

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

**CWP No. 21370 of 2017
Date of Decision: 10.11.2017**

Raj Kumar

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sunil K. Nehra, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner is impugning the order of dismissal dated 25.02.2014 (Annexure P-1), passed by the 2nd respondent herein, i.e. the Director of Industries and Commerce, Haryana.

The said order has been passed invoking jurisdiction under clause (a) of the second proviso to Article 311 (2) of the Constitution of India.

The petitioner having been convicted of charges framed against him under Sections 7 and 13 (i) (d) of the Prevention of Corruption Act, 1988, vide the judgment of the trial Court dated 04.12.2013, and having been sentenced to two years' rigorous imprisonment in respect of the offence punishable under Section 7 of the Act, along with a fine of Rs. 3,000/-, and for one years' rigorous imprisonment for the offence punishable under Section 13 (1) (d) of the aforesaid Act, along with a fine of Rs. 2,000/-, the order of the 2nd respondent herein came to be passed, dismissing him from service.

The appeal filed by the petitioner against that order has also been dismissed by respondent no. 1, vide his order dated 23.05.2014 (Annexure P-

2).

Learned counsel for the petitioner submits that the punishing authority not having applied its mind to whether the petitioner should have been dismissed from service, or reduced in rank or removed from service, in terms of what is contained in clause (a) of the second proviso to Article 311 (2), as interpreted by the Supreme Court in its judgment in **Union of India** vs. **Tulsi Ram Patel** Law Finder DocId # 90349, the impugned orders are wholly unsustainable.

He has further submitted that the same appellate authority modified the orders of other employees in similar circumstances, though not arising out of the same cause of action, but where those employees had also been dismissed from service by the punishing authorities, invoking the same constitutional provision, upon their conviction in criminal proceedings on charges framed under the Prevention of Corruption Act itself.

Specifically, Mr. Nehra has pointed to paragraph 127 of the judgment in **Tulsi Ram Patels'** case (supra), which is reproduced hereinunder:-

“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."

(Emphasis applied in the present judgment)

He further refers to the last part of paragraph 22 in **Divisional Personnel Officer Southern Railway and another vs. T.R. Challappan**

Law Finder DocID # 106703, which reads as under:-

“In this connection it was contended by the learned counsel for the appellants that this provision does not contemplate a full-dress or a fresh inquiry after hearing the accused but only requires the disciplinary authority to impose a suitable penalty once it is proved that the delinquent employee has been convicted on a criminal charge. The Rajasthan High Court in (Civil Writ Petition No. 352 of 1971 concerning Civil Appeal No. 891 of 1975) has given a very wide connotation to the word 'consider' as appearing in Rule 14 and has held that the word 'consider' is wide enough to require the disciplinary authority to hold a detailed determination of the matter. We feel that we are not in a position to go to the extreme limit to which the Rajasthan High Court has, gone. The word 'consider' has been used in contradistinction to the word 'determine'. The rule-making authority deliberately used the word 'consider' and not 'determine' because the word 'determine' has a much wider scope. The word 'consider' merely connotes that there could be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968

which incorporates the principle contained in Article 311 (2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T. R. Challappan in Civil Appeal No. 1664 of 1974, where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the [Motor Vehicles Act](#) and so on, where a major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real resentment he may be dealt with as lightly as

possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair-play. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service.

(Learned counsel referred to Challappans' case in view of the reference made to that case in Tulsi Ram Patels' case, as reproduced hereinabove).

Having considered the aforesaid arguments, it first needs to be noticed that in Patels' case, what their Lordships have held is that the disciplinary authority needs to reach a conclusion that the conduct of the Government servant was such as to require his dismissal or removal or reduction in rank, and as to which of the three penalties is to be imposed, though the Government servant need not be heard for that purpose.

In the present case, after discussing the relevant part of the judgment of the trial Court in the criminal proceedings, the 2nd respondent herein has stated as follows in paragraph 5 of the order, Annexure P-1:-

“I have gone through the facts of the case of Shri Raj Kumar and find that he has been convicted under the Prevention

of Corruption Act, 1988, which tantamounts to a serious crime involving moral turpitude. He is presently on bail and has filed a Criminal Appeal No. 4454-SB of 2013 against the orders of his conviction by the Hon'ble Punjab and Haryana High Court, which has been admitted vide the Hon'ble Court orders dated 18.12.2013 and is pending for decision. The sentence awarded to him has been suspended till the hearing/decision of appeal, but it is noted that the Hon'ble Court has not suspended the conviction. The official has been sentenced to imprisonment for a period of two years and one year respectively and a fine of Rs. 5,000/-. Therefore, there is no need of any further enquiry or any opportunity of hearing to be granted to the official. This renders him unfit for retention in Government service.

Therefore, keeping in view of the decision of the Hon'ble Court convicting Shri Raj Kumar on charges under the Prevention of Corruption Act, 1988, I Ashok Sanwan, Director of Industries and Commerce, Haryana, being competent authority in this behalf, dismiss Shri Raj Kumar, Industrial Extension Officer from service with immediate effect.”

Very obviously, it is after a discussion of the conviction of the petitioner for the commission of offences punishable under the Prevention of Corruption Act, that the punishing authority eventually arrived at the conclusion that “this renders him unfit for retention in Government service”.

Thereafter, he has ordered the dismissal of the petitioner, which has been upheld by the appellate authority, who again while dismissing the appeal, has held as follows in the last paragraph of his order:-

“I have gone through the records of the case, perused his appeal and taken into consideration his oral submissions during the personal hearing. Indulgence in corrupt practices by a person in his capacity as a public servant cannot be treated with any leniency. Keeping in view that the appellant stands convicted by the Court with no relief from a higher Court,

the said appeal is found to be without any merits and hence rejected.”

Therefore, in the opinion of this Court, it is after due application of mind as to the nature of charges against the petitioner and his conviction by the trial Court in criminal proceedings, that the authorities came to a conclusion that he did not deserve to be continued in Government service and in fact deserves to be dismissed.

As regards Mr. Nehras' contention with regard to similarly placed persons having been granted a lesser punishment by the same appellate authority, such orders having been annexed as Annexure P-3 (colly.), without a doubt the three persons in respect of whom the order has been passed are also seen to have been convicted in criminal proceedings for the same offences under the Prevention of Corruption Act; yet, an order passed in another persons' case by an administrative authority, would not come to the rescue of the petitioner, where he also has been specifically found guilty of indulging in corrupt practices and therefore, discretion though undoubtedly has to be exercised judiciously, if in the petitioners' case, the authorities came to the conclusion that he having indulged in corrupt practices cannot be retained in service, I see no reason to interfere with those orders. It may be repeated here that the petitioner and the other employees (in whose case punishment has been reduced by the appellate authority, to one of compulsory retirement), were not criminally prosecuted in respect of the same occurrence, but in respect of wholly different occurrences, as is not denied by learned counsel on query.

Consequently this petition is dismissed.

It may also be noticed, even after dismissed of the petition, that reinstatement of employees convicted in criminal proceedings, especially in

cases in which they have been punished for offences committed under the Prevention of Corruption Act, has been deprecated by the Supreme Court in K. C. Sareen v. C.B.I, Chandigarh 2001 (3) RCR (Criminal) 718, holding that simply because their sentences of imprisonment have been suspended in appeal, did not entitle them to such reinstatement.

However, if the petitioner succeeds in the appeal filed by him against his conviction and sentence, he would be at liberty to file another petition at that stage.

November 10, 2017
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes