

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 45 of 2020

Chandrabali Singh Yadav aged about 50 years son of Late Kalaur Yadav, resident of village Hurmujpur, P.O. Hurmujpur, P.S. Sadar, District- Gazipur, Uttar Pradesh.

... **Appellant**

Versus

1. Union of India through the Secretary, Ministry of Home Affairs, New Delhi P.O. and P.S. New Delhi, New Delhi.

2. Inspector General, Central Reserve Police Force, Longzing, P.O. and P.S. Longzing, District-Imphal, Manipur.

3. Deputy Inspector General of Police, Central Reserve Police Force, Longzing, P.O. and P.S. Longzing, District-Imphal, Manipur.

4. The Commandant, 26Bn, Central Reserve Police Force, Daltonganj, P.O. and P.S. Sadar, District-Palamau.

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellant : Mr. Saibal Mitra, Advocate
Mr. Akshay Kr. Mahato, Advocate
For the Respondents : Mr. Pratyush Kumar, Advocate

Per Sujit Narayan Prasad, J:
Order No.09/Dated 25th April, 2023

I.A. No. 3249 of 2022

The present Interlocutory Application has been filed for condonation of delay of 17 days in filing the instant appeal.

2. Heard learned counsel for the parties.

3. No counter affidavit has been filed opposing the prayer for condoning the delay.

4. Having regard to the averments made in this application, we are of the view that the appellant was

prevented by sufficient cause from preferring the appeal within the period of limitation.

5. Accordingly, I.A. No.3249 of 2022 is allowed and delay of 17 days in preferring the appeal is condoned.

L.P.A. No. 45 of 2020

6. The instant *intra-court* appeal, under Clause 10 of the Letters Patent, is directed against order/judgment dated 26.11.2019 passed by learned Single Judge in W.P.(S) No. 564 of 2011 by which the writ petition has been dismissed on the ground that earlier writ petition being C.W.J.C. No. 1391 of 2000(R) filed by the writ petitioner was dismissed for non-prosecution vide order dated 05.03.2009, against which restoration application being C.M.P No. 109 of 2010 was filed, which was dismissed on merit vide order dated 20.08.2010 and without challenging the order dated 20.08.2010 passed in the aforesaid restoration application since the present writ petition has been filed, therefore, it is not maintainable.

7. At the outset, learned counsel for the respondents have raised the issue of maintainability by defending the order passed by the learned Single Judge on the ground that once the order passed by the original authority vide order dated 31.08.1999 and order passed by the appellate authority dated 21.01.2000 have been challenged by filing writ petition being C.W.J.C. No. 1391 of 2000(R) and the

same was dismissed vide order dated 05.03.2009 and against which one Civil Miscellaneous Application being C.M.P No. 109 of 2010 was filed, which stand dismissed on merit vide order dated 20.08.2010 as such without challenging the order passed in restoration application since second writ petition being W.P.(S) No. 564 of 2011 [subject matter of instant intra-court appeal] has been filed, the instant *intra-court* appeal is not maintainable.

8. Learned counsel for the appellant has submitted that it is correct that while filing the writ petition being C.W.J.C. No. 1391 of 2000(R), the petitioner had challenged order dated 31.08.1999 passed by the original authority and order dated 21.01.2000 passed by the appellate authority but the same was adjudicated on merit since the said writ petition, C.W.J.C. No. 1391 of 2000(R), was dismissed for non-prosecution, against which the restoration application being C.M.P. No. 109 of 2010 was filed which was also dismissed vide order dated 20.08.2010 and the said order has not been challenged. But in the meanwhile, the revisional authority has rejected the revision application preferred by the petitioner by affirming the order passed by the appellate authority and since the order passed by the revisional authority was not the subject matter of C.W.J.C. No. 1391 of 2000(R), therefore, on the basis of principle of merger the order passed by the original

authority and appellate authority will be said to be merged with the order passed by the revisional authority. Since the order 11.08.2000 passed by the revisional authority is under challenge in the writ petition, therefore, the instant *intra-court* appeal is maintainable.

9. We, before proceeding to examine the legality and propriety of order passed by the revisional authority, deem it fit and proper to answer the issue of maintainability.

