

CWP No.15440 of 2022 (O&M)

-1-

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

CWP No.15440 of 2022 (O&M)

Date of Decision.19.04.2023

Sandeep Raj

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Narinder Singh Behgal, AAG, Haryana.

-.-

JAISHREE THAKUR J. (ORAL)

1. The instant writ petition has been filed under Article 226/227 of the Constitution of India for quashing of impugned order dated 17.05.2022 (P-13) passed by respondent No.1 whereby the petitioner has been ordered to be dismissed from service in an illegal and arbitrary manner merely on the basis of his conviction without holding any departmental enquiry.

2. In brief, facts are that petitioner was appointed on the post of Municipal Engineer in the Municipal Council, Narwana, Jind on 24.09.2012. While working as Municipal Engineer in Municipal Corporation, Ambala, an FIR bearing No.160 dated 02.06.2015 came to be registered under Sections 406, 420, 467, 468, 471 and 120-B IPC and Sections 7 and 13-A of the Prevention of Corruption Act at Police Station Ambala Cantt. against one Karnail Singh, Contractor and Junior Engineer, Mohinder Kumar on the allegations that they had given false reports regarding construction of the road/street in Subhash Colony, Ambala Cantt. Though the petitioner was not named in the aforesaid FIR, however, he was implicated on the basis of disclosure statement made by Mohinder Kumar, J.E.

The aforesaid FIR itself was registered on the basis of an enquiry conducted by the Additional Deputy Commissioner, Ambala, according to which, a tender was allotted to Karnail Singh, Contractor regarding construction of road with interlocking tiles from House No.145 to 180 in Subhash Colony, Ambala Cantt. with an estimated cost of Rs.6 lacs. However, despite no such work having been executed at the said site, payment of Rs.4,30,480/- had been made to the said Contractor as per the municipal record. After registration of the FIR, another departmental enquiry was conducted by Joint Commissioner and Superintending Engineer, who vide report dated 18.11.2016 came to the conclusion that no embezzlement of money had taken place. It was also found in the said enquiry that road was constructed at some other place instead of the place for which tender was allotted and therefore, there was only a procedural irregularity. A legal opinion was also obtained in the said matter, according to which, Sections as attributed in the FIR were not attracted in the present case as there was neither any criminal breach of trust nor embezzlement/forgery. Everything had been done in *bona fide* discharge of duties. However, there were irregularities in the matter.

3. Thereafter, vide letters dated 09.12.2016 and 15.03.2017, respondent No.3 forwarded the aforesaid enquiry report as well as the legal opinion to respondent No.1 seeking grant of sanction for prosecution against the petitioner. Respondent No.1 vide letter dated 31.03.2017 while deciding that it was not a fit case for granting sanction for prosecution, simply sought clarification from the petitioner and other co-accused. A status report was sought by the Additional Sessions Judge, Ambala from respondent No.3 whether sanction for prosecuting the petitioner had been granted or not. Shockingly, despite the fact that sanction for prosecution had not been granted by respondent No.1, police officials again

approached respondent No.1 seeking sanction for prosecution of the petitioner, which was granted by respondent No.1 vide order dated 20.03.2018. The trial had commenced and vide judgment dated 17.03.2020 passed by the Additional Sessions Judge, Ambala, petitioner was held guilty and convicted for commission of offences under Sections 13 (2) of Prevention of Corruption Act, 1988 and Sections 120-B, 420, 467, 468 and 471 of the Indian Penal Code. Petitioner had approached this Court in appeal bearing CRA-S No.1150 of 2020 titled as *Sandeep Raj Vs. State of Haryana* wherein vide order dated 05.01.2022, sentence of imprisonment of the petitioner was suspended. Petitioner submitted a representation to the respondent authorities for allowing him to join his duties, however, vide order dated 17.05.2022, petitioner was dismissed from service by respondent No.1 from the date of his conviction i.e. 17.03.2020 without holding any department enquiry. Aggrieved against the order dated 17.05.2022, petitioner has approached this Court by way of instant writ petition.

4. Learned counsel appearing for the petitioner would contend that order dated 17.05.2022 has been passed by respondent No.1 without holding a departmental enquiry and without granting any opportunity of hearing to the petitioner and therefore, principles of natural justice have not been adhered to. He relies upon the judgments passed by this Court in CWP No.7531 of 2021 titled as *Suresh Kumar Vs. State of Haryana and others* decided on 24.03.2022; CWP No.9847 of 2015 titled as *Darshan Singh Ex. Head Constable Vs. State of Haryana and others* decided on 18.10.2016; CWP No.7644 of 2007 titled as *Man Singh Vs. State of Haryana and others* decided on 09.11.2009 and CWP No.759 of 2004 titled as *Hari Ram Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. and another* decided on 20.02.2006 to contend that upon conviction in a criminal charge, dismissal from

service is not automatic and the same if done, would not be sustainable. Reliance has also been placed upon a judgment rendered by the Hon'ble Supreme Court in *Union of India Vs. Tulsi Ram Patel AIR 1985 SC 16* to contend that 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.

