

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3280 of 1984 (O&M)

Date of decision : 24.8.2016

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The Collector, Ludhiana and others

.....Appellants

vs.

Mool Chand

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Neeraj Yadav, Assistant Advocate General,
Punjab for the appellants.

Mr. Sanjeev Sharma, Advocate for the respondent.

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P.B. Bajanthri, J.

In the instant appeal the State of Punjab has questioned the order passed by the Appellate Court dated 5.5.1984 passed in Civil Appeal No.615/163 of 1982.

2) Respondent – Mool Chand was in the cadre of Patwari and under the administrative control of Collector, Ludhiana. While he was working as Patwari in the year 1978, for criminal mis-conduct, criminal proceedings were initiated. Based on the pendency of criminal proceedings he was placed under suspension on 7.2.1978.

3) Sessions Court, Ludhiana, convicted respondent Mool Chand for the offences under Sections 302 and 307 IPC, by sentencing 7 years imprisonment with fine etc. on 15.5.1978.

Respondent – Mool Chand preferred criminal appeal before this

Court. This Court was pleased to dismiss the criminal appeal. Feeling aggrieved by the judgment passed in criminal appeal, he approached the Supreme Court and the Supreme Court upheld the judgment passed in criminal appeal, while affirming the conviction passed by the Sessions Court, Ludhiana.

4) During pendency of the criminal appeal before the High Court, respondent – Mool Chand was removed from service under Rule 13 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred as “Rules 1970”). Feeling aggrieved by the order of removal from service, he filed suit for declaration before the trial Court. On 30.11.1982, trial Court was pleased to uphold the order of removal from service dated 19.9.1978. Consequently, respondent – Mool Chand preferred an appeal before the Appellate Court. On 5.5.1984, the appeal was allowed, while setting aside the order of removal from service dated 19.9.1978. The State of Punjab – appellant feeling aggrieved by the order of the Appellate Court dated 5.5.1984 presented this Regular Second Appeal in the month of December 1984.

5) During pendency of this appeal, respondent – Mool Chand was taken back to service on 24.4.1985 and he has attained the age of superannuation and retired from service on 31.3.1990.

6) On 27.7.2010, the present Regular Second Appeal was dismissed. Thereafter State of Punjab – appellant preferred petition before the Supreme Court. On 26.8.2013, Civil Appeal No. 7197/2013 was allowed and the matter was remanded for fresh

disposal on the ground that learned Single Judge while dismissing present RSA on the score that appellant-State has not challenged the decree which was against appellant-State and when the fact that suit was dismissed filed by respondent – Mool Chand. The other reason is that learned Single Judge relied on an order passed in interlocutory in another case.

7) Learned counsel for the appellant submitted that respondent – Mool Chand was convicted on 15.5.1978. Based on the order of conviction, competent authority passed the following order.

Extract of order dated 19.9.1978 reads as under :-

“Whereas Shri Mool Chand Patwari s/o Sh. Toda Ram of Deputy Commissioner's office, Ludhiana has been convicted on a criminal charge under Section 302 IPC to undergo R.I. For life and to under undergo R.I. for seven years under Section 307 IPC and to pay a fine of Rs.300/- or in default of payment of fine to undergo further R.I. for three months. He has to further undergo R.I. for six years and two years under Section 326 and 452 I.P.C. in case FIR No. 6 dated 7.1.1978 of Police Sation Division No.2 Ludhiana vide order dated 15.5.1978 of Sh. B.D. Gupta Session Judge, Ludhiana. All these sentences are to run concurrently.

2. AND WHEREAS it is considered that the conduct of said Shri Mool Chand, Patwari, which led to his conviction is such as to render his further retention in the Public service undesirable.

3. NOW, THEREFORE, in exercise of the powers conferred by rule 13 (1) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, I hereby order the removal of said Shri Mool Chand Patwari from service with effect from 15.5.1978.”

8) It was contended that order of removal dated 19.9.1978 is in accordance with Rule 13 of the Rules, 1970. Therefore, there is no infirmity in the order of removal from service. Mere pendency of the criminal appeal, there is no hurdle for exercising power under Rule 13 of the Rules, 1970. Thus the Appellate Court has erred in holding that order of removal from service of the respondent – Mool Chand dated 19.9.1978 is not in order. The order should not have been interfered by the Appellate Court. Further it was contended by learned counsel for the appellant that there is compliance of Article 311 (2) (a) of the Constitution of India and the competent authority while passing order dated 19.9.1978, taken the conduct which has led to his conviction on criminal charges. Hence there is no infirmity whatsoever, so as to interference by the Appellate Court in respect of removal order. It was further contended that in view of the later

development that criminal appeal filed by respondent – Mool Chand, as well as, petition filed before the Supreme Court, he suffered order. In other words, conviction ordered by the Sessions Court, Ludhiana has been confirmed. Therefore, Appellate Authority's order dated 5.5.1984, is to be set aside, while upholding the order of removal from service dated 19.9.1978. In support of his contentions, learned counsel for the appellant, relied on the decision of Supreme Court reported in 1985 (3) SCC 398, Union of India vs. Tulsiram Patel (para 127).

