

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

CWP No. 3731 of 2023

Date of decision : 23.02.2023

Lakhwinder Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. A.S. Jawandha, Advocate
for the petitioner.

PANKAJ JAIN, J.

Challenge in the present writ petition is to the order dated 3rd of March, 2008 passed by respondent No.4 whereby the petitioner stands dismissed from service.

2. The petitioner was appointed as Constable with the respondent-Department and arose to the ranks of Sub Inspector. The petitioner along with four other police personnel were booked under FIR No.181 dated 24th of November, 2005 registered for the offences punishable under Sections 342, 364, 302 IPC at Police Station Beas, Amritsar for wrongful confinement, abduction and murder of a young boy of 21 years of age. Departmental proceedings were initiated against the petitioner wherein he was exonerated and was let off by issuing warning vide order dated 31st of August, 2006 passed by

respondent No.5. Subsequent thereto the petitioner was convicted and sentenced to imprisonment for life in the aforesaid FIR vide judgment dated 7th of November, 2007 placed on record at Annexure P-1. As a consequence thereof petitioner was ordered to be dismissed vide impugned order dated 3rd of March, 2008 which has been placed on record at Annexure P-4. Appeal preferred by the petitioner against the judgment of conviction has been upheld by Division Bench of this Court in CRA No.981-DB of 2007 dated 10th of February, 2009 placed on record at Annexure P-2.

3. As per the pleadings raised in the writ petition the petitioner preferred appeal against order of dismissal in the year 2020 which stands dismissed vide order dated 5th of February, 2020 (Annexure P-5). Counsel for the petitioner has emphatically argued that once the petitioner was exonerated in the departmental inquiry he ought to have been afforded an opportunity of hearing prior to passing of order of dismissal and the exoneration in the departmental inquiry ought to have been considered. He further submits that Rule 16.2 has not been considered while passing the order of dismissal. Authorities were under an obligation to deal with the right of the petitioner to claim pension. The impugned order being totally silent about that aspect, the present writ petition deserves to be allowed. Reliance is being placed upon various judgments passed by this Court in **R.S.A**

No.1163 of 1987 titled as **State of Punjab vs. Karnail Singh**, decided on 5th of July, 1994, **RSA No.1113 of 1994** titled as **The Punjab Sate through the Secretary to Government of Punjab, Chandigarh and others vs. Lachhman Singh, Ex-Constable**, decided on 16th of December, 2009, **CWP No.16316 of 2012** titled as **Sardara Singh vs. State of Punjab and others**, decided on 5th of April, 2016, **CWP No.22174 of 2015** titled as **Darshan Singh vs. State of Punjab and others**, decided on 19th of December, 2018 and **CWP No.15307 of 2015** titled as **Satpal vs. State of Haryana and others** decided on 8th of September, 2016.

4. I have heard counsel for the petitioner and have gone through records of the case.

5. Admittedly, the petitioner is a convict for offence punishable under Section 302 IPC. Definitely the petitioner was earlier exonerated in a departmental inquiry but later on stood convicted by the Court of competent jurisdiction. There is a difference between the disciplinary proceedings prior to judicial conviction and the manner in which a convict has to be dealt with. In this context reference can be made to Article 311 of the Constitution of India, which reads as under :-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final”

6. Apex Court in the case of **Union of India vs. Tulsiram Patel, (1985) 3 SCC 398** pointed out the difference between action taken under Second Proviso 2 to Clause (2) of Article 311 and the

action for dismissal, removal or reduction of rank after an inquiry under the main clause. Clauses (1) and (2) of Article 311 prescribe the procedure for dismissal, removal or reduction of rank of a government servant. However, the Second Proviso appended thereto excludes application of Clause (2). It is an express provision which excludes what is contained in Clause (2). The same has been interpreted to hold as under :

“127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, 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 judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan's case. This, however, has to be done by it ex parte and by itself. 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 concerned Government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted

by the facts and circumstances of the case. If it is his case that he is not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that 268 particular Government service the court will also strike down the impugned order. Thus, in **Shankar Dass v. Union of India and another, 1985(2) RCR (Criminal) 117 : [1985] 2 S.C.C. 358**, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.”

7. Same is the import of Rule 16.2 of the Punjab Police Rules, 1934 (for short, 'the 1934 Rules') which reads as under :-

“16.2. Dismissal. - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

[(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed :

Provided that a punishing authority may, in an

exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal :

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.]

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

8. As per Rule 16.2(2) as well where conduct of an enrolled Police Officer has led to his conviction on a criminal charge and he has been sentenced to imprisonment, the Rule provides for dismissal without contemplating any inquiry.

9. Applying the aforesaid principles, once the petitioner was convicted for criminal charge and the case of the petitioner falls within the three clauses enumerated under Second Proviso to Article 311 of the Constitution of India and Rule 16.2(2) of the 1934 Rules, right to the inquiry or personal hearing could not be extended to the petitioner. The only ground available to the petitioner to attack the impugned

order is on the ground of proportionality of punishment. Keeping in view the offence for which the petitioner stands convicted, this Court does not find ground to interfere even on that aspect.

10. In view of the aforesaid, finding no ground to interfere in the present writ petition, the same is ordered to be dismissed.

February 23, 2023	(PANKAJ JAIN)
Dpr	JUDGE
Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No