The law is well settled that the order passed by the original authority if subjected before the appellate authority and the appellate authority confirms the order passed by the original authority, the original order will be merged with the order passed by the appellate authority. Likewise, if the revisional authority confirms the order passed by the appellate authority, the order so passed by the appellate authority will be said to be merged with the order passed by the revisional authority on the basis of principle of merger.

Law in this regard is well settled by Hon'ble Apex Court in the judgment rendered in ***Kunhayammed v. State of Kerala, (2000) 6 SCC 359*** in particular at paragraph 7, 8, 12 and 42, which reads as under:

“7.The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. On more occasions than one this Court had an opportunity of dealing with the doctrine of merger. It

would be advisable to trace and set out the judicial opinion of this Court as it has progressed through the times.

8. In *CIT v. Amritlal Bhogilal and Co.*¹ this Court held:

“There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement;”

12. *The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.*

42. *“To merge” means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or*

swallowing up so as to involve a loss of identity and individuality.”

The decision in ***Kunhayammed v. State of Kerala*** (Supra) was followed by a three-Judge Bench decision of Hon’ble Apex Court in ***Chandi Prasad v. Jagdish Prasad*** reported in **(2004) 8 SCC 724**, wherein at paragraph 23 and 24 it has been held which reads hereunder as :-

“23. The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.

24. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court.”

More recently, the decision in ***Chandi Prasad v. Jagdish Prasad*** (Supra) was followed by a two-Judge Bench of Hon’ble Apex Court in ***Shanthi v. T.D. Vishwanathan*** reported in **(2018) SCC OnLine SC 2196** wherein it has been held at paragraph 7 which reads as under:-

“7. ... When an appeal is prescribed under a statute and the appellate forum is invoked and entertained, for all intents and purposes, the suit continues. When a higher forum entertains an appeal and passes an order on merit, the doctrine of merger would apply. The doctrine of merger is based on the principles of the propriety in the hierarchy of the justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time.”

10. This Court on the basis of aforesaid legal position and after taking into consideration the fact that the order passed by the revisional authority dated 11.08.2000 was not the subject matter of C.W.J.C. No. 1391 of 2000(R) and after disposal of the writ petition since revisional authority has passed order hence the order passed by the appellate authority will be said to be merged with the order passed by the revisional authority, as such the same will be considered to be a cause of action not been adjudicated.

It is also settled position of law that a person cannot be remediless and if such person is aggrieved with any order and if it has been questioned, the same is required to be adjudicated by the court of law. Here, in the instant case, the revisional order has still not been adjudicated and in that view of the matter, if the instant appeal will be said

to be not maintainable, then the writ petitioner will become remediless.

Considering the aforesaid fact, this Court is of the view that the instant appeal is held to be maintainable.

11. This Court considering the aforesaid fact is of the view that objection made on behalf of respondents regarding non-maintainability of the instant appeal, is required to be overruled.

12. Accordingly, the objection with regard to maintainability of the instant intra-court appeal is overruled and the instant *intra-court appeal* is maintainable.

13. This Court, now before proceeding to examine the legality and propriety of the impugned order passed by the learned Single Judge, requires to refer the brief facts of the case, as per the pleadings made in the writ petition, which read as under:

The petitioner-appellant was appointed as constable in Central Reserve Police Force (CRPF) on 01.12.1990. While serving as such, on 05.05.1998, the appellant along with other CRPF personnel was doing operation against the MCC-Naxalite, in which, they were attacked by MCC-Naxalites due to which there were several casualties.

It is alleged that the respondents-authorities treating the incidence to be the lapses on the part of

appellant and one Laxman Bhengra and H.K. Thakur framed one joint memo of charge dated 31.08.1998 and directed them to submit show cause report, to which, the appellant replied denying the charge. But the reply having been found not satisfactory, as such in contemplation of departmental proceeding the enquiry officer was appointed to conduct enquiry against the delinquents. The enquiry officer, after enquiry submitted enquiry report dated 24.07.1999, in which, the charges leveled against the delinquent was found to be partially proved. It is alleged that thereafter, the disciplinary authority differing with the finding recorded by the enquiry officer imposed the impugned punishment of removal of service of the appellant as well as said Laxman Bhengra and H.K. Thakur.

Against the order passed by the disciplinary authority, the appellant preferred appeal which was dismissed vide order dated 21.01.2000 by the appellate authority.

