

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

**CWP-23073-2016 (O&M)
Date of Decision :18.12.2019**

Sukhdev Singh

... Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Jhanji, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

SUVIR SEHGAL, J.(ORAL)

The petitioner has approached this court for issuance of a writ in the nature of certiorari for quashing order dated 04.03.2009 (Annexure P-4), order dated 24.02.2015 (Annexure P-5), order dated 16.07.2015 (Annexure P-6), order dated 14.12.2015 (Annexure P-7) and order dated 11.08.2016 (Annexure P-10) whereby the petitioner was dismissed from service and his appeal, revision-cum-mercy petition and representation was rejected by the authorities.

In brief, the facts are that the petitioner was working as a Constable-Driver with Punjab Police since 07.12.1990. On 08.10.1999 an FIR under Sections 325/365/382/511 and 34 IPC was registered against him and one Amrik Singh, Constable. He was placed under suspension on 08.10.1999 and was reinstated in service on 04.04.2002. After trial, both were convicted by the Judicial Magistrate Ist Class, Chandigarh on 18.12.2008 (Annexure P-1) and they were sentenced to imprisonment for a period of one year under Section 325 read with

Section 34 IPC and one year under Section 365 read with Section 511 IPC. On the basis of his conviction, the petitioner was dismissed from service vide order dated 04.03.2009 (Annexure P-4) by respondent No.2 under Rule 16.2(2) of Punjab Police Rules, 1934 (for short 'the Rules'). In appeal, Sessions Judge, Chandigarh vide judgment dated 18.02.2013 (Annexure P-2) upheld the conviction but reduced the sentence of petitioner to a period of 3 months. After completing the sentence, the petitioner was released from prison on 11.03.2013 (Annexure P-3). Appeal filed by the petitioner before the departmental authorities was dismissed on 24.02.2015 (Annexure P-5). His revision-cum-mercy petition was dismissed by respondent No.4 on 16.07.2015 (Annexure P-6). Thereafter, he preferred mercy petition which came to be rejected by respondent No.3 on 14.12.2015 (Annexure P-7). A revised mercy petition filed by the petitioner was rejected by respondent No.3 on 11.08.2016 (Annexure P-10). Impugning orders Annexures P4 to P7 and P-10, petitioner has filed the present writ petition.

Upon notice, the State filed its response wherein it was submitted that the conduct of the petitioner was gravest act of misconduct and involved moral turpitude. The respondents have further submitted that keeping in view the fact that he had been convicted by the trial court which has been upheld by the appellate Court, his services were dismissed by exercising powers under Rule 16.2(2) of the Rules.

In support of his arguments, learned counsel for the petitioner has submitted that the respondent authorities have dismissed the petitioner from service solely on the basis of conviction and have not applied their mind to the material on record. He has further submitted

that the respondents have failed to reach the conclusion that it is no longer desirable to retain the employee in service. He has placed reliance upon the judgment of this Court in ***Man Singh Versus State of Haryana and others***, 2010(1) S.C.T. 604.

Per contra, learned State counsel has submitted that the impugned orders have been passed keeping in view the gravity of the offence committed by the petitioner. It has been further submitted that conviction and sentence of the petitioner has tarnished the image of the department in general public specially among the women and the dismissal order has been rightly passed in exercise of power under Rule 16.2(2) of the Rules.

Counsel for the parties have been heard and record has been perused with their able assistance.

In ***Man Singh's*** case (supra) this court was dealing with the case of a Sub-Inspector who had been dismissed from service on the basis of conviction under Sections 148, 325, 307, 323, 149 of IPC read with Section 27 of the Arms Act. After noticing the judgment of the Hon'ble Supreme Court in ***Shankar Dass v. Union of India***, 1985(2) RCR (Criminal) 117; Full Bench decision of this Court in ***Om Parkash v. Director Postal Services (Posts and Telegraphs Deptt.), Punjab Circle, Ambala***, AIR 1973 Punjab and Haryana 1 and a Division Bench decision in ***Hari Ram v. Dakshin Haryana Bijli Vitaran Nigam Ltd.***, 2006(2) SCT 112, this Court held as under:-

