

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CWP No.14945 of 2013 (O&M)

Date of Decision : 07.03.2017

Jitender Kumar @ Jitender Singh

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.N.Lohan, Advocate for the petitioner.

Mr. Indresh Goel, Addl. A.G., Haryana.

AJAY TEWARI, J. (Oral)

The petitioner was working as Clerk. When he was convicted under Sections 326/325/324/323/148/149/506 IPC the impugned order (Annexure P-I) dated 26.07.2012 was passed, the relevant portion of which is extracted below :-

“I have gone through the record of the case and perused the judgment dated 10.4.2012 passed by the Sh.R.N.Bharti, Addl. District and Sessions Judge, Jind and the evidence discussed therein. The alleged offences under section 326/325/324/323/148/149/506 IPC were proved beyond any doubt in the court of Law against Sh.Jitender Clerk. Accordingly, he was sentenced to undergo rigorous imprisonment and a fine of Rs.1500/- for the offence were awarded to Sh.Jitender Clerk, Haryana Roadways, Jind.

Under these circumstances and in view of the conduct of the employee which led to his conviction there is no need to hold any further enquiry or issue any notice to the convicted employee. Exercising the powers under Article 311 (2) (b) of the Constitution of India, I deem it fit to order dismissal of the services of convicted employee Sh.Jitender Clerk, Haryana

Roadways, Jind, being as he is unfit to hold a public post. I, therefore, order accordingly.

*Sd/-
Arun Kumar
Director General State Transport
Haryana, Chandigarh.”*

His appeal dated 16.01.2013 (Annexure P-3) was also rejected and that is why he is before this Court. The contention of learned counsel for the petitioner is that the offences for which the petitioner was convicted neither relate to the petitioner as a Govt. servant nor is likely to embarrass the discharge of his duties and do not include moral turpitude and therefore, the respondents are not justified in dismissing him from service. He has relied upon a document instructions annexed by the respondents themselves as R-I. These instructions read as follows :-

“2. Rule 7.6 of the Punjab Civil Services Rules, Volume I, Part I, requires that a Government servant against whom a criminal charge is pending should be placed under suspension, if (i) the charge is connected with his position as a Government servant or (ii) is likely to prove embarrassing in the :discharge of his duties as such, or (iii) involves moral turpitude. The implication of this rule is that if the criminal charge does not fall under any of these three categories, it will not be necessary to suspend the Government servant. It follows that on conviction in the case of such a charge, it will also not be necessary that the Government servant should be dismissed or removed from service. Thus rule 7.6 of the Punjab Civil Services Rules, Volume I, Part I had the effect of dividing cases in which Government servants have been convicted of criminal charge into two classes :-

(i) Cases in which dismissal or removal from service should follow automatically;

(ii) Cases in which it need not so follow.

In the circumstances, he has prayed that the dismissal order be set aside and he be re-instated.

Learned Additional Advocate General has very fairly stated that it was incumbent upon the authorities to have considered these instructions while considering whether the petitioner had to be retained in service or not. As per him it would be in the interest of justice that the competent authority be directed to pass a fresh order.

I find it to be a fair submission. In the circumstances, both the impugned orders are set aside. The disciplinary authority is directed to pass a fresh speaking order in terms of the present judgment within a period of three months from the date of receipt of a certified copy of this order. Till such time a fresh order is passed the petitioner would not be entitled to any consequential benefits of today's order. However if a fresh order is not passed within the time granted, the petitioner would be entitled to the consequential benefits of this order.

Petition stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

07.03.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No