

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 19673 of 2013

Date of decision: December 2, 2015

Gurjant Singh

..... Petitioner

versus

Punjab State Power Corporation Limited and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Mr. Sarvpreet Gurna, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

AMOL RATTAN SINGH, J.

The petitioner challenges the order dismissing him from service on 31.03.2011 (Annexure P-2) and the order of the Appellate Authority dated 19.04.2012 (Annexure P-3) by which his appeal against the first order was also dismissed.

2. The petitioner joined service with the predecessor of the respondent Corporation, i.e. with the Punjab State Electricity Board (hereinafter referred to as the Board) on 22.03.1976, in a work charged

capacity, after which his services were regularised as an Assistant Lineman on 10.06.1983. He was, thereafter, promoted as a Lineman on 16.02.2009.

On 13.05.1994 , when the petitioner was driving a tempo of the Board, as per the duty allotted to him on that date, he was involved in a motor accident leading to the registration of FIR No.60 against him, for the commission of offences punishable under Sections 279, 337, 338 and 304-A of the IPC. He faced trial and was convicted for the offences punishable under Sections 279 and 304-A and was consequently sentenced to rigorous imprisonment for two years and was imposed a fine of Rs.2000/-, vide judgment and order dated 11.10.2000. After the appeal filed by him had been dismissed by the Sessions Court, he filed Criminal Revision No.667 of 2002 before this Court.

3. In the meanwhile, his services were terminated, vide order dated 04.10.2002, passed by the Senior Executive Engineer, Distribution Division, Amloh. However, upon the petitioners' sentence being suspended by this Court, he was reinstated on duty on 29.10.2002.

Eventually, Criminal Revision No.667 of 2002 was dismissed by this Court on 16.03.2010, though his sentence of imprisonment was reduced to nine months, maintaining the fine imposed and the imprisonment to be undergone in default thereof. This Court, while reducing the sentence, observed that it was being so reduced in view of the fact that he was in criminal proceedings before various Courts, for about 16 years. It was also observed, however, that in the motor accident in question, where the petitioner had been found to be guilty of negligence in driving, up to this court, three persons had lost their lives.

4. The judgment of this Court dated 16.03.2010, was, as per the

respondents, not in their knowledge, they not being respondents in the revision petition and as such, the petitioners' eventual conviction and sentence only came to their knowledge after the petitioner had been arrested on 16.10.2010, upon warrants of arrest having been issued.

As contended in the petition, the petitioner himself did not know the fate of his revision petition, till the time when the police came to arrest him.

5. Upon coming to know of the petitioners' final conviction and arrest, the 3rd respondent, i.e. the Superintending Engineer, Distribution Circle, Khanna, passed the impugned order dated 31.03.2011, holding therein that the petitioner illegally continued on duty even after his conviction on 16.03.2010 and continued to draw his salary till his arrest on 16.10.2010 and that his conduct does not permit him to be retained in the service of Corporation (the Board having been replaced by the Punjab State Power Corporation Limited in the meanwhile), in view of letter No.105854 dated 03.08.2009 from the Secretary/Legal Branch, Patiala and an earlier letter dated 07.08.1995, issued by the Secretary of the Board. Reference has also been made in the impugned order, to two letters dated 10.03.1987 and 26.06.2001. The petitioner was, consequently, ordered to be dismissed from service, by specific reference to the letter dated 07.08.1995 and in terms of Regulations 5 (ix) and 14(1) of the Employees Punishment and Appeal Regulations, 1971 (hereinafter to be referred to as the Regulations).

6. The order in appeal also refers to the petitioner having been declared a proclaimed offender after the decision of his revision petition by this Court, but his continuing to work till the date of his arrest, seven months later.

His appeal, as already stated, was also dismissed by referring to the instructions issued by the erstwhile Board from time to time.

7. Mr. Vikas Singh, learned counsel appearing for the petitioner, submitted that no enquiry, whatsoever, was held before dismissing the petitioner from service and that no reason has been given in the impugned orders, as to why no enquiry could be held.

He further submitted that even in the impugned orders, there is no reasoning given as to what constituted mis-conduct on the part of the petitioner, so as to warrant his dismissal from service, after he had already served out his jail sentence in February 2011 itself, the rest of the period of five months (out of the nine month sentence imposed by this Court) already having been undergone by him at an earlier stage.

Learned counsel then pointed to Regulations 5 (ix) and 14 of the aforesaid Regulations of 1971, to submit that there was no mandate in the said provisions that required that a convicted employee must be dismissed from service.

8. Learned counsel further submitted that the petitioner had put in 28 years of service and as such, his dismissal due to one act of negligence, was wholly un-warranted and that too without any enquiry having been held against him. Such dismissal also barred the petitioner from future employment, under Regulation 5(ix).

