

CWP No. 2853 of 2009 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 2853 of 2009 (O&M)
Date of decision : January 24 , 2017

Subhash Chander Mangla,

..... Petitioner

v.

State of Haryana and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. R.K Malik, Sr. Advocate with
Mr. Tej Pal Singh Dhull, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG Haryana

Ajay Tewari, J

By this writ petition, the petitioner has challenged the order dated 18.02.2009 (Annexure P-13) dismissing him from service.

Brief facts are that the petitioner was appointed as a Patwari on regular basis on 25.2.1975 and was promoted to the post of Kanungo on 29.9.1999. He first entered one mutation No.917 on 16.6.1993 regarding the estate of Dhallu Ram, deceased, in favour of Jai Pal son of

and Jai Lok Singh on the basis of an unregistered Will. Later-on, he got

mutation No.942 sanctioned in faour of the natural heirs of deceased Dhallu Ram cancelling mutation No.917 by keeping it away from Parat Patwar register of mutations. There were other charges also. On these allegations, an FIR was lodged against him and parallel to that, a charge sheet was also issued and both the disciplinary as well as criminal proceedings continued. In the disciplinary proceedings he was found guilty and imposed the punishment of stoppage of one increment with cumulative effect. Criminal proceedings also culminated by judgment of conviction dated 18.12.1999 passed by the trial Court. He filed an appeal before the lower appellate Court which was also dismissed by judgment dated 2.7.2004. Pursuant to the dismissal of his criminal appeal, he was issued a notice on 18.1.2005 informing him that his conviction proved that he had been guilty of an offence involving moral turpitude, and asking him to show cause why his services be not terminated. He filed a criminal revision bearing CRR No.1330 of 2004 in this Court against the dismissal of his criminal appeal and prayed that no action should be taken on the show cause notice. However, since there was no stay of conviction, he was ultimately dismissed from service by the impugned order. To complete the narration of facts, it would also be necessary to mention here that his criminal revision was also dismissed by this Court by judgment dated 2.8.2010.

Learned senior counsel for the petitioner has argued that the petitioner having once already been punished in departmental proceedings, his dismissal order only on the basis of his conviction is hit by the doctrine of double jeopardy. This argument has to be noticed only to be rejected. The protection of Article 20 of the Constitution of India attaches only to criminal prosecution for the same offence. It has been so held by the Rajasthan High Court in Narain Lal v. State of Rajasthan, 2003(6) SLR 785, wherein it was held as follows :-

“8. Looking to the above facts and circumstances of the case, the question for determination in this writ petition is that where a person who has been punished earlier in a departmental enquiry under Rule 16 of the CCA Rules and later on, on the same charge, if he is convicted by the Criminal Court and subsequent to his conviction in criminal case, if an order of removal from service has been passed against that person, whether such an order of removal is illegal or without jurisdiction or hit by the principle of double jeopardy as envisaged under Article 20(2) of the Constitution of India or not.

9. It may be stated here that Clauses (1), (2) and (3) of second proviso to [Article 311\(2\)](#) of the Constitution of India correspond to Clauses (i),(ii) and (iii) of Rule 19 of the CCA Rules. Rule 19 of the CCA Rules reads as follows:-

"Rule -19-Special Procedure In certain cases.-

Notwithstanding anything contained in Rules 16, 17 and 18.-

(i) where a penalty is imposed on a conduct which has led to his conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied

for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure.

The Disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit.

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary."

10. It may be stated here that in case which fall under Rule 19 of the CCA Rules which corresponds to [Article 311\(2\)](#), the opportunity of hearing has been abolished altogether in the above three situations.

11. In such matters when departmental enquiry is there and criminal case is also there, there situations generally come in picture, which are as follows:-

(1) The first situation is that when on a criminal charge, a person is acquitted, in such a situation, there was no prohibition for continuation of departmental proceedings against that person. For that the latest decision of the Hon'ble Supreme Court in [Secretary, Ministry of Home Affairs and Anr. v. Tahir Ali Khan Tyagi](#) 2003(2) SCT 227 (SC) may be referred to.

(2) The second situation is that even if a criminal prosecution has commenced and is continuing against any person, a disciplinary proceeding in respect of the accusation which forms the subject matter of the charge in the Criminal Court is not forbidden and it can be commenced. Therefore, two parallel proceedings one of disciplinary proceedings and other of criminal proceedings both can run together.