Thereafter, against the order passed by the appellate authority, the appellant preferred departmental revision, however, during pendency of the revision, the petitioner preferred writ petition being CWJC No. 1391 of 2000(R) invoking the jurisdiction of this Court conferred under Article 226 of the Constitution of India, challenging the order passed by disciplinary authority as well as by the

appellate authority, but the said writ petition was dismissed for non-prosecution vide order dated 05.03.2009, against which the appellant-petitioner preferred restoration application being CMP No. 109 of 2010, which was also dismissed.

After dismissal of the restoration application [CMP No. 109 of 2010], the appellant filed another writ petition being W.P. (C) No. 564 of 2011 for setting aside the order passed by disciplinary as well as by the appellate authority and by way of amendment has also prayed for setting aside the order dated 11.08.2000 passed by the revisional authority.

The learned Single Judge, after hearing learned counsel for the parties, dismissed the writ petition being not maintainable on the ground that earlier writ petition being C.W.J.C. No. 1391 of 2000(R) filed by the writ petitioner was dismissed for non-prosecution vide order dated 05.03.2009, against which restoration application being C.M.P No. 109 of 2010 was filed, which was dismissed on merit vide order dated 20.08.2010 and without challenging the order dated 20.08.2010 passed in the aforesaid restoration application since the present writ petition has been filed, therefore, it is not maintainable.

Being aggrieved with the order passed by learned Single Judge the instant intra-court appeal has been filed.

14. It is evident from the memo of charge dated 31.08.1998 that the allegation has been leveled against the appellant along with one Head Constable Laxman Bhengra and Head Constable H.K. Thakur, that while functioning as Ct/GO and HCs/GO respectively committed an act of misconduct/negligence of duty in their capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 and that they while participating in an encounter with MCC Naxalites on 05.05.1998 near village Tunudag under PS-Panki, District Palamau (Bihar) showed negligence/cowardice during the course of encounter. As a result of their cowardness, lost precious life of L/N Rukmangal Singh and MCC naxalites took away arms and ammunition from the possession of troops. Thus they have committed an act of gross misconduct/negligence of duty.

For ready reference, the imputation of charge, as under annexure 2 appended to the memo of charge is quoted as under:

“That the said No. 903064652 Ct Chandra Bali Singh who was LMG No. 2, No. 810580249 HC Laxman Bhangra and No. 810693516 HC H.K. Thakur of C/25, both Section Commanders while functioning as Ct/GO and HCs/GO respectively committed an act of misconduct/negligence of duty in their capacity as a member of the Force under Section 11(1) of CRPF Act, 1949 in that they while participating in an encounter with MCC Naxalites on 5.5.1998 near village Tunudag under PS- Panki, District Palamau (Bihar) showed negligence/cowardice during the course of encounter. As a result of their cowardness, out troops

lost precious life of of No. 821261746 L/N Rukmangal Singh of this unit and MCC naxalites took away of 303 LMG Butt No. 8, Body No. I-T-7568 along with 5 LMG Magazines from the possession of troops. Thus they have committed an act of gross misconduct/negligence of duty which is prejudicial to god order and discipline of the Force.”

The appellant has participated in the enquiry proceeding and enquiry officer after conclusion of enquiry submitted enquiry report finding the charge partially proved against the appellant along with other delinquent employees, namely, Head Constable Laxman Bhengra and Head Constable H.K. Thakur since joint enquiry was conducted against all the three employees including the appellant.

For ready reference, the conclusion arrived at by the enquiry officer is reproduced herein below:

जाँच अधिकारी की रिपोर्ट :-

(आरोपी सि० चन्द्रबली सिंह, हव० लक्ष्मण सिंह और हव० एच०के० ठाकुर तीनों को दिनांक 8/2/99 को कार्यालय में बुलाया गया तथा प्रारम्भिक पूछ-ताछ की गई। इसके पश्चात दिनांक 10/2/99 को बुलाकर गलती मानने या न मानने (प्ली गिल्टी /नोट गिल्टी) पूछा गया। तीनों ने ही इनके ऊपर लगाये गये अभियोग को न मानकर गलती नहीं मानने (नोट गिल्टी) का बयान दिया। इसके पश्चात अभियोजन पक्ष के कुल 11 गवाहों के बयान उपरोक्त तीनों अभियुक्तों के समक्ष बयान लिये गये। सभी बयानों की एक-एक प्रति इन तीनों आरोपियों को बयान लेने के तुरन्त पश्चात सुपुर्द की गई। तीनों आरोपियों को ही अभियोजन पक्ष के गवाहों के साथ जिरह प्रश्न (क्रॉस क्वेश्चन) करने का बारी-बारी पूर्ण अवसर प्रदान किया गया जिसके साक्ष्य में आरोपी के हस्ताक्षर युक्त कागजात संलग्न है।

