

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20079 of 2013

Date of Decision: 23.09.2016

Sukhbir Singh

... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.S. Longia, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. Notice of motion was issued in this case on the following
premise, to quote:-

*“Learned counsel for the petitioner contends that domestic proceedings had culminated before the criminal trial and the disciplinary authority for the same incident/charge/misconduct had chosen the punishment of stoppage of two increments with cumulative effect which was reduced by the appellate authority against the initial order where punishment of stoppage of five increments with cumulative effect has been imposed against the petitioner. Having chosen punishment for the same misconduct subsequent conviction by the trial Court would not justify dismissal since the conduct of the petitioner has already been examined in that domestic enquiry. Learned counsel relies upon the decision of the Supreme Court in **Shankar Dass vs. Union of India and another, AIR 1985 Supreme Court 772** and the Division Bench decision of this Court in **Hari Ram vs. Dakshin Haryana Bijli Vitaran Nigam Ltd.***

*and another, 2006(2) SCT 112 and the Single Bench decision of this Court in **Man Singh vs. State of Haryana and others, 2010(1) SCT 604.***”

2. The case gathered momentum with the passing of the following interim order on November 30, 2015. The order reads:-

*“The petitioner along with three of his colleagues namely Anil Kumar, Attar Singh and Om Parkash through order dated 21.02.2011 were convicted by the Judicial Magistrate First Class, Jhajjar for offences under Sections 222 (ii) and 223 IPC. On appeal, the Sessions Judge, Jhajjar upheld the conviction under Section 223 but acquitted them qua the charge under Section 222 (ii) IPC. The order of the Sessions Judge, Jhajjar was challenged before this Court by way of **Criminal Revision No.1649 of 2011** titled as “**Om Parkash and others vs. State of Haryana**” which stands admitted and is pending regular hearing. While admitting the revision petition, this Court has suspended the sentence of the petitioner during the pendency of the revision petition.*

On the basis of the aforementioned conviction, the petitioner's services were terminated.

Mr. R.S. Longia, Advocate, appearing on behalf of the petitioner alleging discrimination and praying for parity has drawn my attention to the order dated 04.07.2012 (Annexure P-14) passed by the Inspector General of Police, Rohtak Range, Rohtak wherein while considering the appeal of the co-accused of the petitioner namely Attar Singh, he has been ordered to be taken back in service by staying the operation of the order during the pendency of the revision petition before this Court. Learned counsel for the petitioner further states that similar orders have been passed in the case of Anil Kumar and Om Parkash as well, though such orders are not in his possession.

A perusal of the orders passed by the criminal Court show that the role of the petitioner and Attar Singh to be the same and, therefore, prima facie his reinstatement during

the pendency of the criminal revision petition before this Court while rejection of the case of the petitioner cannot be reconciled.

In view of the aforesaid facts, Mr. Harish Rathee, Sr. DAG, Haryana prays for time to seek instructions.

Adjourned to 14.12.2015.”

3. The Police Department prayed for last opportunity on May 10, 2016 for filing the affidavit of the DGP, Haryana on the allegations of discrimination raised by the petitioner and noted in the order dated November 30, 2015. The affidavit has been filed by Dr. K.P. Singh, IPS, Director General of Police, Haryana stating that the matter has been looked into. Earlier the case was referred to State Government with a statement of the case. It is maintained that the petitioners were proceeded against departmentally and awarded stoppage of five annual increments with permanent effect by the SP, Rohtak being the disciplinary authority. On appeal, the IGP, Rohtak Range reduced the punishment to that of stoppage of two annual increments with temporary effect thereby converting major to minor punishment in exercise of discretionary powers.

