

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

CWP No.14282 of 2015 (O&M)

Date of Decision: 08.05.2019

Suresh Kumar

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.S.Rangi, Advocate,
for the petitioner.

Mr. Anil Chawla, Advocate,
for the respondents-UI.

ARUN MONGA, J. (ORAL)

1. Learned counsel for the petitioner argues that attributed delinquency of the petitioner is that while travelling by train on 21.11.2013, he was found intoxicated with alcohol. He contends that without conducting any medical examination of the petitioner, he was indicted of the said charge leading to the passing of the impugned punishment order dated 22.05.2014 (Annexure P-3), whereby he was removed from service. The said punishment order was upheld vide Appellate as well as revisional authority order dated 17.09.2014 (Annexure P-4) and vide order dated 08.12.2014 (Annexure P-5), respectively. Petitioner also filed a mercy petition but it did not find favour and was rejected vide order dated 30.04.2015.

2. Having gone through the pleadings, I find that the entire emphasis of the respondents is that a medical examination

was conducted qua another past incident of 26.10.2013, and then too the petitioner had allegedly consumed alcohol. The said delinquency of 26.10.2013 was admitted by the petitioner on 29.10.2013 by writing an application/letter to the Coy Commander that he indeed consumed 120 ml. of liquor. A justification has thus been rendered that the petitioner has been rightly dismissed from service in view of his admission.

3. Learned counsel for the petitioner submits that action taken against the petitioner is based on the allegations which were not the part and parcel of the inquiry. Whatever evidence was adduced against him related to past conduct. It is settled position of law that past conduct will not be taken into consideration until that is not part of charge-sheet.

4. As regards, the delinquency attributed to the petitioner of having been found intoxicated on 21.11.2013, even though in the reply, it has been submitted that the inquiry was conducted on the basis of such incident and charges were proved. Learned counsel for the respondent relies on the lesser punishment as provided in Section 11, which are as follows:-

- a) reduction in rank;*
- b) fine of any amount not exceeding one month's pay and allowances;*
- c) confinement to quarters, lines or camp for a term not exceeding one month;*
- d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and*
- e) removal from any office of distinction or special*

emolument in the Force.

5. Without going into the merits of the delinquency of the petitioner assuming of having consumed to be gospel, I am of the view that the punishment awarded to the petitioner is highly disproportionate and harsh as compared to the attributed delinquency.

6. Keeping in view that the petitioner has been out of service for almost 6 years, I am of the view that awarding punishment of removal from service is akin to economic death penalty for an employee. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury and suffers consequences for rest of their life.

7. Reliance may be placed on a judgment rendered by Division Bench of Calcutta High Court in case titled as ***Union of India and others Vs. Sri Sankar Prosad Ghosh and another, 2008***

(5) SLR 170. Relevant whereof is reproduced hereinbelow:-

*“13. It would be naïve to say as on today, that livelihood is not a part of right to life. By this time, by a large number of decisions, it has been held by the Hon'ble Supreme Court as well as High Courts in this country that livelihood is an integral facet of right to life. In this connection, a decision of the Hon'ble Supreme Court rendered in the case of **State of Himachal Pradesh Vs. Raja Mahendra, reported in AIR 1999 SC 1786**, may be remembered.*

14. Dismissal from services undoubtedly is taking away the livelihood of a person at an advanced stage because at that stage, it is impossible for a person to get any employment elsewhere as the order of dismissal will

be treated as a disqualification. Loosing a job in an establishment amounts to a civil death, as the concerned person will not be in a position to earn livelihood at the advanced stage, when all his energies and endeavours have almost come to a diminishing stage.”

8. In the circumstances, the impugned order dated 22.05.2014 (Annexure P-1) as upheld in appeal/revision vide orders dated 17.09.2014 (Annexure P-4) and 08.12.2014 (Annexure P-5), respectively are set aside.

9. Respondents are directed to reinstate the petitioner subject to his being found medically fit without, however, any back-wages. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

10. Petition is allowed in the aforesaid terms.

(ARUN MONGA)
JUDGE

08.05.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No