“5. Though, the liability to dismissal under clause (a) of the Second proviso to [Article 311 \(2\)](#) of the Constitution, would not cease on

*account of the release of the petitioner on probation but still while directing dismissal of an employee on the basis of a conviction of a criminal charge, the power is required to be exercised fairly, justly and reasonably. In this regard, reference can be made to **Shankar Dass v. Union of India**, 1985 (2) R.C.R. (Criminal)117: AIR 1985 SC 772. In para 7, it has been held as under:-*

'It is to be lamented that despite these observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to [Article 311\(2\)](#) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to [Article 311 \(2\)](#) makes the provisions of that article

inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

6. In Full Bench decision of this Court in **Om Parkash v. The Director Postal Services (Posts and Telegraphs Deptt.), Punjab Circle, Ambala and others, AIR 1973 Punjab and Haryana 1**, it is held that departmental punishment of a Government servant is not a necessary and automatic consequence of conviction on a criminal charge. The competent authority has to consider all the circumstances of the case and then make such order in relation to question of imposition of penalty on the Government servant for his original conduct, which has led to his conviction. It is also held that the authority competent to take disciplinary action under Rule 19(1) of 1965 Rules against Central Government servant convicted on a criminal charge has to consider all the circumstances of the case and then decide (a) whether the conduct of delinquent official, which led to his conviction is such as to render his further retention in public service undesirable; (b) if so, whether dismiss or remove him from the service or compulsorily retire him and see if the said conduct of the official is not such which render his further retention in service

undesirable, whether the minor punishment, if any, shall be inflicted or not.

7. *A Division Bench of this Court in **Hari Ram Vs. Dakshin Haryana Bijli Vitaran Nigam Ltd. and another, 2006 (2) SCT 112** again took a similar view while relying upon Full Bench decision of this Court in Om Parkash's case (supra) and has held that upon conviction in a criminal charge, dismissal from service is not automatic. It is further held that the competent authority has to consider and apply its mind to the judgment of the criminal Court and other material available on record and reach a definite conclusion that due to the conviction it is no more desirable to retain the employee in service. Dismissal straightway on account of conviction, thus, can not be sustained. Even in the case of **Union of India and another Vs. Tulsi Ram Patel, AIR 1985 SC 1416**, the Hon'ble Supreme Court held as under:-*

“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 judgement of the criminal Court and consider all the facts and circumstances of the case. 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 Government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties."

8. xxx xxx xxx

9. *It is, thus, clear that the requirement of law while directing dismissal of the petitioner has not been undertaken. The petitioner simply has been dismissed from service upon his conviction, which may not be permissible. Even his unblemished service of nearly 40 years was not given any consideration whatsoever while passing the impugned order. The punishing authority would be under legal obligation to consider all these aspects while passing the order of dismissal."*

When the present matter is examined in the above backdrop, it is clear that the sole basis on which the petitioner has been dismissed from service is the order of conviction and sentence passed by the Court. No regard was given to the conduct which had led to the conviction of the petitioner nor was the judgment of the criminal Court considered by the disciplinary authority to reach at a conclusion that retention in

service of the petitioner was desirable. By the time the dismissal order was passed on 04.03.2009 (Annexure P-4), the petitioner had put in more than 17 years of service. It was therefore, necessary for the authorities to have considered the service record before passing the order of dismissal. However, even this has not been done.

For the reasons recorded above, the impugned orders (Annexures P-4 to P-7 and P-10) are set aside. The matter is remitted back to the disciplinary authority to pass order afresh keeping in view the settled position of law. The necessary exercise be carried out within a period of 4 months from the date of receipt of the certified copy of this order. However, the order of reinstatement of the petitioner shall be kept in abeyance till fresh consideration by the authorities and would depend upon the outcome of the same.

18.12.2019

pooja saini

**(SUVIR SEHGAL)
JUDGE***Whether speaking/reasoned?**Yes/No**Whether reportable?**Yes/No*