

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

C.W.P. No.18117 of 2013

Date of Decision: 02.03.2015

Dhani Ram

....Petitioner

Versus

U.H.B.V.N and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. Vikas Chatrath, Advocate
for the petitioner.

Mr. Pardeep Poonia, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* quashing the impugned orders dated 08.05.2008 (Annexure P-11), 11.11.2008 (Annexure P-12) and 22.12.2008 (Annexure P-13), which have been passed contrary to the regulations governing the conditions of service as well as law laid down in **CWP No.10006 of 2006** titled as **Harpal Singh vs HVPNL and another**.

Briefly, the facts of the case are that the petitioner was working on the post of Lineman till his services were terminated on the basis of conviction in case FIR No.159 dated 30.10.1992 registered under Sections 323, 324, 325, 34, 504 and 506 IPC at Police Station Indri. The petitioner was convicted in said FIR by Judicial Magistrate Ist Class, Karnal vide his judgment dated 31.10.2005. The said judgment of trial Court was challenged before the Additional Sessions Judge, Karnal. However, during

pendency of the appeal, sentence of the petitioner was suspended. The petitioner was dismissed from service vide order dated 29.05.2006 on the basis of his conviction.

Learned counsel for the petitioner submits that the services of the petitioner were terminated because of his conviction in criminal case but subsequently, he was acquitted of the charge as judgment of conviction and order of sentence passed by the trial Court was set aside by the Additional Sessions Judge, Karnal. The petitioner was, therefore, entitled for reinstatement on his acquittal. The respondent-Department did not take into consideration this fact that the petitioner has been acquitted of the charge by the lower Appellate Court and as such, the order of dismissal from service was not sustainable. Learned counsel also submits that there was no departmental inquiry against the petitioner qua the charges in criminal case.

Learned counsel for the petitioner has also relied upon the judgments of Division Bench of this Court in cases ***Hari Ram vs Dakshin Haryana Bijli Vitaran Nigam Limited and another 2006(2) SCT 112*** and ***Tota Singh vs Punjab State Electricity Board and others 2007(3) SCT 793***, in support of his contentions.

Learned counsel for the respondents submits that it was not a case of acquittal on merits but the appeal was allowed as a compromise has been arrived at between the parties. He further submits that the petitioner is neither entitled to remain in service nor entitled to any other benefits.

Heard the arguments of learned counsel for the parties and have also perused the impugned orders annexed as Annexures P-11 to P-13 with the petition.

Admittedly, the petitioner was working on the post of Lineman

and was dismissed from service because of his conviction in case FIR No.159 dated 30.10.1992 registered under Sections 323/324/325/34/504/506 IPC at Police Station Indri. As per directions issued by this Court, the petitioner was reinstated in service but he was not granted any benefit except the amount paid to him during the period of his suspension. It is also not disputed that the petitioner has filed an appeal against the judgment of conviction and order of sentence passed by the trial Court. The respondent-Department dismissed the petitioner from service vide its Order dated 29.05.2006 only on the ground of conviction as per judgment dated 31.10.2005 passed by the Judicial Magistrate Ist Class, Karnal.

The argument of learned counsel for the petitioner is that no departmental inquiry was conducted and only because of conviction of the petitioner, he was removed from service. It is also not disputed that before passing the order of removal, no opportunity of hearing, whatsoever, was afforded to the petitioner.

For resolving the controversy in the case, in hand, Regulation 7(i) of Regulations, 1990 is necessary to be complied with as the inquiry is to be conducted before imposition of any major penalty including dismissal, which reads as under :-

“PROCEDURE FOR INFLICTING MAJOR PENALTIES :-

(i) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order of inflicting a major penalty, shall be passed against a person to whom these Regulations are applicable unless he has been given a reasonable opportunity of showing cause against the action, purposed to be taken in regard to him.

2(a) The grounds on which it is proposed to take

such action, shall be reduced to the form of definite charge or charges which shall be communicated in writing to the person charged, together with a statement of allegations on which each charge is based alongwith a list of documents and witnesses to be relied upon and of any other circumstances which it is proposed to take into consideration in passing orders on the case and he shall be required within a reasonable time to state in writing whether he admits the truth of all, or any, of the charges, what explanation of defence, if any, he has to offer and whether he desires to be heard in person. If he so desires, or if the authority empowered to inflict major penalty upon him so directs, an enquiry shall be held at which all evidence(s) shall be heard as to such of the charges as are not admitted.

b) The Board employee may on his request, be permitted to peruse or take extracts from the records pertaining to the case for the purpose of preparing his written statement provided that the disciplinary or other authority referred to above, may for reasons to be recorded in writing, refuse him, such access, if in its opinion such records are not strictly relevant to the case or it is not desirable in the public interest to allow such access.

c) The Enquiry Officer shall follow the principles of natural justice in the conduct of enquiry and ensure that all reasonable opportunity is given to the person so charged. He may, if so requested, by the Presiding Officer or the person charged, issue summons to the witness(s) under his signature.

d) The person charged shall, subject to the conditions described in Sub-Regulation (3) be entitled, to cross-examine the witness(s) to give evidence in person and to have such witness(s) called, as he may wish, provided that the Officer conducting the enquiry may, for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient

record or the evidence and statement of the findings and the grounds thereof :-

(i) It shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement or allegation made by the person charged, in the course of his defence; and;

(ii) the provisions of the foregoing Sub-Regulation, shall not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reasons to be recorded by him in writing, it is not reasonable practicable to give him an opportunity of showing cause against the action proposed to be taken against him, or where in the interest of the security of the Board, it is considered not expedient to give to that person such an opportunity.”

