

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.9847 of 2015 (O&M)
Case reserved on 27.09.2016
Date of Pronouncement 18.10.2016

Darshan Singh, Ex Head Constable

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. R.K.Malik, Senior Advocate with
Mr. Bhupinder Malik, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Additional A.G., Haryana.

TEJINDER SINGH DHINDSA, J.

Petitioner who was serving as Head Constable with the Haryana Police has impugned the order dated 30.05.2012 (Annexure P-4) whereby he has been dismissed from service. Further challenge is to the orders dated 08.08.2012 (Annexure P-6) and 09.04.2015 (Annexure P-8) whereby the appellate and revisional authorities have affirmed the penalty of dismissal.

Petitioner was enrolled as a Constable on 27.09.1989. He thereafter earned promotions as EHC on 27.09.2005 and as Head Constable on 02.02.2011. A criminal complaint under Sections 323, 324, 342, 504, 506 IPC was filed by one Chiranji Lal against the present petitioner as well as Babu Ram, ASI, Prem Prakash, Constable and Karnail Singh, Constable alleging that the police officials had resorted to giving him beatings. Petitioner along with co-accused aforementioned were convicted and sentenced vide judgment dated 02.08.2007 passed by the learned Judicial Magistrate,

Ambala Cantt. The petitioner and other co-accused filed an appeal against the judgment of conviction but the same was dismissed vide order dated 03.10.2011 by the learned Sessions Judge, Ambala. Petitioner and other co-accused thereafter filed three separate criminal revisions in this Court and which were disposed of by common judgment dated 21.12.2011 (Annexure P-1) and in terms of which the conviction was upheld but the petitioner and other co-accused were ordered to be released on probation for a period of one year.

Apparently, acting upon the judgment of conviction, a show cause notice dated 08.05.2012 was issued to the petitioner contemplating the penalty of dismissal. The petitioner responded to the show cause notice. However, vide order dated 30.05.2012 passed by the Superintendent of Police, Fatehabad (Annexure P-4), petitioner has been dismissed from service on the basis of his conviction for commission of offences punishable under Sections 323, 325, 342 and 34 IPC. Perusal of the impugned order would reveal that while imposing penalty of dismissal, the power under Rules 16.2 (2) of the Punjab Police Rules, Volume II (applicable to the State of Haryana) has been invoked. The appeal as also revision preferred by the petitioner have been declined vide impugned orders dated 08.08.2012 (Annexure P-6) and 09.04.2015 (Annexure P-8).

Having heard counsel for the parties at length and having perused the pleadings on record, this Court is of the considered view that the impugned orders cannot sustain and a case for reconsideration as regards quantum of penalty is made out.

The impugned order does not contain any indication if the nature and gravity of the offence was taken into consideration while

imposing the major penalty of dismissal. The order also does not show if the punishing authority had kept in view the length of service of the petitioner i.e. 22 years. Rule 16.2 of the Punjab Police Rules provides that dismissal shall be awarded only for the gravest acts of misconduct and in making such an award regard shall be had to the length of service of the offender and his claim to pension. Thus, length of service rendered is one of the relevant parameters which has to be taken into consideration by the punishing authority while dismissing an employee.

A similar situation arose in the case of ***Man Singh Vs. State of Haryana and others (CWP No.7644 of 2007) decided on 09.11.2009.*** The petitioner therein was serving as a Sub Inspector in the Haryana Armed Police and was dismissed from service on account of his conviction for offences under Sections 148, 325, 307, 323, 149 IPC read with Section 27 of the Arms Act. Even though his conviction had been upheld but he also was granted benefit of probation. A coordinate Bench of this Court while setting aside the order of dismissal and directing reconsideration on the question of punishment had observed as follows:

*“Though, the liability to dismissal under clause (a) of the Second proviso to Article 311 (2) of the Constitution, would not cease on account of the release of the petitioner on probation but still while directing dismissal of an employee on the basis of a conviction of a criminal charge, the power is required to be exercised fairly, justly and reasonably. In this regard, reference can be made to **Shankar Dass Vs. Union of India**, AIR 1985 SC 772. In para 7, it has been held as under:-*

“It is to be lamented that despite these

observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service “on the ground of conduct which has led to his conviction on a criminal charge”. But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Cl. (a) of the second proviso to Art. 311(2) makes the provisions of that article 4 of 9 inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has, led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinion s that the penalty of dismissal from service imposed upon the appellant is whimsical.”