Mr. Vikas Singh next submitted that the petitioner, in any case, was to superannuate from service on 30.06.2012 upon attaining the age of 58 years and as such, his dismissal, after 28 years of service, just one year and three months prior to that, was wholly unjustified.

9. Lastly, learned counsel relied upon a Division Bench judgment

of this Court in Hawa Singh v. General Manager, Haryana Roadways and another (LPA No.68 of 2009, decided on 25.02.2010), wherein a driver of the Haryana Roadways had also been convicted for the commission of an offence punishable under Section 304-A IPC and had, consequently, been dismissed from service which he challenged before the learned Labour Court. The Labour Court ruled in his favour, which was challenged by way of writ petition before this Court by the General Manager, Haryana Roadways. A co-ordinate Bench having set aside the Award of the Labour Court, the matter went up in appeal before a Division Bench, which eventually directed that the appellant before it be treated to have been compulsorily retired from service with effect from 30.05.2009, i.e. the date he was dismissed from service and that he be paid his pension and other terminal benefits.

10. The reply filed by the respondents relies upon the same reasoning for dismissal of the petitioner, as has been given in the impugned orders and further goes on to say that as per Regulations 14(i), the punishing authority was within its power to make such orders as it deemed fit, where an employee had been imposed a penalty on the ground of conduct which led to his conviction on a criminal charge. Thus, with the petitioners' conduct having led to a motor accident in which three people lost their lives and left two others injured, the punishment imposed was commensurate with such conduct.

The reply also refers to the petitioners' conduct in not informing the respondents with regard to his conviction having been upheld and the sentence imposed by this Court vide judgment dated 16.03.2010.

11. Mr. Sarvpreet Gurna, learned counsel appearing for the

respondents, made his arguments as per the stand taken in the written statement.

12. Having considered the arguments addressed and having gone through the pleadings, I am of the opinion that the contention raised on behalf of the petitioner, with regard to an enquiry not having been held before the passing of the impugned orders, cannot be accepted.

It is very well settled since the judgment of the Supreme Court (Five Judge Bench) in **Union of India v. Tulsi Ram Patel** (AIR 1995 SC 1416), that once an employee has been convicted on a criminal charge, the competent authority has only to consider the conduct which led to such conviction and thereupon is to take a decision on the penalty to be imposed. On the 'non-necessity' of a formal enquiry to be held, or even an opportunity of hearing required to be given, the rationale given is that the employee has already had a complete opportunity of hearing and consideration of his case, before his conviction by the Court seized of the criminal proceedings. Hence, all that the disciplinary authority is required to see, is the conduct of the employee and the appropriate penalty to be imposed upon him, as an employee of the organisation, in view of the conduct leading to his conviction.

Though in that case the issue was with regard to Article 311(2) of the Constitution, however, the same principle was held to be applicable with regard to the Regulations of the Punjab State Electricity Board, by a Division Bench of this Court, in **Kaur Singh and another v. Punjab State Electricity Board and others** (2007) 4 RSJ 780. The very same regulation, as has been invoked in the case of the petitioner, by the respondents, was in issue before the Division Bench. Hence, it is first appropriate to refer to

Regulation 14 of the Regulations. The same is reproduced below:-

“14. Notwithstanding anything contained in Regulations 8, 9, 10, 11, 12 and 13:-

- (i) where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the punishing authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these regulations; or
- (iii) where the Board is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these regulations, the punishing authority may consider the circumstances of the case and make such orders there on as it deems fit.”

Regulation 8, referred to in Regulation 14, lays down the procedure to be adopted for imposing major penalties, including holding of an inquiry against an employee. Regulation 9 prescribes the action to be taken by the punishing authority upon receipt of an inquiry report. Regulation 10 prescribes the procedure for imposing minor penalties, Regulation 11 lays down the procedure of termination of the services of an employee on probation, Regulation 12 stipulates that orders made by the punishing authority must be communicated to the employee and Regulation 13 lays down the procedure of common proceedings against two or more employees in a particular case.

Regulation 14, on the other hand, provides for the special procedure to be followed, notwithstanding the procedures etc. laid down in Regulations 8 to 13. Sub-clause (i) of this Regulation is, obviously, applicable to the present case, where the petitioner was convicted on a

criminal charge.

13. In *Kaur Singhs' case* (supra), it was held that since Rule 14(i) of the Regulations is *pari materia* to clause (a) of the 2nd proviso to Article 311 (2) of the Constitution, then it has to be concluded that the ratio of *Patels' case* would fully apply to the facts such as the ones in the present case.

Therefore, on the basis of the ratio laid down in *Patels' case* (supra), neither respondent no.3, nor respondent no.2, was required to give the petitioner a personal hearing before pronouncing punishment upon him.

The contention on behalf of the petitioner, that the disciplinary authority was required to hold a departmental enquiry before imposing the punishment, is, consequently, rejected.

