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Central Administrative Tribunal
Chandigarh Bench

OA No.060/00105/2014/

Pronounced on: 16.12.2014

Coram:

Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mrs. Rajwant Sandhu, Member (A)

Iqbal Singh son of Sh. Hans Raj age 58 years, Ex-Driver, Chandigarh Transport Undertaking (CTU) now resident of H. No.3280, Sector 40D, Chandigarh.

-Applicant

(By Advocate Shri D.R. Sharma)

-Versus-

1. The Home Secretary-cum-Secretary Transport, Union Territory, Chandigarh.

2. The Divisional Manager-cum-Director, Chandigarh Transport Undertaking, Chandigarh.

-Respondents

(By Advocate Shri Aseem Rai)

O R D E R

Per Mr. Sanjeev Kaushik, Member (J):

The present OA is directed against an order of punishment dated 16.10.2012 and the order dated 26.02.2013 vide which the appeal filed by the applicant has been dismissed by the appellate authority.

2. The minimum facts, which are required for adjudication of the matter, are that the applicant joined respondent-department as a driver

on 25.05.1983 and was put on probation for two years. He was involved in a case FIR No.423/83 registered under Section 279, 304-A of I.P.C. Vide judgment dated 10.11.1986 the applicant was convicted and was sentenced to undergo rigorous imprisonment for three and nine months in respective Sections. The said judgment was challenged in appeal before the learned Additional Sessions Judge, Chandigarh, who too vide its judgment dated 22.11.1998 dismissed his appeal and the applicant was sent to jail on the same day. He was placed under deemed suspension by the competent authority. He was granted bail on 26.11.1988 by the Hon'ble High Court in a criminal revision no.1189 of 1988 preferred by the applicant against his conviction, where also his conviction was upheld. The applicant was released from custody on 28.11.1988 and by order dated 14.12.1988 applicant was reinstated in service w.e.f. 29.11.1988. The Hon'ble High Court vide its judgement dated 28.05.2001 dismissed his criminal revision. It is thereafter the applicant was served with a show cause notice on 30.07.2012 as to why his services should not be dismissed in view of conviction by the ACJM on 10.11.1986 which was affirmed up to the level of High Court. The respondent no.2 vide impugned order dated 16.10.2012 dismissed the applicant from service with immediate effect. It is submitted that against the order of the disciplinary authority the applicant preferred an appeal on 30.11.2012, which was also rejected by order dated 26.02.2013. The applicant was taken in custody only on 01.03.2013 and released on 13.10.2013. It is the case of the applicant that he continued with the respondent-

department since 1983 till 16.12.2012 for a long period of 29 years and having unblemished service record. Hence the Original Application.

3. Pursuant to the notice, the respondents resisted the claim of the applicant by filing a detailed written statement wherein they submitted that on his conviction by the ACJM for finding him guilty of reckless and negligent driving vide its judgment dated 10.11.1986 and after rejection of his criminal revision the competent authority by complying with the principles of natural justice served a show cause notice upon him and it is thereafter impugned order of dismissal from service has been passed. That order has been affirmed by the Hon'ble High Court. The applicant has filed rejoinder wherein apart from contradicting the averments made therein he submitted that while passing the impugned order of dismissal the respondents firstly have not considered his conduct, which led to his conviction and secondly they have not given the weightage of 29 years of long service rendered by the applicant with the respondent-department. An allegation of discrimination has also been levelled as the similarly situated persons like the applicant who met with the accident and convicted by the criminal court have been awarded lesser punishment of withholding of increment whereas in the case of the applicant a punishment of dismissal has been awarded.

4. We have heard Shri D.R. Sharma, learned counsel for the applicant and Shri Aseem Rai, learned counsel for the respondents.