5. It is further argued that the disciplinary authority did not apply its mind as to what was the role of the petitioner and whether his conduct was such as warranted the imposition of penalty of dismissal from service. Moreover, the impugned order has been passed without holding any departmental enquiry, much less, granting any opportunity of hearing.

6. Learned counsel appearing on behalf of the respondents would contend that the FIR in question itself was got registered after the matter was got enquired by the competent authority. The petitioner herein was convicted by the trial court vide judgment dated 17.03.2020 and in the appeal preferred before this Court, only sentence of imprisonment of the petitioner stood suspended. His conviction has never been stayed. It is further argued that as per instructions dated 26.09.2008 issued by the FCR, Haryana, offence under Sections 7 and 13 of the Prevention of Corruption Act would constitute moral turpitude in view of the law laid down by the Hon'ble Supreme Court in *Deputy Director of Collegiate Education Vs. S. Nagoor Meera AIR 1995 SC 1364* and therefore, passing orders of dismissal, removal or reduction in rank of a Government servant, who has been convicted by a criminal court for an offence which constitutes moral turpitude, is not estopped merely because the sentence order has been suspended by the

appellate court. He further relies upon para 16 (b) of the guidelines issued by the Legal Remembrancer, Haryana to argue that in case the government employee is convicted by the Court, there will be no necessity to hold an enquiry and the government employee can be dismissed on the basis of conduct which led to his conviction. Further reliance has also been placed upon second proviso to Rule 7 (16) of the Haryana Civil Services (Punishment & Appeal) Rules, 2016 to contend that no opportunity of hearing or show cause notice is required to be given where any major penalty is proposed to be imposed upon a person on the ground of conduct which has led to his conviction on a criminal charge or where an authority empowered to dismiss or remove him, or reduce him in rank, is satisfied that for certain reasons to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him.

7. I have heard learned counsel for the parties and have perused the paper book as well as the case laws cited.

8. A perusal of the impugned order shows that the same has been passed solely on the basis of conviction of the petitioner by the Additional Sessions Judge, Ambala. The relevant portion of the impugned order is reproduced as under:-

“In view of the facts and circumstances and conviction by the Additional Sessions Judge, Ambala, Sandeep Raj ME is not fit to be retained in Govt. service on the basis of his conduct which has led to his conviction. I am of the considered view that Sandeep Raj ME be dismissed from Govt. service from the date of his conviction i.e. 17.03.2020 under Rule 4 B (vii) of HCS (P&A) Rules, 2016.”

9. It is settled position of law that the departmental punishment of removal or dismissal from government service is not an essential and automatic consequence

of conviction on a criminal charge. The Hon'ble Supreme Court in the judgment passed in *Tulsi Ram Patel's case* (supra) has 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 judgment 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.”

10. It is also settled position of law that before imposing a major penalty, even though a government employee has been convicted under any criminal charge, disciplinary authority has to decide whether in the facts and circumstances of a particular case, what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is to have on the administration and other extenuating circumstances or redeeming the features, if any, present in the case and so on and so forth. In a Full Bench decision of this Court in **Om Parkash Vs. The Director Postal Services (Posts and Telegraphs Deptt.), Punjab Circle, Ambala and others, AIR 1973 Punjab and Haryana 1**, it has been 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.

11. In view of the aforesaid facts and circumstances, this Court is of the opinion that there is non-application of mind by the punishing authority and the impugned order is bereft of any reasoning, as it was required to examine the judgment of the criminal court and thereafter, to assess the conduct of the petitioner to reach to a conclusion as to whether it would be undesirable to keep him in service. Consequently, the impugned order dated 17.05.2022 is set aside and the matter is remanded back to the punishing authority for reconsideration. It would be for the punishing authority to apply its mind and to form an opinion as to whether conviction of the petitioner deserves the penalty of dismissal, removal or reduction in rank or any other lesser penalty. Let such exercise of reconsideration and passing a fresh order, be completed within a period of three months from the date of receipt of a certified copy of this order.

12. The writ petition stands disposed of in the aforesaid terms.

	(JAISHREE THAKUR)	
	JUDGE	
April 19, 2023		
Pankaj*	Whether speaking/reasoned	Yes/No
	Whether reportable	Yes/No