

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5610 of 2015

Date of Decision:- 26.03.2015.

Swaran Singh

.....Petitioner

Versus

Union Territory, Chandigarh and others

.....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. Sukhdeep Singh Brar, Advocate for the petitioner.

P.B. BAJANTHRI, J.

In the above writ petition, petitioner has challenged the order of the Central Administrative Tribunal, Chandigarh ('CAT' for short) dated 17.12.2014 (Annexure P-2) passed in OA No.582/PB/2013 upholding the order dated 16.10.2012 by which the petitioner's review petition against the order terminating his services dated 18.10.2001 has been rejected.

The petitioner was appointed as a Conductor on 22.08.1985 in the Chandigarh Transport Undertaking, Chandigarh.

On 28.04.2001, Inspectors Sh. Gulzar Singh and Bachan Singh checked bus No.CH-O1G-575 on route No.48 at Kartarpur and the petitioner was on duty in the said bus. During the checking they

detected irregularities relating to gross misappropriation of Government revenue to the tune of ₹ 861 by the petitioner as a Conductor of the said bus. In this regard, the Inspectors submitted report on 30.04.2001. Arising out of the aforesaid irregularities committed by the petitioner, the disciplinary proceeding was initiated on 02.05.2001 by issuing statement of article of charge, list of documents and list of witnesses and sought the explanation of the petitioner. However, the petitioner failed to submit his reply to the charge. Consequently, the Competent Authority proceeded with the inquiry by appointing the Inquiring Officer. Inquiring Officer after holding a detailed inquiry held that the charges were proved against the petitioner. The petitioner was supplied with a copy of Inquiring Officer's report and sought explanation. In fact, personal hearing was given to the petitioner on 10.10.2001. After due consideration of the explanation read with the Inquiring Officer's report. The Divisional Manager, CTU and Director, Transport, U.T. Chandigarh, terminated the services of the petitioner.

Arising out of the irregularities relating to misappropriation of Government Revenue, criminal proceeding was launched against the petitioner. It was ended in acquittal in case No.329/1/06 dated 12.06.2007. In the meanwhile, the petitioner preferred an appeal before the Appellate Authority questioning the order of termination on 01.01.2002. The Appellate Authority, after considering the memorandum of appeal rejected the petitioner's appeal on

26.06.2003. The petitioner approached the CAT, Chandigarh by filing OA No.1224-CH of 2003. The same was dismissed on 03.08.2004 in which the Tribunal was pleased to hold that necessary procedures have been adopted in holding the inquiry and there are no procedural lapses or irregularities in the charges stood proved on the basis of evidences on record. Therefore, the Tribunal refused to interfere with the termination order. In pursuance of his acquittal in the criminal proceedings, the petitioner submitted representation on 25.07.2007 and on 25.11.2007 to reinstate him into service. On 19.10.2009, petitioner's memorandum of appeal/representation was rejected. Thereafter, petitioner preferred a revision petition on 12.02.2010.

When things stood thus, the petitioner approached the CAT, Chandigarh. On 07.02.2011, the Tribunal directed the second respondent to consider representation of the petitioner after giving him an opportunity of being heard and, thereafter, to pass an appropriate speaking order within a period of 2 months. The petitioner's revision petition was rejected on 05.08.2011. On 08.08.2011, the petitioner's CP (civil) No.94 of 2011 which was pending consideration before the CAT, Chandigarh was withdrawn. The petitioner meanwhile had filed revision petition before the Home Secretary and it was also rejected on 16.10.2012.

The petitioner aggrieved by the orders dated 16.10.2012, 19.10.2007 and 19.10.2009 filed one more OA before the CAT, Chandigarh which has also been dismissed by the Tribunal vide

order dated 17.12.2014. Thus, the petitioner is before this Court.

The petitioner was subjected to parallel proceedings, viz., disciplinary and criminal proceedings for the misdeeds committed by him, namely, irregularities in issuing tickets to the passengers thereby causing loss to the Government exchequer. The disciplinary proceedings concluded in imposing the penalty of termination after due inquiry and further order of termination has been upheld by the Appellate Authority and Revisional Authority so also by the CAT, Chandigarh. The petitioner was acquitted on 12.06.2007 in the criminal proceedings. He opened his eyes as soon as he was acquitted in the criminal proceedings by giving representations/revision. His revision petition was rejected. Thereafter, once again he has approached CAT. Even though he had suffered an order on 03.08.2004. However, the Tribunal directed the Authorities to re-consider the matter after giving an opportunity even the directions of the CAT dated 07.02.2011 passed on OA No.109/PB of 2011 was considered and rejected the grievance of the petitioner after giving ample opportunity. It is to be noted that the CAT should not have entertained the OA No.109/PB/2011 for the reasons that the petitioner had already suffered an order in view of the subsequent development namely acquittal in the criminal proceedings the Tribunal has entertained the OA No.109/PB/2011. In fact, approaching CAT on the same cause of action amounts to constructive res judicata. However, sympathetically the Tribunal

interfered and directed the Competent Authority to reconsider the matter after giving an opportunity.

The petitioner counsel vehemently contended that there were serious irregularities in conducting inquiry. However, he has not specifically pointed out what are the irregularities. He further contended that the petitioner was acquitted in the criminal proceeding. Consequently, the disciplinary proceedings are to be held as incorrect. It is to be noted that the disciplinary and criminal proceedings are two separate proceedings. The acquittal in criminal proceedings thus does not absolve of the charge in a disciplinary proceedings. In the criminal proceedings, an employee is subjected for the offences under the Criminal Procedure Code read with Indian Penal Code which are required to be proved beyond reasonable doubt. In the disciplinary proceedings, on the other hand, an employee is subjected for his misdeeds/misconduct where preponderance of evidence is also permissible. Both the proceedings are independent of each other. Therefore, question of re-opening of disciplinary proceedings on basis of acquittal in the criminal proceedings is impermissible.

It is evident from the record that the petitioner is in the habit of committing irregularities and misappropriation of Government revenue while discharging duties of the post of Conductor. This is evident from Annexure R-2 (statement) wherein 14 times, the petitioner was placed under suspension and for 14 times he was

imposed with the penalty of withholding of increments/censure. In fact, the petitioner, was once terminated from service on 09.02.1994 for committing irregularities and the Appellate Authority set aside the order of termination dated 09.02.1994 on 06.06.1995 and reinstated the petitioner. However, the intervening from the date of termination till reinstatement it was ordered as dies non for all service condition purpose.

Having regard to the facts and circumstances, the petitioner has not made out case so as to interfere with the order of the CAT dated 17.12.2014 vide Annexure P-2 read with order dated 16.10.2001 vide Annexure A-1 and 18.10.2001 vide Annexure A-5.

Accordingly, the writ petition is dismissed. No order as to cost.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

March 26, 2015.

sandeep sethi