4. However, the petitioner was convicted in case FIR No.122 dated September 22, 2007 under Sections 222/223/224/120-B of the IPC registered in Police Station, Salhawas and sentenced to undergo RI for a period of two years under section 222 (ii) and for 1 year under section 223 IPC by the learned Court of JMJC Jhajjar to run concurrently. On appeal, the Sessions Judge, Jhajjar vide order dated July 19, 2011 acquitted the petitioner and set aside his conviction under section 222 (ii) IPC; but his conviction under section 223 IPC was maintained. In Criminal Revision, the petitioner and other co-defaulters were given benefit of suspension of

sentence during pendency of the case. On recorded conviction, pending revision the punishing authority dismissed the petitioner from service w.e.f. July 19, 2011 vide order dated September 12, 2011. His appeal and revision were rejected on December 18, 2012 and June 22, 2013 respectively on the ground that only the sentence was suspended but not the conviction.

5. Section 223 IPC prescribes punishment for public servant legally bound to keep in confinement person charged with or convicted and negligently suffers such person to escape from custody shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

6. The Police Department admits that the case of the petitioner is similar to that of Constable Attar Singh. Constable Attar Singh was retained in service pending final decision of the revision filed by him in the High Court whereas the petitioner was dismissed from service by the competent authority. It has been explained that unequal treatment given to the petitioner and Constable Attar Singh was because of the fact that the competent authorities decided cases of two different Officers as the petitioner and Constable Attar Singh were posted in different ranges when their cases were decided by the competent authorities. The department admits that both of them, though similarly circumstanced were given different punishments. And this is discriminatory and needs to be corrected. Accordingly, the petitioner has been taken back in service vide order dated July 11, 2016 vide Annex R-1 on the same terms and conditions as Constable Attar Singh was retained in service. The order was passed after giving personal hearing to the petitioner on July 11, 2016. Therefore,

injustice done to the petitioner has been rectified. It may be noted that Criminal Revision No.1649 of 2011 jointly filed by the four convicts before the High Court is pending with sentences suspended which includes Attar Singh.

7. The situation presently is that the petitioner has been taken back in service on July 11, 2016, a fact affirmed in the affidavit of DGP dated July 16, 2016 filed in Court. The reinstatement to service is in the wake of acceptance of plea before the police department that the petitioner deserves to be treated in similar fashion as his co-accused Constable Attar Singh involved in the same episode of escape of an accused from custody of police party to which both belonged to redress non-discrimination bound together by the fate of the sub judice criminal revision against conviction and sentence under section 223 IPC.

8. In such a situation can the impugned orders dated September 10, 2011 dismissing the petitioner, the order in appeal dated December 18, 2012 and in revision dated June 22, 2013 can be declared to be illegal and unconstitutional by reason of the department conducting a regular inquiry against the petitioner in the same set of allegations and charges brought to bear before the end of the criminal trial, by weighing the gravity of the charge on the evidence adduced before the enquiry officer common to both the proceedings and accordingly reducing punishment to stoppage of two increments with temporary effect, a minor punishment, then the question presents itself for determination that can the disciplinary authority change its view depending on the outcome of the criminal revision. Option once exercised by a conscious decision of the competent authority to proceed

departmentally is final in its outcome and is not open to review in any of the changed circumstances by coming into existence supervening events over which the employer had no control just as it had in a domestic trial for establishing misconduct of negligence.

9. It would have been a different thing, I think, had the inquiry into the offence of criminal negligence within section 223 of the IPC or the employment misconduct, howsoever viewed, not been marked to a regular departmental proceeding to establish guilt or innocence without awaiting the result of the criminal trial. For this, there are two conceivable assumptions that can possibly be made on pure common sense and the first principles of law of putting first the cart before the horse or vice versa. In case, the criminal revision succeeds in the case of the petitioner and Attar Singh, that would be end of the matter since the petitioner already stands reinstated to service by the administrator by reason of Constable Attar Singh being retained in service despite conviction and proof of domestic misconduct just like the petitioner. The other possible assumption is that the Criminal Revision fails and the conviction stands under section 223 of the IPC. Even then Article 311 (2) Proviso (a) would protect the petitioner against penalty of dismissal from service or other punishment guarded by the Constitution except for conduct which led to the conviction. Above all, the argument that can be raised is repelled by the fact that the conduct of the petitioner has already been examined threadbare in a departmental enquiry and finally minor punishment has been imposed even before the criminal court in appeal recorded conviction for criminal negligence committed under section 223 of the IPC and after finding the petitioner innocent of the