(3) The third situation that can be visualised is that the person, who has faced departmental proceedings and in departmental proceedings, he was punished and, thereafter, if he was convicted in the criminal case, whether on the basis of conviction passed in criminal

case, subsequent punishment can be imposed upon that person or not. In this writ petition, this third eventuality is there and the question which was posed above has to be answered.

12. The learned counsel for the petitioner has sought the help from Clause (2) of [Article 20](#) of the Constitution of India which speaks that no person shall be prosecuted and punished for the same offence more than once.

13. Clause (2) of [Article 20](#) of the Constitution of India guarantees that no person be prosecuted and punished for the same offence more than once. 'And' is used here in the ordinary conjunctive sense. Hence, [Article 20\(2\)](#) bars a second prosecution only where the accused has been both prosecuted and punished for the same offence previously but this clause does not bar subsequent trial if the ingredients of the offences in the previous and the subsequent trials are distinct.

14. The necessary conditions for applicability of Clause (2) of [Article 20](#) of the Constitution of India are as follows:-

(a) There must have been previous proceedings before a Court of law or a judicial tribunal of competent jurisdiction.

(b) The person must have been 'prosecuted' in the previous proceeding.

(c) The conviction (or acquittal) in the previous proceedings must be in force at the time of second trial;

(d) The 'offence' which is the subject-matter of the second proceeding must be the same as that of the first proceedings, for which he was 'prosecuted and punished'.

(e) The 'offence' must be an offence as defined in [Section 3\(38\)](#) of the General Clauses Act, that is to say, 'an act or omission made punishable by any law for the time being in force.' It follows that the prosecution must be valid and not null and void or

abortive.

(f) The subsequent proceeding must be a fresh proceeding where he is, for the second time, sought to be 'prosecuted and punished' for the same offence. Hence, the clause has no application where the subsequent proceeding is a mere continuation of the previous proceedings, e.g. in the case of an appeal against acquittal, or against conviction. Nor does it bar a retrial, on appeal, with a direction to reframe the charges, provided the retrial is confined to the same offence or offences for which he had been tried at the original trial.

In other words, a second punishment for the same offence does not attract the operation of the clause unless the second punishment is awarded in a fresh proceeding.

15. The words 'prosecuted and punished' indicate that both the proceedings referred to by the clause must be proceedings before a Court of law or a judicial tribunal.

16. 'Prosecution' in this context, thus, means an initiation or starting of proceedings of a criminal nature before a Court of law or a judicial tribunal in accordance with the proceedings prescribed in the statute which creates the offence and regulates the punishment.

17. 'Punishment' in this clause means a judicial penalty, awarded by a Criminal Court, as distinguished from a statutory authority and would not include other penalties such as disciplinary action in the case of public servants.

18. During the course of arguments, specific question was put to both the learned counsel whether there is any authoritative pronouncement of the Hon'ble Supreme Court or any other High Court on the point in question, but both learned counsel replied the question in negative and, thereafter, law books were searched and I have come across to an old case reported in [S.A. Venkataraman v. Union of India and](#)

Anr. AIR 1954 SC 375, and that ruling of the Hon'ble Supreme Court answers the present complexed question framed above. In that case, the Hon'ble Supreme Court held as follows:-

"The language of Article 20 and the words actually used in Article 20(2) afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence."

I am in respectful agreement with the above judgment.

The matter can be viewed from another angle. The standard of proof required in departmental proceedings is more akin to the requirement of civil cases i.e preponderance of probability, while that required in criminal cases is beyond reasonable doubt. When the petitioner was found guilty in departmental proceedings, it was only on the basis of preponderance of probability but once he was convicted (and that conviction was upheld upto this Court and became final), there was no shred of doubt regarding his complicity and that could justifiably persuade the employer to come to the conclusion that he deserved dismissal from service.

Learned senior counsel for the petitioner has relied upon the decisions of this Court in Balwant Singh v. State of Haryana 2000(3)

SCT 617 and Daya Nand v. State of Haryana 2000(2) SCT 978. In both these decisions, the petitioners were drivers who had caused deaths by negligent driving. They had been punished in departmental proceedings and later, after conviction, were dismissed from service. As per the learned counsel, in those cases this Court set aside the subsequent dismissal orders. Apart from the other grounds, it is clear that an offence under Sections 279 read with Section 304-A of the IPC in any case does not involve moral turpitude and, therefore, both the aforesaid decisions are distinguishable on this ground.

In the totality of circumstances, I find no reason to interfere with the impugned order of dismissal and consequently dismiss this petition with no order as to costs.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

January 24, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No