CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

...

OA No. 060/00612/2014 Date of decision- 18.11.2014.

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

...

Baljinder Singh, Ex-Sectional Officer, Engineer Department, Chandigarh Administration, U.T., Chandigarh, Resident of H.No. 641, Milk Colony, Dhanas, U.T., Chandigarh.

...APPLICANT

BY ADVOCATE : Sh. Barjesh Mittal

VERSUS

1. Chandigarh Administration through its Secretary, Engineering Department, Chandigarh Administration, U.T. Secretariat, Sector -9, Chandigarh.
2. Chief Engineer, Chandigarh Administration, U.T. Secretariat, Sector 9, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Rakesh Verma

ORDER (ORAL)

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present O.A is directed against the order 10.05.1999 (Annexure A-2) vide which he was dismissed from service on his conviction in a criminal case and order dated 12.06.2014 whereby his

representation dated 14.10.2013 for review of his case in view of his acquittal in higher court was rejected.

2. The facts which led to filing of the present O.A are required to be spelt out first. The applicant, after acquiring the Diploma in Civil Engineering, joined the respondent department as Sectional Officer w.e.f. 16.03.1988. After completion of probation period of two years, he was confirmed on that post. An FIR No. 2 dated 19.06.1992 under Section 418, 420, 477, 120-B IPC read with Section 13 (1) (c) and (2) of Prevention of Corruption Act,1986 was registered against four persons including the applicant. Thereafter, he was placed under suspension. He was issued a charge sheet dated 16.06.1993 under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (in short ' 1970 Rules) which was replied to by the applicant. Thereafter, the applicant was reinstated in service vide order dated 28.09.1993. Vide order dated 28.02.1998, the learned Special Judge convicted the applicant in the Criminal Case. Aggrieved by the above order, the applicant filed Criminal Appeal No. 191-SB-1998 before the Hon'ble Jurisdictional High Court which was admitted vide order 11.03.1998. Based upon the conviction by the Learned Special Judge Chandigarh the department imposed the penalty of dismissal from service under Rule 13 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. Dissatisfied the applicant filed O.A No.

451/CH/1999 seeking quashing of order dated 10.05.1999. On the same ground, other officials, against whom FIR was registered also approached this Tribunal by filing O.A No. 444/CH/1999, O.A No. 446/CH/1999 and O.A No. 452/CH/1999. The same were disposed of vide a common order dated 09.05.2002 wherein the applicants were granted liberty to agitate the matter again after the decision in the pending criminal case. Thereafter, the appeal was allowed in favour of the applicant and he was acquitted of the charges framed against him by setting-aside the judgment dated 28.02.1998 passed by the Special Judge. Based upon the liberty as granted by this Tribunal after the acquittal from the charges, the applicant moved a representation dated 30.12.2013 requesting them to take him back in service as ground of dismissal prevalent at that time, has now been washed away. But despite that no action was taken by them which compelled the applicant to approach this Tribunal again by way of O.A No. 56/CH/2014. The said O.A was disposed of on 05.03.2014 with a direction to the respondents to revisit the order dated 10.05.1999 keeping in view that the applicant had been acquitted from the charges and take necessary decision. But again the respondents failed to comply with the order within stipulated time and the applicant filed a Contempt Petition. During the pendency of the contempt petition, the respondents passed the impugned order dated 12.06.2014 by

recording findings that in view of the advice tendered by the Vigilance Department, UT, Chandigarh, his request for instatement in service has been rejected and said contempt petition was disposed of. Hence, the present O.A.

3. Pursuant to notice, the respondents contested the claim of the applicant by filing detailed written statement wherein it is submitted that the respondents had decided to challenge the order of the Hon'ble High Court before the Hon'ble Supreme Court, therefore, at this stage, they could not reinstate the applicant in service.

4. We have heard Sh. Barjesh Mittal, learned counsel for the applicant and Sh. Rakesh Verma, learned counsel for the respondents.