crime under framed against him under section 222 (ii) of the Penal Code. Therefore, it would be very difficult in my view to hold that even in case the conviction is sustained, a different view is possible on the question of punishment for employment misconduct so far as dismissal from service is concerned. I believe that the perception of quantum of punishment on the appropriate doze to be administered to a delinquent Constable has primacy and is no longer dependent on the result of the findings of the criminal court. Even upon conviction all that can be said is that the final orders as may be passed by the High Court would be obeyed. The worst consequence of which the petitioner could face is if he is incarcerated to jail to serve out his sentence or the conviction is converted to the period undergone, as the case may be. However, this is in the realm of conjectures and this order can have no impact whatsoever on the proceedings pending in the Criminal Revision against conviction for a decision on merits.

10. Mr. Longia appearing for the petitioner submits with force that domestic punishment can only be imposed on ground of conduct of the employee which led to his conviction but not on the basis of conviction itself, failing which the extreme penalty of dismissal from service would be whimsical and arbitrary, besides being unconstitutional. He submits that the employer having selected the punishment cannot reverse the gear on the judgment of the court delivered later in point of time. The conduct of the petitioner in the eyes of the police department called for only the penalty of stoppage of two future increments without any permanent effect. The punishment selected was minor in character. Thereafter, there is no question of re-opening the matter by imposition of penalty of the harshest kind

which would amount to something akin to double jeopardy which is saved by the protections afforded by Article 20 (2) of the Constitution of India, that no person shall be prosecuted and punished for the same offence more than once. In Parkash Nath Saidha, Naib Tehsildar v. The Financial Commissioner (Revenue) Punjab and others, 1972 SLR 601 it was held that Article 20(2) is equally applicable to departmental proceedings.

11. On facts, Mr. Longia submits that the petitioner was a member of the Police escort party charged with the duty of escorting a criminal for production in court and while under escort the convict managed to escape from the custody of the escort party through a secret back door of a toilet in the house of one Jasbir Singh, Ex-Chairman of Village Matan Hali. The facts are rather interesting. A criminal by name Vijay Pal was a life convict undergoing life imprisonment in a jail in Haryana and who involved in various pending criminal cases was released on parole for ten days for getting married in compliance of the orders passed by the Delhi High Court on September 14, 2007. The Escort party, including the petitioner, took custody of the said convict from District Jail, Rohtak and took him to Village Dubaldhan where he contracted marriage in a temple allowed by court orders. Thereafter, the said convict went to his village Charkhi to visit his house and to offer prayers in a temple. On September 19, 2007 the escort party took Vijay Pal to Bhiwani for production in the Court of Chief Judicial Magistrate, Bhiwani and on the next day they had to take him to the Court at Bahadurgarh for production in the Court of the Sub Divisional Judicial Magistrate in another criminal case. The next day, on September 22, 2007 at about 8 PM Vijay Pal went to Village Matanhali at the house of

one Jasbir Singh from where the convict managed to escape from the custody of the escort party through a secret back door of a toilet and from the house of the Ex-Chairman.

12. The incident led to registration of an FIR bearing No.122 dated September 22, 2007. A regular departmental inquiry was initiated simultaneously against the members of the police escort party. The enquiry was conducted. The charge was proven by the enquiry officer in his report. The rest of the story has been explained above and needs no repetition. To reduce the case to its fundamentals, it would suffice to say that when minor punishment was inflicted on the petitioner it means that the charge was not found grave but of a minor nature. At best negligence could be attributed but not intention to commit crime. There was no mens rea of the petitioner as far as the departmental proceedings are concerned.

