

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19822 of 2012

Date of Decision:- 07.07.2015.

Secretary, Department of Health and Family Welfare, U.T.
Chandigarh and another

.....Petitioners

Versus

Central Administrative Tribunal, Chandigarh Bench and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Shekher Verma, Advocate for the petitioners.

Mr. Ranjivan Singh, Advocate for respondent No.2.

SURYA KANT, J. (ORAL)

1.) The Chandigarh Administration through the Department of Health and Family Welfare has filed this writ petition challenging the order dated 03.07.2012 passed by Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the Tribunal') whereby the dismissal order passed against respondent No.2 was set aside and he has been ordered to be reinstated in service.

2.) The facts may be noticed briefly. Respondent No.2 joined the petitioner-Department as a Driver on 17.11.1982. FIR No.124 dated 21.05.2005 was registered against him by Chandigarh Police under Section 18 of the NDPS Act on the allegation that he was

found in conscious possession of 40 grams of opium without any licence or permit. Respondent No.2 was placed under suspension on 01.06.2005 while he was in police custody though the said order was revoked after he was released on bail.

3.) The Special Judge NDPS, Chandigarh held respondent No.2 guilty and convicted him vide judgment dated 10.10.2008. Sentence of 17 days imprisonment with fine of ₹ 7,000/- was imposed on him.

4.) It is an admitted fact that no charge-sheet was served and no inquiry was held against the second respondent. However, keeping in view his conduct which led to his conviction in the NDPS case, a show cause notice was served after about 18 months of his conviction and pursuant thereto the impugned order of dismissal from service was passed.

5.) The second respondent successfully challenged his dismissal order before the Tribunal as the same has been set aside on the plea that no charge-sheet was issued and no inquiry was conducted and that appropriate orders ought to have been passed in accordance with rules.

6.) The aggrieved Administration approached this Court and vide order dated 05.10.2012 operation of the order passed by Tribunal was stayed.

7.) It may be mentioned here that meanwhile, respondent No.2 challenged his conviction in the NDPS case before this Court in

Criminal Appeal No.S-2496-SB of 2008. The instant writ petition was thus admitted and stay was made absolute though with liberty to respondent No.2 to seek out of turn hearing after the decision of his criminal appeal.

8.) It is an admitted fact that vide judgment dated 17.03.2015, a learned Single Judge of this Court allowed the criminal appeal of respondent No.2 and after setting aside the conviction and sentence, respondent No.2 has been acquitted of the charges.

9.) We have heard learned counsel for the parties and gone through the record. At the outset, we clarify that the reason assigned by the Tribunal to set aside the dismissal order cannot sustain in law. A civil servant can be dismissed/removed from service under proviso to Article 311 (2) on the basis of his conduct which has led to conviction on a criminal charge and for passing such dismissal/removal, there is no need to afford him an adequate opportunity of hearing within the meaning of Article 311 (1) of the Constitution. The Tribunal, therefore, erred in law in holding that respondent No.2 could not be dismissed from service without any proper inquiry or charge-sheet. It was a case where the conduct of respondent No.2 led to his conviction on a criminal charge involving moral turpitude, hence, his dismissal from service, at that point of time was totally justified though the subsequent events have turned the table in his favour.

10.) Since respondent No.2 was dismissed from service only on account of his misconduct which led to his conviction on a criminal charge and on that charge he has been acquitted by this Court on accepting his criminal appeal, the very foundation of the dismissal order has become non-existent. The dismissal order, thus, cannot sustain in view of the acquittal of respondent No.2 in the criminal case.

11.) The other ground assigned for dismissal of respondent No.2 from service, namely, the alleged concealment of fact could not have been invoked without holding a regular inquiry. Whether or not there was a concealment of fact, is a question of fact which could be answered only in a domestic enquiry which was never held.

12.) For the reasons aforesaid, we dismiss this writ petition and uphold the reinstatement of respondent No.2 though for the reasons different than those assigned by the Tribunal. Since the Tribunal has applied the principle of 'no work no pay' the resultant effect would be that respondent No.2 shall not be entitled to any arrears of pay till date but the benefit of pay fixation and other consequential service benefits shall be granted to him notionally.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

July 07, 2015.

sandeep sethi