrary. Thus, there should have been reasons by the Appellate/Revisional Authority as to how the reasoning given by the Commandant was bad before enhancing the punishment and, therefore, it can be safely said that the order enhancing the punishment suffers from the vice of absence of reasons.

(21) Reliance can also be placed upon the judgment of the Apex Court passed in ***Kranti Associates Pvt. Ltd. and another*** *versus* ***Masood Ahmed Khan and others***[2], wherein it has been held that even administrative orders should contain reasons, since the decision affects the persons prejudicially. Following principles were laid down in the said judgment:-

> "47. Summarizing the above discussion, this Court holds:
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> a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
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> b. A quasi-judicial authority must record reasons in support of its conclusions.
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> c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
>
> f. Reasons have virtually become as indispensable a component of a decision making process as observing

[2] (2010) 9 SCC 496

principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

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 life blood 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.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

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 (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the

> Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
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> o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

(22) In such circumstances, unfortunately the appellate order also passed thereafter by the Inspector General of Police dated 23.04.2010 suffers from the same vice wherein the appeal was dismissed. The specific plea was taken that the disciplinary authority had to come to the conclusion that the findings of the Inquiry Officer could not be held to be proved beyond doubt, which had not been addressed.

(23) The malice was, thus, not corrected even in the revision by the Director General of Police, who had been prodded to take a decision, since the CWP No.23339 of 2012 had been disposed of on 27.11.2012 with the directions that the revision be decided within a period of 2 months. The Director General of Police dismissed the revision on 07.05.2013 while only dealing with the issue as to the powers of revision under Rule 29 (d) of the 1955 Rules. Relevant part of the order reads as under:-

> "07. I have gone through the revision petition submitted by No. 015234644 Ex-CT/ GD Kamaljeet Singh of 84 Bn. CRPF & other connected records of the D.E. minutely and examined the mater on record. The plea taken by the petitioner that prescribed procedure has not been complied with the sufficient opportunities have not been provided to him and that the de-novo Enquiry on the same charge is in utter infringement of the Rules and just to cover up and substantiate the case is not tenable, during the course of enquiry, the p9t (sic. petitioner) was given ample opportunity to put up his defence and the DE was conducted as per the laid down instructions/ procedure. Earlier the DE proceedings submitted by Shri Surinder Kumar, 2-1/C was quashed due to some procedural shortcomings and order issued for de-novo enquiry was quite in order and as per established norms, which was not out of any pre-determined and biased attitude as alleged by

> petitioner. Moreover, the another plea taken by the petitioner that in the instant case, the power of revision has been exercised while dealing with the appeal of the petitioner given under Rule 28 of the CRPF Rules, 1955 and the CRPF Act and Rules do not contemplate enhancement of punishment by the superior authority while dealing with the appeal of an individual is also not tenable, DIG is competent authority to review the punishment awarded by the Disciplinary Authority i.e. Commandant under Rule, 29(d) of CRPF Rules, 1955. In the instant case, punishment of "Stoppage of increment for three years with cumulative effect awarded to the petitioner to the Disciplinary Authority i.e. Commandant 84 Bn. was found to be not commensurating with the gravity of offence committed by the appellant and hence same was enhanced and punishment of dismissal from service was imposed upon the appellant by the DIG, CRPF, Chandigarh vide order No. R.XIII-84/2009-EC-3 dated 15/6/2009. Punishment of "Stoppage of increment for three years with cumulative effect" awarded by the disciplinary authority was cancelled. Thus action. taken by the DIG Chandigarh Range being Reviewing Authority is in accordance to the laid down procedure/ instructions.
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> 08. All the facts of the case were already examined earlier and did not find any merit for consideration. Since, no new facts have been brought out by the petitioner, I do not find any reason to interfere with the decision taken earlier and as such his petition is rejected."

(24) Thus, it would be apparent that even the revisional authority failed to take into consideration the reasons which had weighed with the disciplinary authority while imposing the order of stoppage of three annual increments with cumulative effect.

(25) Though we are in agreement with the counsel for the Union of India that the powers of revision could have been exercised by the Appellate Authority, though done at a belated stage in the present case, we are of the considered opinion that the reasons given by the learned Single Judge that the said power was not available cannot be held to be sustainable in view of the provisions of Rule 29 (d) as reproduced above.

(26) However, for the reasons given otherwise we are of the

considered opinion that the impugned order dated 15.06.2009, duly conveyed on 01.08.2009 by the Commandant, dismissing the appeal was not justified and the same cannot be sustained. Similarly, the subsequent order in appeal dated 23.04.2010 (Annexure P-12) 07.05.2013 (Annexure P-16) also cannot stand the test of judicial scrutiny and, accordingly, we do not find any fault in the order of the learned Single Judge, for the reasons noticed hereinabove.

(27) Resultantly, the present appeal is dismissed with the above modification of the order of the learned Single Judge, whichbe implemented by the authorities by reinstating the respondent within a period of 3 months.

Dr. Payel Mehta