5. The solitary contention raised on behalf of the applicant is that the respondents while passing the impugned order of dismissal has not considered the conduct of the applicant which led to his conviction. Solely based upon his conviction the impugned order has been passed, which is in flagrant violation of the settled law by the Hon'ble Supreme Court in the case of **Divisional Personnel Officer, Southern Railway, v. T.R. Chellappan**, (1976) 3 SCC 190 and the judgment in the case of **Union of India v. V.K. Bhaskar**, (1997) 11 SCC 383.

6. Per contra, Shri Aseem Rai, learned counsel appearing for the respondents argued that once the applicant has been held guilty of negligence driving and he has been convicted by the Court of Law, then dismissal is the only punishment which the respondents have passed after serving a show cause notice.

7. We have given our thoughtful consideration to the entire matter and have perused the pleadings available on record with the able assistance of the learned counsel appearing for the respective parties.

8. The sole question, which is to be answered is as to whether on mere conviction, an employee can be dismissed from service or respondents have to consider the conduct of the employee which led to his conviction, that too, whether the offence committed by the employee comes within the definition of moral turpitude, which debars a delinquent employee to continue in service.

9. This issue is no more *res integra*. In the case of **Union of India v. Tulsi Ram Patel**, (1985) 3 SCC 398 their Lordships of the Hon'ble Supreme Court have considered the similar proposition and wherein they have held that on mere conviction an employer cannot dismiss the services of an employee but they have to consider the magnitude of misconduct and whether the said misconduct falls within the definition of moral turpitude, which debars a government employee to continue with the department. The relevant finding reads as under:

> "130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or

together with or through other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

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133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before

passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particular, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of that reasons in a departmental appeal or before a court of law and the failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non- production of the written reasons"

10. Based upon the law settled by the Hon'ble Supreme Court in the case of **Tulsi Ram Patel** (supra), this Tribunal in **Mamta Rani v. Union of India & Ors.** OA No.464/HR/2012, decided on 16.01.2014, in which one of us (Judicial Member) is the author of the judgment, considered the entire law and held that merely on conviction an employee cannot be thrown out of service. The respondents are bound to consider his conduct, which led to his conviction and have to give weightage to his served rendered with the respondent-department. The relevant observations read as under:

> "11. Now the issue which remains to be adjudicated is that "whether the case of the husband of the applicant is to be re-considered after his release on probation or not". Though the respondents deny that they had received any representation either from the husband of the applicant or the applicant herself, it is not disputed by the respondents that the husband of the applicant was removed from service on the basis of his conviction by the Court of Law. The issue whether the conviction of an employee in criminal case shall be followed by his dismissal/removal from service has already been considered by the Hon'ble Supreme Court in the case of The Divisional personnel Officer Southern Railway and Another Vs. T.R. Chellappan (supra) which has subsequently been considered by the Constitution Bench in the case of Union of India vs. Tulsiram Patel(1985) 3 SCC 190), wherein it has been held that 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. This view of the Hon'ble Supreme Court was followed by the Hon'ble Jurisdictional High Court in the case of Kaur Singh Vs. Punjab State Electricity Board (2007(4) SCT 426) wherein it has been held that mere conviction does not construe that the employee be dismissed from service, but his past conduct is also to be considered before dismissal.
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> 12. It is also not disputed that subsequently, the judgment of conviction dated 04.03.2003 was maintained but order of sentence was modified and the applicants husband was released on probation by the Additional Sessions Judge, Ambala, vide order dated 31.03.2006. It has become a settled law that the case of an

employee, who had been dismissed from service on the basis of conviction in criminal case, requires re-consideration in case of his release on probation. Recently, a similar controversy came up for consideration before the Hon'ble High Court of Punjab & Haryana in the case of Rajinder Singh and Another Vs. U.T. Chandigarh and Others(CWP No. 19146 of 2011) and vide judgment dated 08.02.2013, it has been held as under.

