

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8059-CAT of 2014
Date of Decision:- 16.07.2015.

Union Territory, Chandigarh

.....Petitioner

Versus

Ex-Constable Dhoom Singh 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. Kapil Kakkar, Advocate for the petitioner.

Mr. D.R. Sharma, Advocate for the respondents.

SURYA KANT, J. (ORAL)

1.) The Chandigarh Administration and its Police Department have preferred this writ petition against the order dated 29.01.2014 of Central Administrative Tribunal, Chandigarh Bench (hereinafter referred to as 'the Tribunal') vide which the order of dismissal from service passed against the first respondent was set aside and he has been ordered to be reinstated in service as Constable though without payment of back wages but with the benefit of continuity in service towards seniority and other benefits.

2.) The first respondent was serving as Constable in Chandigarh Police. On 02.06.2005, the Crime Branch of the

Chandigarh Police conducted a raid in Hotel Castle, Sector 35, Chandigarh and found some persons indulging in gambling. The first respondent was also found involved. FIR No.137 dated 02.06.2005 under Sections 3 and 4 of the Public Gambling Act, 1867 was registered. He was placed under suspension and disciplinary proceedings were initiated on the same set of allegations. The Inquiry Officer, on consideration of the statement of witnesses and other material, gave a report dated 11.01.2007 proving the charges levelled against the first respondent. Thereafter, the Competent Authority served him with a show cause notice dated 07.02.2007 and after considering his reply thereto, he was dismissed from service vide order dated 24.03.2008. The departmental appeal and revision petitions were also turned down by the Competent Authorities.

3.) The first respondent then approached the Tribunal through OA No.87/CH/2009 but withdrew the same on 28.04.2011 with liberty to file a fresh petition after conclusion of the proceedings in the criminal trial.

4.) The Chief Judicial Magistrate, Chandigarh vide judgment dated 10.05.2012, extended the benefit of doubt and acquitted the first respondent in criminal case.

5.) The first respondent then submitted a representation to the Inspector General of Police, Chandigarh for withdrawal of the dismissal order on the basis of his acquittal in the criminal case. The said representation was rejected which prompted the first respondent

to file another Original Application before the Tribunal, which has been allowed vide the impugned order on the premise that after acquittal of respondent No.1 in the criminal case, the dismissal order cannot sustain.

6.) The Tribunal's order is assailed primarily on the ground that acquittal in the criminal case would not vitiate the departmental proceedings which were held in accordance with Rules and principles of natural justice. Taking notice of this contention, this Court on April 29, 2014 stayed the operation of the Tribunal's order.

7.) Having heard learned counsel for the petitioner-Administration on 15.09.2014, we tentatively opined that even if disciplinary proceedings were held in consonance with principles of natural justice yet the question of proportionality of punishment would require re-consideration by the Authorities as the first respondent had served the Department for 15 years.

8.) In deference thereto, the Administration has re-considered the matter and the Inspector General of Police, U.T. Chandigarh vide order dated 15.07.2015 has converted the punishment of 'dismissal' from service into 'compulsory retirement'. It is expressly recited in the order that the first respondent shall be entitled to pensionary benefits as if he has been retired compulsorily w.e.f. date on which the order of dismissal was passed.

9.) We have heard learned counsel for the parties and gone through the record. As noticed earlier, the Tribunal proceeded on the

premise that once the first respondent was acquitted of the criminal charges and that acquittal having remained unchallenged, the order of dismissal cannot sustain for the reason that “facts and evidence in the two proceedings were the same.”

10.) The above stated reasoning assigned by the Tribunal, however, finds no support from the record. On our asking, the Senior Superintendent of Police has filed his affidavit dated 26.03.2015 explaining that in the domestic inquiry, eight officials had appeared as witnesses and their statements were duly considered by the Inquiry Officer while submitting the inquiry report. He has further explained in para 3 of the affidavit that “none of the above PWs appeared as witnesses in the criminal trial.” He has further explained that disciplinary action has been initiated against some of the official witnesses who did not turn up for cross-examination in the criminal trial and for that reason alone, the first respondent could earn the acquittal. It would be useful to reproduce para Nos.2 and 3 of the affidavit which are to the following effect:-

2. “That in compliance of the said order, it is submitted that the following PWs were examined in domestic enquiry:-

- 1. HC Ranbir Singh No.2164/CP, MHC PS-11.*
- 2. Sh. Sukhpal Singh Inspector SHO PS-II (Now Retired)*
- 3. SI Kuldeep Singh No.199/CHG. Crime Branch (Now Retired)*
- 4. Sh. KIP Singh, DSP/South (Now Retried)*

5. Sh. Om Parkash, DSP/Crime (Now Retired)

6. Sh. P.K. Dhawan, DSP/PCR (Now Retired)

7. Sh. Gurdev Singh, OSI (Now Retired)

8. Sh. Gurnek Singh, CRA (Now Sr. Asstt)

3. *That none of the above PW's have appeared as witness in the Criminal Trial."*

11.) Having held that the quality and quantity of evidence considered in the domestic inquiry was totally different than what was led before the criminal Court, it is difficult to uphold the finding of the Tribunal that the orders passed by the judicial forum or the quasi-judicial forum are based upon the same set of evidence.

12.) It is not a case of dismissal from service in exercise of powers under proviso to Article 311 (2) of the Constitution on consideration of the conduct of respondent No.1 which led to his conviction on a criminal case. If it were a case of such like dismissal, the Tribunal would have been fully justified in setting aside the dismissal order after respondent No.1 stood acquitted in the criminal case. However, the dismissal order in the instant case was passed pursuant to a domestic inquiry which, as held earlier, was concluded in conformity with principles of natural justice. The disciplinary action which culminated into passing of the dismissal order, thus, could not be tinkered with by the Tribunal only on the basis of acquittal by the Criminal Court without finding fault with the domestic enquiry.

13.) The only ground to interfere with the order of punishment could possibly be the award of disproportionate punishment which

pricks the conscious of the Court. Keeping that aspect in mind that the Authorities were advised to re-consider the quantum of punishment. The Competent Authority has indeed substantially reduced the punishment from 'dismissal' to 'compulsory retirement' from service. We are, thus, of the view that the decision taken by the Inspector General of Police dated 15.07.2015 is fair, just and reasonable.

14.) For the reasons aforesaid, the writ petition is allowed in part; the order passed by the Tribunal is set aside and the Original Application is disposed of in the light of the order dated 15.07.2015 of the Inspector General of Police whereby punishment of dismissal of service awarded to first respondent stands substituted by compulsory retirement from service.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

July 16, 2015.

sandeep sethi