*In Full Bench decision of this Court in **Om Parkash Vs. The Director Postal Services (Posts and Telegraphs Deptt.), Punjab Circle, Ambala and others**, AIR 1973 Punjab and Haryana 1, it is held that departmental punishment of a Government servant is not a necessary and automatic consequence of conviction on a criminal charge. The competent authority has to consider all the circumstances of the case and then make such order in relation to question of imposition of penalty on the Government servant for his original conduct, which has led to his conviction. It is also held that the authority competent to take disciplinary action under Rule 19(1) of 1965 Rules against Central government servant convicted on a criminal charge has to consider all the circumstances of the case and then decide (a) whether the conduct of delinquent official, which led to his conviction is such as to render his further retention in public service undesirable; (b) if so, whether dismiss or remove him from the service or compulsorily retire him and see if the said conduct of the official is not such which render his further retention in service undesirable, whether the minor punishment, if any, shall be inflicted or not.*

*A Division Bench of this Court in **Hari Ram Vs. Dakshin Haryana Bijli Vitaran Nigam Ltd. And another**, 2006 (2) SCT 112 again took a similar view while relying upon Full Bench decision of this Court in Om Parkash's case (supra) and has held that upon conviction in a criminal charge,*

*dismissal from service is not automatic. It is further held that the competent authority has to consider and apply its mind to the judgment of the criminal Court and other material available on record and reach a definite conclusion that due to the conviction it is no more desirable to retain the employee in service. Dismissal straightway on account of conviction, thus, can not be sustained. Even in the case of **Union of India and another Vs. Tulsi Ram Patel**, AIR 1985 SC 1416, the Hon'ble Supreme Court held as under:-*

“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 judgement 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.”

The observations made by this Court in ***Man Singh's Case (supra)*** would apply squarely to the facts of the present case as well.

A Division Bench of this Court in ***Rajinder Singh Versus Board of School Education, Haryana and another 1996 (4) RSJ 417*** had held that in cases involving moral turpitude the employer may be justified in taking a view that the employee has lost his right to remain in service, but may choose to impose a comparatively lesser punishment. The Division Bench observed that the quantum of punishment and to be imposed would depend on the objective application of mind by the employer to the facts of the given case. In the case of ***Hari Ram (supra)***, it had been held that there can be no automatic dismissal from service merely on conviction and it was obligatory upon the competent authority to apply its mind to the judgment of the criminal Court and other material to reach a definite conclusion that it would not be desirable to retain an employee in service on account of his conviction. Impugned order of dismissal in the present case does not reflect any such objective application of mind at the hands of the punishing authority. The length of service rendered by the petitioner i.e. 22 years has also not been factored in while directing dismissal from service. Yet another relevant aspect which has been overlooked is that out of four police officials including the petitioner who had been involved in the criminal case and who had also been convicted and finally released on probation, no

action has been taken against two, namely, Babu Lal ASI, and Prem Prakash, Constable and who have since superannuated and are drawing their pension regularly. It was incumbent upon the punishing authority to have even covered such aspect and thereafter to have assigned reasons to distinguish the case of the present petitioner from that of co-accused Babu Lal and Prem Prakash so as to justify the imposition of major penalty of dismissal. The same has not been done. Such material aspects and as aforesaid have been overlooked not only by the punishing authority but by the appellate and revisional authorities as well.

For the reasons recorded above, the writ petition is allowed. The impugned orders dated 30.05.2012 (Annexure P-4), 08.08.2012 (Annexure P-6) and 09.04.2015 (Annexure P-8) are set aside and quashed. The matter is remanded back to the punishing authority for reconsideration in terms of the law laid down and as noticed above and to thereafter pass a fresh order in accordance with law. It would be for the punishing authority to apply its mind and to form an opinion as to whether conviction of the petitioner deserves the penalty of dismissal, removal or reduction in rank or any other lesser penalty. Let such exercise of reconsideration and passing a fresh order be completed within a period of three months from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

18.10.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No