

Harman Preet Singh

...Petitioner

Vs.

Union of India and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Karanjeet Singh Brar, Advocate for the petitioner.

Mr. Shivoy Dhir, Sr. Panel Counsel, UOI for the respondents.

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 the order dated 21.02.2022 (Annexure P-1), whereby he has been dismissed from service. Further prayer is for issuance of a writ in the nature of mandamus directing the respondents to reinstate him in service during the pendency of his criminal appeal against the judgment of conviction.

Learned counsel for the petitioner submits that the petitioner (GS-198277F MSWPNR) 1599 PNR Coy (GREF/64 BRTF (P) SWASTIK) was serving in GREF, who was performing his duty diligently and had been falsely implicated in case FIR No.75 dated 1.5.2016, registered under Sections 302, 342 and 34 Indian Penal Code, 1860 at Police Station Tanda, District Hoshiarpur, wherein the trial against him ended in his conviction on

28.07.2021. According to the learned counsel for the petitioner, the judgment of conviction has been challenged by him by way of a criminal appeal i.e. CRA-D-414 of 2021 and the same is pending adjudication, but without waiting for the outcome of the said appeal, wherein the sentence of the petitioner has already been suspended the respondent No.4 has passed the impugned order dated 21.02.2022 (Annexure P-1) thereby dismissing him from service. Learned counsel has argued that during investigation of the criminal case, the petitioner was found innocent, however, during trial, he was summoned under Section 319 Cr.P.C., therefore, there is every possibility that he would be acquitted of the charges by the Appellate Court, but the impugned order has been passed hastily without affording him any opportunity of hearing. He refers to the Rule 19 (i) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 to contend that under Rule 19, it was imperative for the disciplinary authority to issue notice to the official before passing the extreme order of termination, and for lack of opportunity of hearing, the impugned order warrants interference by this Court.

After hearing the learned counsel and considering his submissions, this Court finds that the argument that the petitioner was found innocent during investigation has no merit as he joined the trial proceedings as an additional accused, wherein his guilt was proved by the prosecution. Thus, the presumption of innocence attached to the accused during the trial proceedings ceased to exist, and merely because an appeal by convict is pending before the Appellate Court, this fact alone would not be sufficient to hold that the respondents have acted illegally while exercising

jurisdiction under Rule 19 (i) of Central Civil Services (Classification, Control and Appeal) Rules, 1965.

A perusal of Rule 19 (i) shows that the disciplinary authority is justified in making such an order, if, the conduct of the Government servant led to his conviction on a criminal charge. Thus, the submission that the opportunity of hearing ought to have been afforded to the government servant as a mandatory requirement is without any substance as the proviso attached to Rule 19 does not contemplate it as a mandatory requirement. Further, a reading of the impugned order shows that even show cause notice was issued to the petitioner and in response, he had given a written representation and upon considering the said written submission, the disciplinary authority imposed the penalty of dismissal from service.

No other argument has been raised.

Resultantly, in view of the above discussion, no case is made out for exercise of extra ordinary writ jurisdiction under Article 226 Constitution of India and the writ petition is dismissed.

(MANOJ BAJAJ)
JUDGE

07.02.2023

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