

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 10.07.2018****CWP No.11735 of 2006 (O&M)**

Jeet Singh

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Arora, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. S.K.Mahajan, Advocate, for respondents No.2 to 4.

RAJIV NARAIN RAINA, J.

The criminal case under the Prevention of Corruption Act, 1988 (for short 'the Act') against the petitioner failed before the Special Judge, Jind vide judgment dated 04.10.2004 and, therefore, the charges levelled against the petitioner for releasing unauthorized connections are not established on evidence. Let alone the criminal trial in which the petitioner's co-accused Adarsh Mohan, Assistant Foreman, a departmental enquiry was held and in the report Annex P-7, the enquiry officer concluded that the petitioner cannot alone be blamed, as he alone could not release the unauthorized connections without the consent of seniors although his own part in the incident cannot be excused. Thus, the enquiry officer has also held other persons including seniors of the petitioner responsible for the act, but curiously enough L.N.Guglani, SDO (OP) Sub Division at the relevant time and under whom the petitioner was working was let off by the

Department by declining sanction to prosecute him in the criminal case in which he was named and the petitioner was a co-accused.

It may be noticed that the petitioner and his co-accused Adarsh Mohan were initially placed under suspension on 23.03.1997 and were reinstated to service after more than 9 months on 08.01.1998. However, after presentation of the final report/challan, the petitioner alone was again suspended on 09.03.1998 and was reinstated on 16.04.2004 forcing him out of service for a rather long time with apparently no legal justification especially in view of the fact that Anand Mohan was not suspended again and his seniors through whom the papers for release of connections had passed were left untouched. Even in the matter of punishment, non-discriminatory procedure has been followed.

The petitioner was acquitted of the charges alleged against him on 04.10.2004 in FIR No.285 dated 27.04.1997 registered under Sections 7 and 13(1)(d) of the Act in which L.N.Guglani, SDO was named as an accused, but sanction to prosecute him, as said earlier, was declined by the State Government. It may further be noticed that the petitioner was arrested on 28.06.1997 and was released on bail after one day of custody. The departmental enquiry took six years to conclude. The categorical finding is that the unauthorized connections cannot be released without the consent of the seniors who call the shots.

The respondents had filed written statement and contested the case by stating that the writ petition is not maintainable, as no right of the petitioner has been infringed; petitioner has no locus to file the present petition as departmental proceedings and criminal trial can be initiated against him simultaneously; he has concealed material facts and has not

come with clean hands; he has been awarded punishment after following due procedure as established by law and after following the principles of natural justice.

I have considered the arguments of respective counsel and find weight in what the petitioner urges. The acquittal against the petitioner and Adarsh Mohan has attained finality, as the State has not challenged the judgment in appeal. The petitioner appears to have been made a scapegoat with no action taken against the senior officers. Keeping the petitioner out of service for six years is found wholly unjustified, discriminatory and unsustainable. It is discriminatory qua Adarsh Mohan, who continued in service and, therefore the petitioner cannot be deprived of salary especially when a criminal case was an employment related charge while on duty and initiated by the employer. If the enquiry officer's report is to be made foundation for future actions, then the finding is in favour of the petitioner that he himself could not alone be blamed for release of unauthorized connections to the consumers. He was neither the sanctioning authority nor the final authority in this regard.

There also a glaring fact pointed out by the petitioner from the written statement filed by respondents No.2 to 4 that Adarsh Mohan was convicted for three years rigorous imprisonment and fined a sum of Rs.3000/- for the commission of offence punishable under Section 13(1)(D) of the Act, is a factually incorrect and misleading statement contrary to the judgment of acquittal dated 04.10.2004, whereby petitioner and his co-accused Adarsh Mohan have been acquitted. The relevant extract contained in Para.12 of the written statement filed by respondents No.2 to 4 reads as follows:

“12.So far as the case of L.N.Guglani, SDO and Sh. Adrash Mohan, AFM is concerned, disciplinary action has already been taken by the competent authority against both these officials. Sh. Adarsh Mohan, AFM had already been sentenced rigorous imprisonment for 3 years and fined a sum of Rs.3000/- for the commission of the offence punishable under Section 13(1)(D) of the Prevention of Corruption Act.” .

The petitioner submits correctly that Adarsh Mohan was convicted in some other case bearing FIR No.139 which related to some other matter. The State has not been able to dispute this fact. Thereby, we have to go by FIR No.285 dated 27.04.1997.

Lastly, it has been submitted that in the meanwhile due to pendency of the criminal case, persons junior to the petitioner have served on higher promotional posts i.e. Linemen and Foremen and even retired as such. The petitioner has been ignored due to the delay in resolution of his enquiry and criminal trial. This matter is pending since 2006 and it is the submission of the petitioner that subsequent events may be kept in mind while concluding this case and awarding relief.

I have considered the submission and find merit in it to avoid multiplicity of proceeding where the petitioner may be compelled to approach this Court again which would delay this matter by an amendment in the prayer clause supported by introduction of supervening events to serve the ends of justice. Though the punishment of stoppage of one increment without future effect inflicted upon the petitioner vide order dated 09.05.2005 (Annex P-9) in the departmental proceedings is minor in nature and the period of suspension was ordered to be regularized as leave of kind due, but the petitioner has not to be blamed for his continued suspension for

six years when he did not withhold his labour. The criminal trial initiated by the Corporation having failed and the charge being employment related, the petitioner is deemed to be innocent on the date of initial suspension prior to the registration of FIR and such a declaration has come from the Special Judge, Jind with the order of acquittal handed down.

Accordingly, both the impugned orders dated 09.05.2005 (Annex P-9) and 17.05.2006 (Annex P-11) are quashed. The petition is allowed. The petitioner is held entitled to payment of arrears of pay etc. for the suspension period and the amount due to him shall be disbursed within eight weeks from the date of receiving of certified copy of this order.

10.07.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No