

CWP No.3931 of 2017 (O&M)

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

CWP No.3931 of 2017 (O&M)

Date of decision : 13.07.2022

Pargat Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. B.S. Khehar, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab for the respondent(s).

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for quashing the impugned order dated 09.06.2014 (P-6), passed by the Director, State Transport, Punjab-respondent No.3, whereby petitioner was terminated from the post of Driver on account of his conviction and sentence under Sections 279 & 304A of the Indian Penal Code, 1860 (*for short 'IPC'*). Further prayer is to quash the order dated 27.01.2016 (P-8) vide which his appeal against the aforesaid order

was dismissed by the Special Secretary, Transport-cum-Appellate Authority-respondent No.2.

(2) Facts are not in dispute.

(3) In the year 1998, petitioner was appointed as Driver with Punjab Roadways (Nawanshahr Depot). On 29.03.2002, when he was driving Bus No.PB-12C-9809, an accident occurred with Motorcycle No. DL-45H-4361. As a result thereof, out of 04 occupants of the motorcycle, 03 died. On the basis of statement of one Jaswant Singh s/o Bela Singh, r/o Verka, Police Station Sadar, Amritsar, an FIR No.15 dated 29.03.2002 under Sections 304A, 279, 337 & 427, IPC was registered at Police Station Dhilwan, District Kapurthala; resulting into the conviction & sentence of the petitioner by Judicial Magistrate 1st Class, Kapurthala in the following manner:-

Conviction under Section	Sentence	Fine	Default clause
279 IPC	RI 06 months	Rs.500/-	RI 02 days
304A IPC	RI 02 years	Rs.1000/-	RI 08 days

(4) Against the above conviction & sentence, an appeal was preferred by petitioner, but the same was dismissed by learned Additional Sessions Judge, Kapurthala on 03.05.2013 (P-2).

Still aggrieved, petitioner preferred Criminal Revision No.2064 of 2013 before this Court, which was partly allowed on

30.07.2014 (P-3) and he was ordered to be released on probation for a period of 01 year subject to executing the bond of ₹ 20,000/- with one surety in like amount to the satisfaction of Chief Judicial Magistrate, Kapurthala. He was further directed to pay an amount of ₹ 2,00,000/- (Rupees two lakh only) to the legal heirs of deceased (1/3rd each).

(5) During the pendency of above criminal revision, petitioner was issued a Show Cause Notice for termination of his service under Rule 13 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (*for short, 'the Rules of 1970'*). In response thereto, petitioner filed detailed reply, but the punishing authority (respondent No.3) did not agree with his explanation and as a result thereof, terminated him from service while passing the impugned order dated 09.06.2014.

Dissatisfied with the aforesaid order, petitioner preferred statutory appeal under Rule 15 of the Rules of 1970 on 14.11.2014 (P-7), but the same was dismissed by the Appellate Authority vide order dated 14.01.2016 (endorsed on 27.01.2016) being time barred.

(6) Hence, the present writ petition.

Contentions on behalf of the petitioner

(7) Learned counsel contended that at the time of occurrence, petitioner was driving the bus at a normal speed on left side of the road. The accident had taken place due to rash and negligent driving of the motor-cyclist who was riding the same along with 03 others in gross

violation of the provisions of Motor Vehicles Act, 1988. Further contended that even General Manager, Punjab Roadways, Nawanshahar, while filing reply dated 29.10.2003 (P-11) before the learned Motor Accident Claims Tribunal, Kapurthala (*for short, 'MACT'*) on behalf of official respondents also adopted similar stand while supporting the version of the petitioner. Again contended that conviction under Sections 304A & 279 IPC does not fall within the purview of 'moral turpitude' and as such, both the authorities wrongly invoked the provisions of Rule 13 (*ibid*). Also contended that there are numerous instances where Drivers convicted under Sections 304A & 279 IPC are still working with the Punjab Roadways and reference in this regard was made to order dated 28.06.2005 (P-9). Further contended that at the time of issuing Show Cause Notice by respondent No.3, petitioner had already preferred Criminal Revision No.2064 of 2013; but without awaiting the final decision of the same, he was terminated in gross violation of the Rules of 1970. Also contended that this Court while partly accepting the criminal revision of the petitioner, extended him the benefit of probation and he was made liable to pay an amount of ₹ 2,00,000/- to the legal heirs of deceased, but this aspect of the matter was not at all taken into consideration by the Appellate Authority. Again contended that the Appellate Authority, instead of adverting to the provisions of Rule 17 for condonation of delay, dismissed the statutory appeal of petitioner solely on the ground of delay on hyper-technical ground. Also contended that in the grounds of appeal, petitioner had specifically disclosed the instances

where Drivers convicted for similar offences were reinstated in service, but the Appellate Authority completely ignored this aspect of the matter. In support of his contention, learned counsel has relied upon a judgment of the Hon'ble Supreme Court, titled **Union of India Versus Tulsiram Patel, 1985 SCR Supl. (2) 131** to the effect that mere conviction under Sections 304A & 279 IPC will not attract the provisions of Rule 13 (*ibid*) till it is proved that conduct of the employee has led to the conviction.

Contentions by respondents

(8) *Per contra*, learned State counsel submitted that petitioner was convicted by learned trial Court, which was upheld in appeal. Also submitted that conviction of petitioner has attained finality subject to the modification releasing him on probation with a rider to pay compensation to the legal heirs of deceased. Further contended that learned MACT recorded a finding to the effect that petitioner was rash and negligent while driving the offending Bus and that had resulted into payment of compensation in three claim petitions to the tune of ₹ 2,20,400/- by the respondents. Also submitted that as on today, petitioner is a convict under Sections 304A & 279 IPC, therefore, he has rightly been terminated from service while invoking the provisions of Rule 13 of the Rules of 1970. Lastly contended that petitioner preferred statutory appeal against termination at a belated stage; thus, the same was rightly dismissed being time barred.

(9) Heard learned counsel for the parties and perused the paper-book.

(10) Before proceeding further, it is necessary to extract the relevant part of Rules 5, 13, 17 & 19 of the Rules of 1970, which reads as under:-

“5. Penalties.

The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a Government employee, namely:-

Minor Penalties

(i) to (iv)

Major Penalties

(v) to (vii)

(viii) removal from service which shall not be a disqualification for future employment under the Government;

(ix)

6 to 12.

13. Special procedure in certain cases –

Notwithstanding anything contained in Rule 8, 9, 10, 11 and 12 -

(i) where any penalty is imposed on a Government employee on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the punishing authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in that manner provided in these rules; or

(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold

any inquiry in the manner provided in these Rules, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this Rule.

14. to 16.....

17. *Period of limitations of appeal –*

No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty- five days form the date on which a copy of the order appealed against is delivered to the appellant;

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

18.

19. *Consideration of appeal -*

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 4 and having regard to the circumstances of the case, the order of suspension is justified or not confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider-

a. Whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any

provision of the Constitution of India or in the failure of justice;

b. whether the finding of the punishing authority are warranted by the evidence on the record; and

c. whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe and pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(iii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 13, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 8 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority propose to impose is one of the penalties specified in clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has already been held in the case, the appellate authority shall make such orders as it may deem fit; and

(iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provision of Rule 10 of making a representation against such enhanced penalty.”

(11) There is no dispute that petitioner was convicted and sentenced under Sections 304A & 279 IPC by learned trial Court and an appeal thereagainst was also dismissed. Also not in dispute that conviction of the petitioner has been upheld by this Court while partly allowing the criminal revision vide order dated 30.07.2014, but he was released on probation in the following terms:-

“As a result, the petition is partly allowed to the extent that while the petitioner's conviction under Sections 279 and 304-A IPC is upheld, the sentence awarded to him is modified that instead of undergoing the remaining sentence, the petitioner is directed to be released on probation on executing bonds in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the Chief Judicial Magistrate, Kapurthala. The petitioner shall file an undertaking to keep peace and maintain good behaviour for one year and to appear and receive sentence as and when called upon to do so during the aforesaid period. The petitioner shall also be liable to pay compensation to the tune of Rs.2 lacs to the legal heirs of the deceased (1/3rd qua each deceased). In case, the petitioner fails to deposit the amount of compensation within a period of two months in the trial Court, the petition shall be deemed to have been dismissed.”

(12) Perusal of extracted portion of order dated 30.07.2014 clearly reveals that while releasing the petitioner on probation, he was fastened with the liability to pay compensation of ₹ 2,00,000/- to the legal heirs of the deceased. It is also matter of record that impugned termination order dated 09.06.2014 was endorsed to the petitioner on 17.06.2014 and an appeal thereagainst was preferred on 14.11.2014. It is again not in dispute that appeal preferred by petitioner remained pending before the Appellate Authority for more than 01 year, but it was not decided on merits; rather it has been dismissed only on the point of delay.