अभियोजन पक्ष के गवाहों के पश्चात उपरोक्त तीनों आरोपियों को पुनः कार्यालय में दिनांक 2/4/99 को बुलाकर गलती मानने या न मानने (प्ली गिल्टी /नोट गिल्टी) के लिए पूछा गया तो पुनः तीनों आरोपियों ने ही गलती न मानने (नोट गिल्टी) का बयान दिया इसके पश्चात आरोपियों को 18/4/99 तक का 15 दिन का समय अपना बचाव पक्ष रखने के लिए दिया गया।

अभियोजन पक्ष के गवाहों के बयानों के आधार पर यह स्पष्ट मालूम होता है कि प्लाटून की केवल 16 लोगों की नफरी अफरा तफरी में बिना जी०एफ० राइफल, बिना पर्याप्त हैण्ड ग्रेनेड तथा बिना निश्चित जिम्मेदारी सौंपे ड्यूटी के लिए चले गये। फायरिंग स्थल पर फायर आने के बाद जैसे ही

प्लाटून कमांडर को गोली लगी तो जमकर / पोजीशन लेकर मुकाबला करने के बजाय पीछे हटने की ओर ही ध्यान रहा।

सि० चन्द्रबली सिंह जो कि एल०एम०जी० टू की ड्यूटी कर रहा था. सेक्शन कमांडर के आदेशानुसार पोजीशन बदली करते समय एल०एम०जी० वन के साथ नहीं गया और जैसा कि यह कह रहा है कि एल०एम०जी० वन ने इसको वहीं से कवरिंग फायर देने के लिए कहा तो यह वहीं रुक गये। साथ ही इन्होंने खाली मैग्जीनों को भी अपने साथ नहीं रखा। इन्होंने अपने बचाव में कन्धा उतरने के साक्ष्य के रूप में डाक्टर द्वारा दिये गये इलाज के कागजात प्रस्तुत किये हैं। जैसा कि इनके बयान से ही स्पष्ट है कि लगभग पूरी कार्यवाही समाप्त होने के बाद बांध के पास खड्डे में गिरने से कन्धे में चोट आई। इससे यह स्पष्ट होता है कि कन्धे की चोट कार्यवाही के दौरान अन्तिम समय में होने के कारण इनके कार्य में कोई बाधा नहीं थी। केवल अपनी जिम्मेदारी से बचने के लिए ही इन्होंने ऐसा पक्ष प्रस्तुत किया है।

आरोपी हव० लक्ष्मण भेंगरा के बयानों से यह स्पष्ट है कि इन्होंने हैण्ड ग्रेनेड का उचित उपयोग नहीं किया और फायरिंग के बाद सेक्शन को यही आदेश देते रहे कि पीछे हटकर बांध की आड़ पकड़ लो। इन्होंने स्वयं ने भी अपने हथियार कारबाइन से केवल 09 राउन्ड फायर किये। हालांकि इन्होंने कारबाइन में रोक पड़ने का बयान भी दिया है। पीछे हटकर उचित आड़ पकड़ते समय पूरे सेक्शन का ध्यान न रखकर व्यक्तिगत रूप से बेतरतीब पीछे हटना स्पष्ट मालूम होता है।

आरोपी हव० एच०के०ठाकुर ने सेक्शन कमांडर होते हुए अपने विवेक से सेक्शन को कमांड न करके हव० लक्ष्मण भेंगरा के ऊपर निर्भर रहे और इन्होंने जैसा हव० लक्ष्मण भेंगरा ने कहा वैसा ही मान लिया। इन्होंने अपने हथियार कारबाइन से केवल 06 राउन्ड फायर किये जबकि ऑपरेशन / फायरिंग कई घण्टे चली थी। हालांकि इन्होंने भी कारबाइन की मैग्जीन ठीक न होने का कारण बताया है। इन्होंने भी केवल मात्र एक हैण्ड ग्रेनेड लेकर गये थे उसका उचित इस्तेमाल नहीं किया। जबकि इनका सेक्शन कार्यवाही के दौरान सबसे आगे था।

तमाम अभियोजन पक्ष के गवाहों के बयानों तथा बचाव पक्ष के बयानों और दोनों ही पक्ष के उपलब्ध दस्तावेजों से यह स्पष्ट होता है कि उग्रवादियों/नक्सलवादियों के फायर का जवाब तुरन्त पोजीशन लेकर नहीं दिया गया। हालांकि उचित आड़ न होने के कारण प्लाटून को अपेक्षाकृत सुरक्षित आड़ हेतु बांध की ओर जाना जरूरी भी था तो योजनाबद्ध तरीके से सम्पूर्ण नफरी अल्टरनेटिव पोजीशन पकड़ने की आवश्यकता थी। **अतः जाँच अधिकारी इस निष्कर्ष पर पहुंचते हैं कि सि० चन्द्रबली सिंह, हव० लक्ष्मण भेंगरा और हव० एच०के० ठाकुर पर लगाया गया अभियोग तमाम गवाहों के बयानों तथा कागजातों के आधार पर आंशिक रूप से साबित होता है।**

The aforesaid enquiry report has been forwarded before the disciplinary authority, who vide order dated 31.08.1999 imposed the punishment of removal from service against the appellant and said HC Laxman Bhengra and HC H.K. Thakur.

The appellant being aggrieved with the order passed by the original authority preferred appeal which was also dismissed vide order dated 21.01.2000.

The appellant, against the order passed by original authority and appellate authority preferred revision on the ground that though the appellate authority has quashed the order of punishment of removal from service against the co-delinquents, namely, Laxman Bhengra and H.K. Thakur but order passed by original and appellate authority has been confirmed so far as case of the appellant is concerned, which is contrary to the principle of parity to be applicable in imposing punishment.

However, during pendency of the revision application, the appellant approached this Court by filing writ petition being C.W.J.C. No. 1391 of 2000(R) which was dismissed for non-prosecution vide order dated 05.03.2009, against which restoration application being C.M.P No. 109 of 2010 was filed, which was dismissed vide order dated 20.08.2010.

In the meanwhile, the revisional authority rejected the revision application preferred by the petitioner by affirming the order passed by the appellant authority vide order dated 11.08.2000 *inter alia* on the ground that the revisional authority while dealing with the revision has not appreciated the fact that on the similar set of allegation i.e,

on identical charge leveled against the co-delinquents, namely, Laxman Bhengra and H.K. Thakur, the order of punishment passed by original and appellate authority have been quashed but even though the allegation against appellant is identical to that of co-delinquent, namely, Laxman Bhengra and H.K. Thakur but the revisional authority has refused to accept the said submission by passing order that nature of allegation is different to that of co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur.

15. Learned counsel for the appellant has submitted that that law is well settled that while imposing the punishment the principle of parity is required to be maintained.

In support of his submission, he relied upon the judgment rendered by Hon'ble Apex Court in the case of ***Rajendra Yadav Vs. State of Madhya Pradesh & Ors*** **[(2013) 3 SCC 73]**.

16. Per contra, Mr. Pratyush Kumar, learned counsel appearing for the respondents has submitted that there is no error in the order passed by revisional authority reason being that the nature of allegation leveled against the appellant cannot be said to be identical to that of co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur, if the nature of imputation is taken into

consideration wherein it has been alleged that the appellant was detailed as LMG-2, who was supposed to carry spars barrel, magazines and heldel of LMG and remain with LMG-1 during the operation but when one of the member of LMG-1, namely, Rukmangal Singh suddenly came under heavy firing of MCC naxalites, Ct. Chandra Bali Singh (appellant) did not provide proper assistance of LMG-1 from the scene of occurrence as a result of which said Rukmangal Singh sustained bullet injury and died on spot. It is alleged that if Ct. Chandra Bali Singh, LMG-2 would have remained with LMG-1 L/Nk Rukmangal Singh then naxalites could not have dared to take away one 303 LMG along with 5 LMG magazines from the possession of troops.

