

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

CWP No.19489 of 2020

Date of decision : 24.05.2023

Rajinder Kumar

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Anupam Bhardwaj, Advocate
for the petitioner.

Mr. I.P.S. Kang, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Petitioner is aggrieved of the order dated 30th of March, 2015 passed by respondent No.5, order dated 6th of November, 2015/13th of November, 2015 passed by respondent No.4, order dated 24th of June, 2019/27th of June, 2019 passed by respondent No.3, and that dated 1st of January, 2020 passed by respondent No.5.

2. The petitioner who was working as Constable with the respondent/Police Department was booked in FIR No.93 dated 12th of July, 2009 registered for offence punishable under Section 27/54/59 of the Arms Act and Section 336 of the IPC. On trial the petitioner was initially acquitted vide judgment dated 11th of August, 2014. However, he was convicted by the Appellate Court vide judgment dated 7th of March, 2015 and was sentenced to undergo R.I. for 3 years *qua* offence punishable under

Section 27 of Arms Act and for 2 months for offence punishable under Section 336 IPC. Owing to his conviction the petitioner was ordered to be dismissed from services vide order dated 30th of March, 2015. Petitioner thereafter preferred appeal against the order of dismissal and further revisions which also stand dismissed vide impugned orders. In the interregnum the revision preferred by the petitioner against judgment of conviction i.e. CRR No.972 of 2015 came up for consideration before this Hon'ble Court. This Court vide order dated 4th of July, 2019 maintained the conviction of the petitioner but released him on probation.

3. The impugned order of dismissal and further orders in statutory appeal/revisions have been assailed by counsel representing the petitioner claiming that the same have been passed merely on the basis of conviction and the same are not speaking orders.

4. Per contra, State Counsel submits that the petitioner though released on probation is a convict. There are serious allegations against him. Thus the Disciplinary as well as Higher Authorities have rightly held punishment of dismissal to be appropriate. He thus submits that no fault can be found with the impugned orders and the writ petition deserves to be set aside.

5. Having heard counsel for the parties and after going through records of the case the question that needs to be adjudicated by this Court is “whether the petitioner has been dismissed rightly or not?”

6. Relevant provisions of the law read as under :

Article 311 of the Constitution of India, 1950

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 an 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.]

Rule 16.2 of the Punjab Police Rules, 1934

“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.”

7. The question w.r.t. grant of opportunity of hearing to a convict is no more *res integra* and has been answered by Supreme Court in the case of **Union of India vs. Tulsiram Patel, (1985) 3 SCC 398** 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 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.”

8. In view of afore-stated proposition of law, no fault can be found with the impugned order(s) on procedural issues.

9. Coming on to the question: “*whether the punishment awarded to the petitioner is disproportionate or not?*”, it will be apt to peruse the allegations against the petitioner. The petitioner was posted at Battalion Headquarter, Amritsar. On 12th of July, 2009 he was sent for handing over pistol glock No.17 body No. EWY-689 cartridge 30, magazine-2, filler magazine-1, cleaning rod brush along with pistol box issued vide road certificate No.33/09 to Inspector Sukhdev Singh, Company Commander. Departure report of the petitioner was recorded in *roznamcha* of the battalion Head Quarter with the direction that he will be responsible to report back within one hour at batallion Head Quarter after handing over the same pistol and ammunition to the Inspector Sukhdev Singh, Company Commander. The petitioner failed to report along with the pistol and ammunition. It was discovered that the petitioner fired three shots in public with the same pistol in drunken condition near Bus Stand, Amritsar. This led to registration of FIR. The allegations against the petitioner are of having

misused the pistol entrusted by the department to him for delivery at a destination. The petitioner misused the same by firing under influence of liquor. The question w.r.t. release on probation also stands laid to rest by the Supreme Court in the case of **Harichand vs. Director of Social Education, (1998) 2 SCC 383** holding as under :

“7. In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and offence and its punishment also stipulates a disqualification, a person convicted of the offence but **released on probation** does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from Government service.”

10. In view of afore-stated settled law and the fact of the present case, mere fact that the petitioner has been released on probation cannot be read to hold punishment bad. Further this Court does not find that the 'punishment of dismissal' awarded to the petitioner can be said to be disproportionate to the misconduct alleged against the petitioner. Resultantly, the present writ petition is ordered to be dismissed.

May 24, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No