It is apparent from Regulation 7(i) of Regulations, 1990 reproduced herein above shows that no major penalty is to be imposed without giving any reasonable opportunity of show cause against the action proposed to be taken.

The Full Bench, in case ***Om Parkash, Postman vs The Director Postal Services (Post and Telegraph Department) Punjab Circle, Ambala and others 1971(1) SLR 648*** has held as under :-

“ (i) the Departmental punishment of removal or dismissal from Government service is not an essential and automatic consequence of conviction on a criminal charge;

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(xii) an order of dismissal or removal or for compulsory retirement can be passed under rule 19 (i) (without conforming to the procedure prescribed in Rules 14 to 18) not on the basis of the conviction, but

only if the competent authority finds that the relevant misconduct of the concerned Government Servant renders his further retention in public service undesirable;

(xiii) an order imposing a punishment on a Government servant simply because of his conviction on a Criminal charge without reference to the conduct which led to the conviction cannot be sustained.”

Same view has been taken in ***Maha Singh vs State of Haryana and another 1994(1) SCT 154***, ***Lehna Singh vs State of Haryana and another 1994(1) SCT 173***, ***Jagmohan Lal vs State of Punjab and others AIR 1967 Punjab 422*** and ***Hari Ram's*** case (supra).

Hon'ble the Apex Court in ***Union of India vs Tulsi Ram Patel AIR (1985) SC 1416***, has held as under :-

“ Where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties.”

Similarly, Hon'ble the Apex Court in cases ***B.D. Gupta vs State of Haryana 1972 SLR 845*** and in ***State of Assam vs Raghava Rajagopalachari, Civil Appeal Nos. 1561 and 1562 of 1966***, decided on **06.10.1967** has observed as under :-

“19. This Court held that clause (b) of the Fundamental Rule 54 would be applicable in all cases where the officer concerned is not honourably acquitted. Since in that case the Government Servant had clearly not been fully exonerated of the charges levelled against him it was open to Government to decide what period of absence from duty during the period of suspension should be treated as period spent on duty and, also what proportion of pay and allowances should be given to him. This decision cannot apply to the instant case for the simple reason that Government, by withdrawing the proceedings initiated against the appellant in respect of Charge 1 (b) made it impossible for the appellant to get himself fully exonerated. Since the appellant had been exonerated of Charge 1(a) and since Charge 1(b) was withdrawn, it is impossible for Government to proceed on the basis as if the appellant has not been fully exonerated or to assume that the order of suspension was one which was not wholly unjustified. In that view of the matter, we do not think that the case of the State of Assam and another v. Raghava Rajagopalachari (2) can be of any assistance to the respondents.”
(Emphasis added)

It is apparent from the judgments as mentioned above that in case, any employee either is exonerated or the charges are withdrawn then it is to be considered that suspension in the case of such an employee was not justified.

In the present case also, the respondent-Department has not considered that the conduct of the petitioner has not led to his conviction

as required by law. Only on the basis of judgment of Criminal Court, the conduct of the petitioner was assessed. The conclusion was drawn that the petitioner was convicted in a criminal case but it was not considered by the respondent-Department as to whether it was necessary to conduct any departmental enquiry to reach at a conclusion as to whether it would be undesirable to keep him in service. The action of respondent-Department must be based on relevant considerations.

In the instant case, even after acquittal of the petitioner by the criminal Court, his case was not considered. His dismissal was based on judgment of conviction, although, he was acquitted of the charge. The order of removal was passed by the respondent-Department without affording any opportunity of hearing to the petitioner and as such, the petitioner cannot be made to suffer its consequences.

Under similar circumstances, petitioner-Harpal Singh in **CWP No.10006 of 2006** was held to be entitled for benefit of intervening period i.e between removal from service till he was taken back on duty and he was deemed to be on duty for all intents and purposes vide Order dated 21.01.2008.

Accordingly, this petition is allowed and the impugned orders dated 08.05.2008 (Annexure P-11), 11.11.2008 (Annexure P-12) and 22.12.2008 (Annexure P-13) are set aside and the petitioner is held entitled for all consequential benefits. The intervening period of dismissal and re-instatement be considered as period spent on duty.

The necessary exercise be done within a period of three months from the date of receipt of certified copy of this order.

02.03.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE