

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

**CWP No. 18181 of 1996 (O&M)
DATE OF DECISION : 21.08.2019**

Giani Ram

...Petitioner

versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Jai Vir Yadav, Advocate,
for the petitioner.

Mr. Sunil K. Sharma, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

1. A perusal of the impugned order dated 30.10.1996 (Annexure P-2) does not reflect as to what transpired in the mind of disciplinary authority while terminating the services of petitioner. No reason, whatsoever, other than merely citing that in view of Sub-Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules 1965, the services of petitioner are being terminated. The order is not only vague, but is also arbitrary, unreasonable and as cryptic as it can be.

2. In similar circumstances, this Court in a case titled as "***Dr. P.K.Mittal v. State of Punjab and others, 1982 (2) SLR 267***", has observed that unless the punishment order speaks for itself, the mere fact that the same is tried to be extended or

rationalize pleadings before this Court could not make it sustainable in the eyes of law. His Lordship M.M. Punchhi, J. (as he then was) speaking for this Court observed as below :

*"The only contention raised by Mr. J. L. Gupta, learned counsel for the petitioner, in support of the petition is that order Annexure P-16 is not a speaking order and that no reasons have been assigned as to why the reply of the petitioner has been rejected. According to him, the order is cryptic and sketchy and could well have been passed without the application of any mind. Reliance has been placed by him on **Ram Dass Chaudhary v. State of Punjab and another, 1968 S. L. R. 792**, wherein P.C.Jain, J. in somewhat similar circumstances, relying on the decision of the Supreme Court in **Bhagat Raja v. Union of India and others, AIR 1967 Supreme Court 1606**, took the view that it was incumbent on a punishing authority to give reasons while arriving at a decision against a delinquent officer as the power of punishing was quasi judicial in nature. The case before P. C. Jain, J. arose from an appellate order of the Government, but here the impugned order is on the original side. In **State of Punjab v. Dr. R. K. Chopra, 1978(I) I. L. R. 1**, a Division Bench of this Court approved P. C. Jain, J's view in Ram Dass Chaudhary's case (supra) To my mind, the dictum of Bhagat Raja's case (supra) applies reinforcedly to an order passed by a punishing authority on the original side. It goes without saying that such an order may be subjected to appeal or revision or be tested in writ jurisdiction of this Court. Ex facie, something has to be available on the face of the order from which the Court of correction has to go by. In the instant case, as is plain, the order was that*

the reply of the petitioner had been considered by the Government and found to be unsatisfactory and, therefore, one increment was thereby stopped with cumulative effect. That per se, to my mind, does not reveal as to how the mind of the Government was applied towards arriving at such a conclusion. Such an order cannot be sustained merely because in the return filed by the Government, effort has been made to justify that it is a speaking order, and it indicates the reasons because of which action was being taken against the petitioner. That may be true, that it indicates the reasons because of which action was being taken against the petitioner. But it does not indicate the reasons for coming to the conclusion for punishing the petitioner.

The arena for the respective two spheres is well marked. And though permitted to over-shadow 'to some extent, cannot have the effect of superimposition to wipe out the ultimate aspect altogether."

3. In view of the aforesaid, I am of the opinion that the impugned order is liable to be set-aside on this short ground alone.

4. Learned counsel for the petitioner even otherwise points out that assuming the justification of the respondent given in the return to the petition qua the impugned order, is to be taken into consideration, even then, the same is belied by the record of case. The stand taken in the return by the respondent is that the applicant had not disclosed in his verification form, which is required to be filled after he was selected to the post of

Constable, that he had undergone criminal trial prior to his having applied for the job. The relevant column of the said verification form, as contained at Annexure R-5, is extracted herein below :

"12 (a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a Court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selections, or debarred from taking any examination/rusticated by any University or any other education authority/Institution?"

5. A perusal of the above reflects that the true spirit of the same is if a candidate has been either arrested or prosecuted or convicted by a Court of law or kept under detention or has been bound down or fined for any offence or debarred/disqualified by any Public Service Commission from appearing, in that event, the candidate is required to disclose the particulars of such conviction and/or having been debarred or having been bound down, in column No.12 (a) of the verification form.

6. Per contra, learned counsel for respondent-Union of India submits that Rule 12 (a) *ibid*, also requires that in case a candidate has been acquitted then also he is ought to have disclosed the factum of his acquittal and needs to give nature of the procedure carried out and since the petitioner failed to do so, therefore, he has been rightly dismissed from service.

7. I am afraid argument of learned counsel for the respondent-Union of India goes beyond what has been envisaged in Clause 12-A, as plain reading of same does not record that in case he is acquitted, he is bound down to disclose the same. In any case, given the nature of language used in Clause 12-A, the petitioner at the relevant time, all of a 22-23 years boy, seemed to have been genuine mistaken that since he had already been acquitted from the criminal proceedings, prior to filling up of verification form, there was no requirement on his part of disclosing the fact of having undergone the criminal trial.

8. My these sentiments are also supported by a judgment rendered by Hon'ble Apex Court in the case of another similarly situated candidate titled as "Commissioner of Police and others v. Sandeep Kumar" 2011 (4) SCC 644, wherein Clause 12-A *ibid*, was under consideration and the candidate therein had also written 'no' in response to the said Clause under mistaken belief that since he had been acquitted, therefore, he is not required to give the details of the same. His Lordship Markandey Katju, J., while authoring the judgment observed as below :

"11. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as

criminals for the rest of their lives.

12. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

13. The modern approach should be to reform a person instead of branding him as a criminal all his life.

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14 A. As already observed above, youth often commit indiscretions, which are often condoned.

15. It is true that in the application form the respondent did not mention that he was involved in a criminal case under [Section 325/34](#) IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

16. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

9. In the present case also, the petitioner at the relevant time was of 22-23 years of age and therefore, in his wisdom committed bonafide mistake of not disclosing his prosecution wherein he was acquitted. However, this does not mean that this Court is granting any seal of approval to all indiscretions committed by the youth. The same, therefore, are not to be condoned in every case. It is only in the peculiar circumstances herein that I am of the view that indiscretion committed by the petitioner is condonable.

10. In view of my discussion above and reasoning contained therein, writ petition is allowed and the impugned order is set-aside. Since petitioner was terminated from service in 1996, the respondents are directed to conduct his fresh medical examination and subject to him being medically fit, take him back in service. However, on the principles of "no work no pay", petitioner shall not be entitled to salary for the period he remained out of service. The petitioner shall also not be entitled to claim seniority for the above said period. However, the petitioner will be entitled to all future benefits which may arise on having been taken him back in service by granting him continuity in service with effect from the date his services were terminated.

(ARUN MONGA)
JUDGE

AUGUST 21, 2019

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1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No