

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

**CWP-1292-2023 (O&M)
Date of decision-23.01.2023**

Gurminder Singh

...Petitioner

Vs.

Industrial Tribunal, Patiala and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vikas Singh, Advocate for the petitioner.

MANOJ BAJAJ, J. (Oral)

Petitioner has filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of Certiorari for quashing of award dated 02.09.2021 (Annexure P-4) passed by the Industrial Tribunal, Patiala, whereby relief of reinstatement with back wages claimed by the petitioner has been declined.

Learned counsel submits that the petitioner joined his services as driver with respondent No.2-Corporation w.e.f. 22.06.1994 and continued to work there till his termination dated 31.10.2012. He submits that on 26.04.2006, the petitioner was falsely implicated in case FIR No.200 dated 26.04.2006, under Section 15 Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Kotwali, Patiala for allegedly carrying two

Kilograms of 'poppy husk', and pursuant to the criminal case, he was charge-sheeted on 19.05.2006. After completion of the enquiry as well as subsequent proceedings before the disciplinary authority, the petitioner was inflicted punishment of stoppage of four increments with cumulative effect vide order dated 12.11.2007. Learned counsel submits that later, the trial in the criminal case ended in conviction of the petitioner through judgment dated 05.09.2011 and pursuant to it, he was again charge-sheeted on 02.12.2011, whereupon he faced another enquiry. He submits that in the said enquiry, he relied upon the previous punishment inflicted on 12.11.2007, but ignoring his stand that on the set of same allegations, the petitioner has already faced an enquiry earlier, he was again held guilty for charge No.3 (i.e. *deliberately concealing the fact*) and was dismissed from service on 31.10.2012. According to the learned counsel, the conviction of the petitioner was further upheld by the Appellate Court, however, his sentence was reduced to the undergone period, whereas fine was enhanced from Rs.1000/- to Rs.5000/- through decision dated 31.10.2011. Aggrieved against the said decision, he preferred the appeal and the same has also been dismissed vide impugned order dated 17.9.2013.

Learned counsel submits that against petitioner's dismissal from service, he raised an industrial dispute through demand notice dated 21.07.2014 and the said reference has been answered against the petitioner vide impugned award dated 2.9.2021. Learned counsel has argued that the sole misconduct of the petitioner was his implication in a criminal case for alleged commission of offence punishable under NDPS Act, 1985 and the

subject quantity of contraband was small i.e. two kilograms of 'Poppy husk' and for this misconduct, petitioner has been put to face two enquiries, therefore, the subsequent extreme punishment of dismissal imposed upon the petitioner is bad in law. He submits that the petitioner had served the department for 18 years and the punishment, which was imposed in the year 2007, would be adequate to meet with the ends of justice and the petitioner be reinstated by setting aside the impugned order.

After hearing the learned counsel and considering the above facts and circumstances of the case, this Court finds that the first enquiry against the petitioner related to his implication in a criminal case and the punishment of stoppage of four increments imposed upon him was never challenged by him in any other proceedings. Admittedly, at the time of inflicting punishment on first occasion, the trial in a criminal case was pending against the petitioner, therefore, presumption of innocence was attached to him, but upon his conviction recorded on 05.09.2011, the said presumption ceased to exist. The judgment of conviction was further upheld by the Appellate Court, therefore, on this legitimate ground, the petitioner again faced an enquiry and participated without challenging its legality, much less on the ground of double jeopardy. Since, this sole ground has been raised only before the writ Court, this Court is not inclined to entertain this objection as the petitioner by his act and conduct acquiesced the validity of the enquiry proceedings. Apart from it, the conviction of petitioner in a narcotic case amounts to grave misconduct, therefore, this Court does not find any merit in the argument that the punishment inflicted

upon the petitioner is disproportionate to his guilt.

Notably, the order dated 31.10.2012 passed by the punishing authority dismissing the petitioner from service was further upheld by appellate authority vide order dated 17.09.2013 and through a reference under the Industrial Disputes Act, 1947 before the Industrial Tribunal, Patiala, the petitioner again attempted to test the correctness of the orders passed by the disciplinary authority. A perusal of the impugned award shows that the Industrial Tribunal has rightly answered the reference against him.

Resultantly, finding no merit in this writ petition, the same is hereby dismissed.

(MANOJ BAJAJ)
JUDGE

23.01.2023

geeta

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No