9) Per contra, the learned counsel for the respondent – Mool Chand, submitted that order of removal dated 19.9.1978, Exhibit P-2, is not in accordance with Article 311 (2) (a) of Constitution of India read with Rule 13 of the Rules, 1970. It was contended that proviso to Rule 13 has not been complied. It was further contended that during pendency of the present Regular Second Appeal, respondent – Mool Chand was taken back to duty on 24.4.1985 and thereafter he has attained age of superannuation and retired from service on 31.3.1990. In view of these developments and for non-compliance of Article 311 (2) (a) of the Constitution read with Rule 13 of the Rules, 1970, the Regular Second Appeal is to be dismissed. Learned counsel for the respondent relied on the following decisions :-

i) The Divisional Personnel Officer, Southern

Railway and another vs. T.R. Challappan 1975

(2) SLR 587 (Para 10, 23, 24);

ii) *Union of India vs. Tulsiram Patel, 1985 (3)*

SCC 398, (para 127);

iii) *Union of India vs. V.K. Bhaskar 1997 (11)*

SCC 383, (Paras 4 and 5); and

iv) *Sushil Kumar Sikka vs. Uttar Haryana Bijli*

Vitran Nigam, Panchkula and others, 2006 (1)

S.C.T. 186 (P&H) (DB). (Para 8)

10) Heard learned counsel for the parties.

11) Respondent – Mool Chand was removed from service under Rule 13 of the Rules, 1970. An extract of Rule 13 is reproduced herein:-

“13. Special procedure in certain cases -

Notwithstanding anything contained in Rule 8,9,10,11 and 12-

(i) where any penalty is imposed on a Government 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 rules; or

(iii) where the Governor 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 rules, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this Rule.”

12) Rule 13 (1) (i) read with Article 311 (2) (a) is complied or not, is to be examined in the present case. Therefore, Article 311 (2) is extracted hereunder :-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

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XXX

XXX

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the

basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) 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

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry”

13) Learned counsel for the appellant submitted that there is compliance of Rule 13 of Rules, 1970, since the order of removal from service is with reference to the respondent's – Mool Chand, conviction in criminal proceedings, which has been taken note of by the competent authority before passing the order, therefore, there is

no infirmity. Reading of removal order dated 19.9.1978, two aspects are required to be examined; i) whether the competent authority has chosen to impose removal from service with reference to the conviction led to the conduct; ii) the other aspect is before passing the order of removal from service dated 19.9.1978, whether the Commission (Punjab Public Service Commission), has been consulted before passing order, vide proviso to Rule 13.

14) Perusal of the order of removal from service dated 19.9.1978 do not reveal the application of mind to the extent that the disciplinary authority is empowered to impose any one of the penalty, like dismissal from service, removal and reduction in rank. In other words, disciplinary authority has chosen to impose the penalty of removal from service. No reasons have been assigned as to why he has chosen to impose the penalty of removal from service on the respondent – Mool Chand. Therefore, the impugned action is not in compliance of Article 311 (2) (a) of the Constitution of India. It is evident from the record that there is non-compliance of proviso to Rule 13 of the Rules, 1970, which provides that **“provided that the Commission shall be consulted, where such consultation is necessary before any orders are made in any case under this rule”**. Reading of the above provisions, it is crystal clear that consultation with the Public Service Commission is mandatory for the reasons that proviso mandates that the Commission shall be consulted, which is mandatory provision. Therefore, on this ground also, the impugned removal order dated 19.9.1978 is liable to be set

aside. Supreme Court in the case of *State of Bihar vs. Upendra*

Narayan Singh and others 2009 (5) SCC 65, held as under :-

“41.Clause 3 of [Article 320](#) makes consultation with Union Public Service Commission, or the State Public Service Commission, as the case may be mandatory on all matters relating to methods of recruitment to civil services and for civil posts, on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers, on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters, on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted

against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State, on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award. This clause also casts a duty on the Public Service Commissions to advise on any matter referred to them by the President or the Governor.”

- 15) In the case of **Dost Mohammad vs. Union of India and others** (All.) 1981 (3) SLR 274 (DB), it has been held as under :-

“7. In **Divisional Personnel Officer v. T.R. Chellappan**, AIR 1975 SC 2216, the Supreme Court while considering R.14 of the Railway Servants (Discipline and Appeal) Rules held that the concluding part of R.14 imports a rule of natural justice in enjoining that before taking a final decision

in the matter the delinquent employee should be heard, the circumstances must be objectively considered. The rule further requires that there should be active application of mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the conduct and the penalty to be posed on the delinquent employee on his conviction on a criminal charge. The rule further confers power on the disciplinary authority to decide whether on the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. The principles laid down by the Supreme Court in Chellappan's case squarely apply to the instant case. There is no dispute that the petitioner was not given any opportunity of hearing and explanation before the disciplinary authority issued the impugned order removing him from service. A perusal of the impugned order clearly shows that the disciplinary authority did not apply his mind objectively to the question as to whether the conduct which led to the petitioner's

conviction was sufficient to impose the penalty against him and if at all what penalty should be imposed on him. It appears that the disciplinary authority mechanically exercised its power under R. 19 to remove the petitioner from service merely because the petitioner had been convicted of a criminal offence under S. 323 IPC. In our opinion the disciplinary authority acted in violation of the principles of natural justice as well as in excess of his jurisdiction. The appellate authority also acted in the same manner and it failed to apply its mind to the questions raised by the petitioner in appeal.”