(13) As per Rule 17 (*ibid*), an aggrieved person can prefer an appeal within 45 days from receipt of the order, but at the same time, there is an enabling provision under this Rule to the effect that if the Appellate Authority is satisfied that the appellant had sufficient cause for not preferring the appeal in time, it may entertain the same after expiry of the said period. Concededly, the Appellate Authority while entertaining the appeal solicited the comments of respondent No.3 which were duly received. Even it is discernable from the order passed by the Appellate Authority that records were summoned from the Office of respondent No.3 and petitioner was afforded opportunity of personal hearing on 14.01.2016. Yet, the Appellate Authority, instead of examining the matter on merits, dismissed the appeal merely on the point of delay while adopting hyper-technical approach in such a serious matter. The Appellate Authority did not record any reason(s) in terms of proviso to Rule 17 (*ibid*) for condonation of delay despite the fact that appeal

remained pending for a period of more than 01 year; nor there is any observation to the effect that petitioner was not able to show the sufficient cause for not preferring the appeal within limitation. Concededly, criminal revision filed by petitioner was partly allowed on 30.07.2014 and he has been released on probation; meaning thereby, his sentence is wiped out.

No doubt, recourse to Rule 13 may be invoked in a situation *“where any penalty is imposed on a Government employee on the ground of conduct which has led to his conviction on a criminal charge”*, but in view of order dated 30.07.2014, as on today, no such penalty remains intact against the petitioner.

Moreover, the point of compensation to the tune of ₹ 2,00,000/-, fastened upon the petitioner, has also not been taken into consideration by the Appellate Authority.

Above all, the mandatory procedure prescribed under Rule 19 (*ibid*) has also been given a complete go bye by the above Authority despite the fact that it would be the integral part of principles of natural justice in the present case.

(14) It is clearly discernible from the grounds of appeal that petitioner is a poor person having three daughters of marriageable age and as such, he rightly prayed for a sympathetic view in the matter, but the Appellate Authority did not apply its mind at all. Even the specific

instances were given in the grounds of appeal and relevant part of the same in this regard reads as under:-

“That I want you to bring in your notice that there are many cases where convicted driver’s were reinstated. Among them Shri Judge Singh, Driver No.89, Ujjagar Singh, Driver No.177, Punjab Roadways, Ferozepur, Shri Magraj Singh Driver No.150, Harpal Singh Driver No.21, Punjab Roadways, Moga, Shri Jaswant Singh, Driver No.34, Shri Jaswant Singh, Driver No.161, Shri Charanjit Singh, Driver No.127, Punjab Roadways Ludhiana, Shri Jagdev Singh, Driver No.159, Punjab Roadways, Chandigarh, Shri Kewal Randeep Singh, Driver No.14, Punjab Roadways Amritsar 2, Sh. Satnam Singh Driver No.159, Punjab Roadways, Hoshiarpur, Sh. Harvinder Singh, Driver No.256, Punjab Roadways, Roopnagar and Sh. Baljit singh, Driver No.116/11, Punjab Roadways Jagraon, are included.

Other than this, vide order dated 12.02.2012, passed by Director State Transport, Punjab reinstated with back wages Sh. Ujjagar singh D.R. 177 Punjab Roadways, Ferozepur. So passing different orders in same type cases is against law and is against the rules of natural justice.....”

(15) Despite above legal and factual position, the Appellate Authority, instead of deciding the appeal on merits, dismissed the same while adopting a shortcut method only on point of delay, which in the opinion of this Court, ought to have been condoned.

(16) In view of the facts and circumstances, discussed hereinabove, this Court is of the considered opinion that course adopted by the Appellate Authority is wholly erroneous and indefensible in law.

(17) As a result thereof, present writ petition is partly allowed; impugned order dated 27.01.2016 (P-8) passed by the Appellate Authority is set aside. The appeal preferred by the petitioner shall be heard and decided on merits afresh in accordance with law by the Appellate Authority while taking into consideration its grounds as well as the oral pleas, which may be raised by the petitioner.

Necessary exercise be completed within a period of 04 (four) months from receipt of certified copy of this order.

(18) Needless to say that the Appellate Authority shall follow the procedure prescribed under Rule 19 (*ibid*) as well as the law laid down by the Hon’ble Supreme Court in Tulsiram Patel’s case (*supra*).

(19) Pending application(s), if any, shall also stand disposed off.

July 13th, 2022
atulsethi/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>