> "In our considered view, the matter requires re-consideration, especially on the quantum of punishment by the Competent Authority/Revisional Authority as the case may be at least for the following two reasons:-
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> (i)It is well established that an order of dismissal from service under Clause (a) of Proviso to Article 311(2) of the Constitution cannot be passed only on the basis of conviction, rather the conduct of the person which led to his conviction on a criminal charge will have to be kept in view.
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> (ii)Section 12 of the Probation of Offenders Act, 1958, starts with a non-obstante clause and it says that notwithstanding anything contained in any other law, a person found guilty of any offence and dealt with under the provisions of Section 3 or section 4 shall not suffer disqualification if any, attaching to a conviction of offence under such law.

The length of service and previous service record can also be kept in view while determining the nature of punishment.

Since the aforesaid aspects were apparently not considered while dismissing the petitioners from service especially Section 12 of the Probation of Offenders Act, 1958, let the matter be placed before the Inspector General of Police, U.T. Chandigarh for an appropriate reconsideration within a period of three months from the date of receipt of certified copy of this order."

13. In respectful accord with the view taken by the Hon'ble Jurisdictional High Court, this Tribunal has disposed of the case of Surti Ram Vs. Union of India & Others vide orders dated 20.08.2013, the operative portion whereof is extracted hereunder:-

> "In the light of the above judicial pronouncements, now we proceed to examine the impugned order in the present O.A. A perusal of the impugned order suggests that the competent authority had studied the copy of the judgment passed in the criminal case. But there is not a whisper which suggests that the competent authority had came to the conclusion that the

offence of the applicant is such which debars him to retain in service. It is also clear that while passing the impugned order, the conduct of the applicant which led to his conviction has also not been examined. Even the past service of the applicant has also not been considered by the competent authority. In nut-shell, it can be concluded that the impugned order has been passed merely on the ground that the applicant has been convicted by the Criminal Court of law, which as per the settled law cannot be gone. The competent authority is supposed to consider the circumstances which led to conviction and also keep in mind the past conduct of the employee and thereafter to form an opinion whether he is entitled to be retained in service or he be shunted out from service on his conviction in public interest, which is lacking in the impugned order.

Accordingly, the impugned order is quashed and set aside. The matter is remitted back to the respondents to re-consider the same in the light of what we have observed above. The respondents are directed to pass a fresh order in terms of what we have stated herein above, within a period of two months from the date of receipt of a certified copy of this order."

14. In the present case also, the respondents, while imposing the punishment of removal from service upon the deceased employee, considered the ground of his conviction in criminal court and ignored all other aspects such as length of service and past conduct during his service-career, which had to be considered by the Disciplinary Authority, as per the established law. Moreover, he was subsequently released on probation by the Court of Law and in the light of this subsequent development, the case of the husband of the applicant requires re-consideration, especially with regard to the quantum of punishment. Accordingly, in view of the identical facts and the law settled by the Hon'ble Jurisdictional High Court in the case of Rajinder Singh and another Vs. U.T. Chandigarh and others (supra) and subsequently followed by this Tribunal in the case of Surti Ram (supra), the present O.A. deserves acceptance. Accordingly, the O.A. is allowed and the orders dated 19.07.2004 and 14.02.2005 (Annexure A-1 & Annexure A-4 respectively) are quashed and set aside. The matter is remitted back to the respondents to re-consider it in the light of what we have observed hereinabove, within a period of three months from the date of receipt of a copy of this order. No costs."

11. Even in the case of **Baljinder Singh v. Chandigarh Admn. & Another,** OA No.060/00612/2014, decided on 18.11.2014 this Tribunal

considered the similar controversy and after placing reliance upon the judgment in the case of **Tulsi Ram Patel** (supra) and jurisdictional High Court in the case of **Rajinder Singh and Another Vs. U.T. Chandigarh and Others** (CWP No.19146 of 2011) decided on 08.02.2013 has decided the same issue. The relevant portion reads as under:

> "The issue whether the conviction of an employee in criminal case shall be followed by his dismissal/removal from service has already been considered by the Hon'ble Supreme Court in the case of The Divisional personnel Officer Southern Railway and Another Vs. T.R. Chellappan (supra) which has subsequently been considered by the Constitution Bench in the case of Union of India vs. Tulsiram Patel(1985) 3 SCC 190), wherein it has been held that 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. This view of the Hon'ble Supreme Court was followed by the Hon'ble Jurisdictional High Court in the case of Kaur Singh Vs. Punjab State Electricity Board 2007(4) SCT 426 wherein it has been held that mere conviction does not construe that the employee be dismissed from service, but his past conduct is also to be considered before dismissal. Recently, a similar controversy came up for consideration before the Hon'ble High Court of Punjab & Haryana in the case of Rajinder Singh and Another Vs. U.T. Chandigarh and Others (CWP No. 19146 of 2011) and vide judgment dated 08.02.2013, it has been held as under.
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> > "In our considered view, the matter requires re-consideration, especially on the quantum of punishment by the Competent Authority/Revisional Authority as the case may be at least for the following two reasons:-
> >
> > (i) It is well established that an order of dismissal from service under Clause (a) of Proviso to Article 311(2) of the Constitution cannot be passed only on the basis of conviction, rather the conduct of the person which led to his conviction on a criminal charge will have to be kept in view.
> >
> > (ii) Section 12 of the Probation of Offenders Act, 1958, starts with a non-obstante clause and it says that notwithstanding anything contained in any other law, a person found guilty of any offence and dealt with under the provisions of Section 3 or section 4 shall not suffer disqualification if any, attaching to a conviction of offence under such law."

9. The length of service and previous service record can also be kept in view while determining the nature of punishment. The aforesaid aspects have apparently not been considered while rejecting the request of the applicant, the order does not meet the requirement of law.

10. In respectful accord with the view taken by the Hon'ble Jurisdictional High Court, this Tribunal has disposed of the case of Surti Ram Vs. Union of India & Others vide orders dated 20.08.2013, the operative portion whereof is extracted hereunder:-

> "In the light of the above judicial pronouncements, now we proceed to examine the impugned order in the present O.A. A perusal of the impugned order suggests that the competent authority had studied the copy of the judgment passed in the criminal case. But there is not a whisper which suggests that the competent authority had came to the conclusion that the offence of the applicant is such which debars him to retain in service. It is also clear that while passing the impugned order, the conduct of the applicant which led to his conviction has also not been examined. Even the past service of the applicant has also not been considered by the competent authority. In nut-shell, it can be concluded that the impugned order has been passed merely on the ground that the applicant has been convicted by the Criminal Court of law, which as per the settled law cannot be gone. The competent authority is supposed to consider the circumstances which led to conviction and also keep in mind the past conduct of the employee and thereafter to form an opinion whether he is entitled to be retained in service or he be shunted out from service on his conviction in public interest, which is lacking in the impugned order.
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> Accordingly, the impugned order is quashed and set aside. The matter is remitted back to the respondents to re-consider the same in the light of what we have observed above. The respondents are directed to pass a fresh order in terms of what we have stated herein above, within a period of two months from the date of receipt of a certified copy of this order"

12. We may notice here that the applicant was convicted by the ACJM on 10.11.1986. He was reinstated in service after release on bail vide order dated 14.12.1988 w.e.f. 29.11.1988 and he continued with the respondent-department till the disciplinary authority passed an order on 16.10.2012, i.e., almost 29 years. Therefore, it becomes more

imperative upon respondent, i.e., disciplinary authority that while taking a view in the matter they have to consider his long service. Therefore, only on this ground we allow this Original Application to the extent that the impugned order dated 16.10.2012 is quashed and set aside. The matter is remitted back to the respondents to give a fresh look in the matter in the light of what has been observed above and also the settled legal position, as quoted above. No costs.

(Rajwant Sandhu)
Member (A)

(Sanjeev Kaushik)
Member (J)

16.12.2014

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