So far as allegation against co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur is concerned, it has been contended that as per imputation of charge they were detailed as section commanders in the said special operation as such they were supposed to have control and supervision on their respective sections during the course of special operations but they had shown negligence/cowardice in the encounter and failed to use their weapons effectively to break the ambush by naxalites and prevent them to come nearer to L/Nk Rukmangal Singh (deceased). Had they performed their duties properly

the life of Rukmangal Singh could have been saved and loss of arms and ammunitions could have been avoided.

It has been contended by making comparison of charges leveled against with appellant vis-à-vis other co-delinquent, namely, Laxman Bhengra and H.K. Thakur that the nature of allegation leveled against them is quite different as allegation leveled against the appellant is that he did not give proper assistance to L/Nk Rakmangal Singh when heavy firing was done by MCC-Naxalites due to which he sustained bullet injury and died on spot and further naxalites took away arms and ammunition from the deceased. Whereas allegation against the co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur is that being section commanders they failed to discharge their duty of control and supervision on their respective section during the course of special operations and they failed to use their weapons effectively to break ambush by naxalites.

In that pretext, it has been contended that if the appellant would have discharged his duty with utmost sincerity the life of L/Nk Rukmangal Singh could have been saved and if there would have been better supervision and control over the unit by the section commanders, namely, Laxman Bhengra and H.K. Thakur the ambush by the naxalites could have been avoided. Thus, it is evident that

nature of allegation against the appellant is more serious as he was assigned the duty of giving proper assistance to L/Nk Rukmangal Singh and to carry spars barrel, magazines and heldel of LMG and remain with LMG-1, namely, L/Nk Rukmangal Singh but during the firing made by MCC naxalites he did not give proper assistance to LMG-1 due to which said Rukmangal sustained bullet injury and died on the spot.

In that view of the matter, submission has been made that charge leveled against the appellant cannot be said to be identical to said co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur. Hence, the principle of parity in punishment will not be applicable in the case at hand.

17. We have heard learned counsel for the parties, perused the documents available on record.

18. The sole ground taken by the appellant in questioning the order of punishment is that there is no parity in the order passed by the appellate authority in favour of two co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur whose order of punishment has been interfered with by quashing and setting it aside vis-à-vis the appellant. In this regard, submission has been made that since the allegation leveled against the appellant is identical to that of co-delinquent employees, namely,

Laxman Bhengra and H.K. Thakur, therefore, similar relief ought to have been extended by the appellate authority and the said fact has been given to the notice to the revisional authority but no interference was shown rather the claim of the appellant was rejected by coming to the conclusion that the charge leveled against the appellant cannot be said to be identical to that of co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur.

19. The law is well settled that the principle of parity in punishment with co-delinquent employee is required to be followed since the doctrine of equality applies to all who are equally placed; even amongst who are found guilty.

Reference in this regard be made to the judgment rendered by Hon'ble Supreme Court in the case of **Anand Regional Coop. Oil Seedsgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah, (2006) 6 SCC 548** wherein at paragraph 27 and 28, it has been held as under:

“27. There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

28. The first respondent might not have opted therefor. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated on a similar footing. In view of the fact that the first respondent has succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having

regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31-1-2003 as affirmed by the High Court is substituted by a direction that the first respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof.”

Further, the Hon’ble Apex Court in the judgment rendered in the case of ***Rajendra Yadav v. State of M.P., (2013) 3 SCC 73***: at paragraph 9 and 10 held as under:

“9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in a few judgments of this Court. The earliest one is DG of Police v. G. Dasayan wherein one Dasayan, a police constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.”