13. Mr. Longia submits that dismissal can be based only by virtue of provisions of Rule 16.2 of the Punjab Police Rules, 1934 as applicable to Haryana. Rule 16.2 reads as follows:-

“Rule 16.2 Dismissal :- (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed.

Provided that a punishing authority may, in an exceptional case, involving manifestly extenuating circumstances, for reasons to be recorded and with the prior approval of the next higher authority, impose any punishment other than that of dismissal.”

14. As per the above provisions dismissal can be awarded only for the gravest acts of misconduct and or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

15. Mr. Longia submits that the petitioner was enrolled as a Constable in 2004 and was a young hand when the incident happened. A bona fide mistake committed by a new entrant due to lesser experience has to be viewed from the perspective of Rule 16.2. He submits that there is even no finding of any of the criminal courts to suggest mala fides or guilty mind of the petitioner of commission of a heinous offence. To strengthen is case he cites a case directly in point involving escape of an accused/convict from the hands of an escort team with the occurrence happening in the case of escort party in the Haryana Police. He reminds that even the Assistant Sub Inspector who headed the escort team was allowed premature retirement with benefit of full pension and retiral benefits. The case in point is titled Man Singh v. State of Haryana and others, reported in 2010 (1) S.C.T 604 holding that conviction of an employee in a criminal case does not automatically lead to dismissal from service. The punishing authority has still to apply its mind and consider the nature and gravity of the offence and the service record. A reading of the order in appeal dated July 19, 2011 passed by the Sessions Judge, Jhajjar reveals that the conviction is for negligence while discharging official duties and the attributed negligence or role led to the escape of Vijay Pal. The episode arises out of an order passed by the Delhi High Court granting parole to the Vijay Pal (convict) to perform marriage on a request made. It is rather intriguing as to how the

Delhi High Court passed the order granting parole to a convict in Haryana for ten days to get married. However, I refrain from making any comment since the order of the Delhi High Court has not been placed on record to understand the question of jurisdiction. It is possible that Vijay Pal may have faced criminal proceedings within Delhi jurisdiction.

16. As a result of the above discussion, the legal position appears to me to be that in parallel proceedings, on a criminal charge and a charge sheet for misconduct, then in case the departmental proceedings conclude before the trial and the authorities measure the fitness of departmental punishment and awards a particular penalty after taking a conscious decision then the consequences of the criminal trial in appeal or revision in later point of time will have no effect from the perspective of service law. If the authorities in the Police Department have chosen to inflict minor penalty by reducing it from dismissal on the same charge of negligence as constitutes misconduct and criminal negligence within section 223 of the IPC put to trial then the decision of the authority on punishment will prevail irrespective of the result of criminal trial. I hasten to add that in the pending criminal revision the law will take its course. Depending on the result of the criminal revision the Police Department would be free to act as per rules in case, the conviction is sustained or sentence is upheld or reduced, as the case may be. However, by the very nature of things the proceedings would impact each other, one already final qua departmental proceedings, then other which may lead to the jail. This is left open to await the decision of the High Court in the revision against conviction. Nevertheless the relief claimed deserves to be allowed.

17. For the reasons recorded above and in the two interim orders dated September 11, 2013 and November 30, 2015 reproduced in the beginning of this order, this petition is allowed. The dismissal order is deemed to be set aside in view of the affidavit filed by the DGP, Haryana. The petitioner's case has already been placed at par with Constable Attar Singh. The order inflicting minor punishment is maintained. The period of punishment has run out its course on expiry of the period specified which would entail restoration of increments withheld temporarily. These two increments will revert to the petitioner from the date when the currency of the punishment ended. The petitioner will have the benefit of bar against double jeopardy in so far as domestic penalty is concerned subject to result of revision. The Police Department will be at liberty to pass separate orders as to how the intervening period has to be treated. However, in the broader sense, this order would remain subject to final decision in the criminal revision on the criminal side of case but not its domestic service law angle, which will be governed by this order.

(RAJIV NARAIN RAINA)
JUDGE

23.09.2016

manju

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No