14. However, what they were required to see, was whether his conduct warranted dismissal from service, especially in view of the fact that he had put in 28 years of service prior to his conduct of rash and negligent driving, leading to an accident in which three people lost their lives.

15. The circular dated 07.08.1995, on which reliance has been placed in order to dismiss the petitioner from service, though not annexed with the reply, has been submitted by the learned learned counsel for the respondents. The said letter is addressed by the Secretary of the Punjab State Electricity Board to various authorities in the Board and in its subject head states that it is with regard to imposition of a major penalty, following the conviction of an employee in a court of law.

Referring to the judgment of the Supreme Court in **Dy. Director of Collegiate Education (Admn.) Vs. S. Nagoor Meera** (AIR 1995 SC 1364), the letter advises various authorities that the principle of law laid down in the aforesaid judgment “be kept in mind and followed as

and when conviction of some employees of criminal charge (s) is reported for taking departmental action”.

In *S.Nagoor Meeras' case* (supra), their Lordships had laid down that clause (a) of the 2nd proviso to Article 311 (2) of the Constitution can be resorted to while imposing a penalty on a Government employee, consequent upon his conviction in a criminal case. However, it was specifically held that:-

“It should be remembered that action under clause (a) of the second proviso to Article 311 (2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2).”

In that case, the respondent before the Supreme Court had been found guilty of corruption in a criminal case.

16. In the present case, the petitioner is no doubt guilty of negligence in driving an official vehicle, which led to the unfortunate death of three innocent persons. Hence, without doubt, the punishment imposed upon him cannot be a light punishment. However, it also needs to be seen that the act was one of negligence in driving (as found in the criminal case against him) and not of any deliberate intention on the part of the petitioner.

Further, he had also put in 28 years of service without any blemish on his career, at least as per the pleadings before this Court. Hence, in my opinion, the punishing authority and even the appellate authority did not apply their mind to the actual conduct of the petitioner. Both the impugned orders seem to have been passed completely in a mechanical manner, simply by reference to the aforesaid circular dated 07.08.1995. The import of the judgment of the Supreme Court, to the effect that the three

punishments mentioned in Article 311(2) should only be invoked where the conduct of the employee warrants such punishment, is something which the punishing authority and the appellate authority have not applied their minds to, at least as per the wordings of the impugned orders.

The operative part of the order dated 31.03.2011, passed by respondent No.3, reads as follows:-

“Whereas the competent authority, keeping in view the decision of the Hon'ble Punjab & Haryana High Court dated 16.03.2010, it has been found that the conduct of the employee does not permit him to be retained in the service of Punjab State Power corporation Ltd. The Secretary legal Branch, Patiala, vide memo No.42524-LB-3(24) 121262/11 dated 25.02.2011 has given opinion that action should be taken in accordance with letter No.105854 dated 3/8/09 of the Secretary/ Legal Branch Patiala and letter No.101511/102161/LB-3(24) 144/95 dated 7/8/1995 of the Secretary, Punjab State Electricity Board, Patiala and also letter No.35573/36088 dated 10/3/1987 and 1575561/157746 dated 26/6/2001.

Therefore, taking action under memo No.101511/102161/LB-3(24) 144/95 dated 7/8/1995, Sh. Gurjant Singh Lineman is dismissed from service under Regulation 5(ix) and 14(1) of the Employees Punishment and Appeal Regulations. Therefore, Sh. Gurjant Singh LM is dismissed from service w.e.f. From 16/3/2010 under Rule 5 (ix) of 14(1) of the Employees Punishment and Appeal Regulations, 1971.”

(Emphasis applied)

Obviously, there is no application of mind with regard to the conduct of the petitioner, or his length of service being commensurate to the punishment of dismissal imposed upon him.

Similarly, the order of the appellate authority (respondent

No.2), dated 19.04.2012 (Annexure P-3), also does not examine whether or not the conduct of the petitioner deserves the punishment of dismissal or a lesser punishment.

Consequently, this writ petition is partly allowed to the extent that the impugned orders (Annexures P-2 and P-3) are hereby quashed and the matter is remitted to the 2nd respondent to pass an order of punishment upon the petitioner, in terms of S.14 of the Regulations, after considering his conduct that led to his conviction in the criminal case; further also considering his length of service in the Board/Corporation prior to such conduct. What such punishment should be, in terms of the penalties provided for in Regulation 5, is left to the discretion of the punishing authority, who would consider both, the negligent conduct of the petitioner, leading to the loss of three lives, as also his service record and length of service.

The order be passed within a period of two months from the date of receipt of a certified copy of this order. However, in the meanwhile, pending fresh orders by respondent No.2, the petitioner shall not be considered to have been reinstated in service even upto the date on which he was to superannuate (30.06.2012). That issue would also be decided by the punishing authority, in the fresh order to be passed.

December 2, 2015

dinesh/vcgarg

**[AMOL RATTAN SINGH]
JUDGE**