16) This Court Division Bench in the case of **Hari Ram vs. Dakshin Haryana Bijli Vitaran Ltd.,** (P&H) (DB) 2006 (2) SCT 112 held as under :-

“5. We have heard learned counsel for the parties at length. We have also perused the original record which produced in the Court. The Full Bench has clearly observed as follows :-

"For the foregoing reasons, it is held that :-

(i) the departmental punishment of removal or dismissal from Government

service is not an essential and automatic consequence of conviction on a criminal charge;

(ii) to (iv) xx xx xx xx

(v) the liability to be departmentally punished for conduct which has led to the conviction of the employee does not attach to the conviction, but attaches to the original conduct (misconduct) which constituted the offence of which the official has been convicted;

(vi) to (xi) xx xx xx xx

(xii) an order or 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; and

(xiii) xx xx xx xx"

The law has further been clarified by the

Supreme Court in the *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416. In the aforesaid case, it has been held as follows :-

"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.""

Keeping in view the aforesaid observations of the Supreme Court, we have examined the record produced by the respondents. A perusal of the record shows that the respondents have not paid any attention to the conduct which led to the conviction of the petitioner as required by law. It was necessary for the respondents to examine the judgment of the Criminal Court and to assess the conduct of the petitioner to reach a conclusion as to whether it would be undesirable to keep him in service. The action of the management/employer must be based on relevant considerations. The impugned order in our opinion suffers from the vice of non-application of mind. Consequently, we are of the opinion that

the impugned order deserves to be quashed on this short ground.”

17) The Supreme Court in the case of **Divisional Personnel Officer, Southern Railway and another vs. T.R. Chellapan** (1976) 3

SCC 190 held as under :

“22. Mr. S. N. Prasad appearing for the appellants submitted that it may not be necessary for the disciplinary authority to hear the accused and consider the matter where no provision like r. 14 exists. because in such cases the Government can, in the exercise of its executive powers, dismiss, remove or reduce in rank any employee who has been convicted of a criminal charge by force of proviso (a) to Art 311(2) of the Constitution. In other words, the argument was that to cases where proviso (a) to [Art. 311\(2\)](#) applies a departmental inquiry is completely dispensed with and the disciplinary authority can on the doctrine' of pleasure terminate the services of the delinquent employee. We however refrain from expressing any opinion on this aspect of the matter because the cases of all the three` respondents before us are cases which

clearly fall within R. 14 of the Rules of 1968 where they have been removed from service without complying with the last part of R. 14 of the Rules of 1968 as indicated above. In none of the cases has the disciplinary authority either considered the circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all. On the other hand in all these cases the disciplinary authority has proceeded to pass the order of removal from service straightaway on the basis of the conviction of the delinquent employees by the criminal courts.

23. For the reasons given above the High Courts of Kerala and Rajasthan were, in the Circumstances, fully justified in quashing the orders of the disciplinary authorities removing the respondents from service. The appeals therefore fail and are accordingly dismissed but in view of somewhat unsettled position of law on the question involved we leave the parties to bear their own costs.”

18) The Supreme Court in the case of *Tulsiram Patel's case*

(Supra), at para 127 held as under :-

“127. Not much remains to be said about clause (a) of the second proviso to [Article 311\(2\)](#). To recapitulate briefly, 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 and the various factors set out in Challappan's case. This, however, has to be done by it ex parte and by itself. 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 concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however,

bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all

proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in [Shankar Dass v. Union of India and another](#), [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.”

19) In view of the above, Public Service Commission consultation is mandatory and not complied and the authority is bound to assign reason as to why he has chosen particular penalty. In the present case the appellant – competent authority-Collector (Deputy Commissioner, Ludhiana) has not stated as to why he has chosen the penalty of dismissal, when there is an option for him to impose the penalty of reduction in rank, removal or dismissal when criminal appeal was pending consideration. During pendency of the

present appeal, new developments have taken place, like respondent – Mool Chand was taken back to service on 24.4.1985 and he has attained age of superannuation and retired from service on 31.3.1990. It is learnt that he is also paid pension. Therefore, Regular Second Appeal is liable to be rejected. The question of remanding the matter do not arise for the reasons that order of removal is dated 19.9.1978, respondent – Mool Chand was reinstated in service on 24.4.1985 and he had retired from service on 31.3.1990. Further he has been paid pension for certain period. Thus due to passage of time also, decision of the Appellate Court need not to be interfered.

20) In view of the above facts and circumstances, the Regular Second Appeal stands dismissed.

August 24, 2016
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(P.B. Bajanthri)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No