Likewise, the Hon'ble Apex Court in the judgment rendered in **Naresh Chandra Bhardwaj v. Bank of India, (2019) 15 SCC 786** at paragraph 5 held as under:

*“5. It is trite to say that the domain of the courts on the issue of quantum of punishment is very limited. It is the disciplinary authority or the appellate authority, which decides the nature of punishment keeping in mind the seriousness of the misconduct committed. This would not imply that if the punishment is so disproportionate that it shocks the conscience of the court the courts are denuded of the authority to interfere with the same. Normally even in such cases it may be appropriate to remit the matter back for consideration by the disciplinary/appellate authority. However, one other cause for interference can be where the plea raised is of parity in punishment but then the prerequisite would be that the parity has to be in the nature of charges made and held against the delinquent employee and the conduct of the employee post the incident. It is the latter aspect which is sought to be advanced by the learned counsel for the appellant by relying upon the judgment in **Rajendra Yadav v. State of M.P.** On this very aspect the learned counsel for the respondents drew out attention to a subsequent judgment in **Lucknow Kshetriya Gramin Bank v. Rajendra Singh** which had taken note of the earlier judgment referred to aforesaid.”*

20. This Court is now proceeding to examine as to whether the charge leveled against the appellant is identical to that of other co-delinquent employee, who subsequently at the appellate stage have been exonerated from the charges by quashing and setting aside the order of removal from service passed by the disciplinary authority.

21. The principle of parity is to be followed while imposing punishment is based upon the principle that the

charge against the delinquent employee must be identical and similar.

22. This Court, therefore, is required to examine the charge leveled against the appellant vis-à-vis charge leveled against the co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur.

The imputation of charge has already been referred hereinabove against the appellant as also against the co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur.

23. It is evident against the charge leveled against the appellant that he being detailed as LMG-2, was supposed to carry spars barrel, magazines and heldel of LMG and remain with LMG-1 during the operation but when one of the member of LMG-1, namely, Rukmangal Singh suddenly came under heavy firing of MCC naxalites, the appellant did not provide proper assistance of LMG-1 from the scene of occurrence as a result of which said Rukmangal Singh sustained bullet injury and died on spot and the naxalites took away arms and ammunitions from the deceased.

24. From perusal of Charge leveled against co-delinquent employees, namely, Laxman Bhengra and H.K. Thakur it is evident that they were detailed as section commanders in the special operation as such they were supposed to have control and supervision on their

respective sections during the course of special operations but they had shown negligence/cowardice in the encounter and failed to use their weapons effectively to break the ambush by naxalites and prevent them to come nearer to L/Nk Rukmangal Singh (deceased) and if they had performed their duties properly the life of Rukmangal Singh could have been saved and loss of arms and ammunitions could have been avoided.

25. This Court, on the basis of charge coupled with the finding recorded by the enquiry officer by negating the explanation furnished by the appellant that due to pain in his shoulder he could not be able to carry the arms and ammunition, is of the view that the charge leveled against the appellant is more serious in comparison to that of the charge leveled against co-delinquent employees. This is because of the reason that charge leveled against the appellant was that he was detailed as LMG-2 and was supposed to carry spare barrel, magazine and heldel of LMG-1 and remain with LMG 1 but he was not along with LMG-1 and not with spare barrel, magazine etc. rather even he did not give proper assistance to L/Nk Rukmangal Singh but ran away from the scene of occurrence which led to casualty of said L/Nk Rukmangal Singh.

While the nature of allegation leveled against the co-delinquents, namely, Laxman Bhengra and H.K. Thakur is

quite different as they were supposed to have control and supervision on their respective sections during the course of special operations.

It has come in imputation of charge that the allegation of running away from the scene of occurrence is also there against the appellant when heavy firing was going on by the MCC-naxalities, which is serious allegation.

But there is no such allegation against co-delinquents, namely, Laxman Bhengra and H.K. Thakur rather they were supposed to have control and supervision on their respective sections during the course of special operations.

26. This Court, therefore, is of the view that the parity of punishment, as has been said to be made applicable in the facts and circumstances of the case by quashing the order passed by revisional authority, is of the considered view that the parity of principle cannot be made applicable herein taking into consideration the nature of allegation leveled against the appellant having not identical to two other co-delinquents, namely, Laxman Bhengra and H.K. Thakur.

In that premise, the ground of principle of parity in imposing punishment if not accepted by the revisional authority, the same, according to our considered view, cannot be said to suffer from any error.

27. This Court in view of discussions made hereinabove is of the view that the order passed by the revisional authority requires no interference.

28. Accordingly, the instant *intra-court* appeal fails and is dismissed.

(Sujit Narayan Prasad, J.)

(Subhash Chand, J.)

Alankar/-**A.F.R.**