5. Sh. Barjesh Mittal, learned counsel for the applicant submitted that the impugned order is non-speaking and has been passed without application of mind as once the basis of applicant's dismissal i.e. conviction in criminal case has been washed away by the Hon'ble High Court, the respondents have to reexamine the case of the applicant for his reinstatement in service. Merely because the respondents have decided to file an SLP before the Hon'ble Supreme Court, would not give them a handle to keep the applicant out of service by passing a vague and non-speaking order that too without application of mind. To buttresses his submission, he placed reliance upon the judgment passed by the Bangalore Bench of this Tribunal in O.A No. 48/2012

titled ***R.N. Patra Vs. U.O.I. & Ors.*** decided on 26.06.2012 and judgment passed by the Hon'ble Supreme Court in case of ***Narinder Mohan Arya Vs. United India Insurance Company***-2006(4) SCC 713. He prayed that the impugned order may be quashed and set aside being passed without giving any reason.

6. Sh. Rakesh Verma, learned counsel for the respondents has reiterated, what has been stated in the written statement.

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

8. Vide order dated 10.05.1999, the service of the applicant was terminated by invoking Rule 13 of the 1970 Rules because he was convicted by the court of law in an FIR. Said conviction was challenged before the Hon'ble High Court whereby the applicant was acquitted from the charges. As in first round of litigation, the applicant filed O.A no. 451/CH/1999 whereby he was given liberty to move a representation after the acquittal in criminal case. Thereafter, he made representation for reinstating him into the service but when no action was taken by respondents thereon, he approached the Tribunal a second time by filing O.A 56/CH/2014 which was disposed of vide order dated 05.03.2014 with a direction to the respondents to revisit the order dated 10.05.1999 through which the applicant was dismissed

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for his conviction on criminal charge and take necessary decision in the matter. Pursuant to this, the respondents passed the impugned order dated 12.06.2014 rejecting his request, which does not talk of any reason upon which his request for reinstatement in service has been rejected. Though at the time of argument, it was suggested by Sh. Rakesh Verma, learned counsel for the respondents and also mentioned in their written statement that the respondents are in the process of challenging the order of the Hon'ble High Court before the Hon'ble Apex Court but the same has not been spelt out by them in the impugned order and it is only recorded that in light of the advice rendered by the Vigilance department his request has been rejected. It also shows their non application of mind while passing the order and such orders cannot be sustained in the eyes law as the authority has not carried out independent application of mind. No reasons have been given while rejecting the representation of the applicant. Failure to give reasons amounts to denial of justice. The administrative authority that is discharging quasi judicial duty is required to give reasons while rejecting any claim. Because if the reasons are given then it will be easier for the applicant to challenge the order effectively before the Court of law by concentrating only on those points which did not find favour to the authority. Even in respect of administrative orders Lord Denning M.R. In **Breen v. Amalgamated Engg. Union** (1971) 1 All

ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 IC 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The law laid down by the lordships of Honourable Supreme Court in the case of **Raj Kishore Jha versus State of Bihar & Others,** 2003 (11) CC 519 has again be reiterated in **Ram Phal Vs. State of Haryana,** 2009 (3) SCC 258, decided on 06.02.2009 stating that "reason is the heartbeat of every conclusion. Without the same, it becomes lifeless". Our views find support from the judgment passed by the Bangalore Bench of this Tribunal in case of R.N. Patra (supra) where in para 8, the Tribunal has recorded the findings, which is reproduce as under:-

> 8. Therefore, in our considered opinion, the penalty order displays a total lack of application of mind and hence, it is bad in the eye of law. The entire disciplinary proceedings have been totally vitiated from the time of initation due to failure of follow the procedure as outlined in the vigilance Manual, CCS (CCA) Rules, 1965 and the CCS (Pension) Rules, 1972. The Disciplinary Authority did not put in writing his reasons for disagreeing with the finding of the I.O. when he held the applicant to be not fully responsible for the delayed submission of the report. It was left to the D.G. , GSI to issue the memo and the Disciplinary Authority merely accepted the opinion of the Director General, GSI to hold the applicant guilty of the charge leveled against him.

Therefore, impugned order can not be sustained as same does not meet requirement of law. In this regard, we place reliance upon the judgment passed by the Hon'ble Supreme Court in case of ***Narinder Mohan Arya Vs. United India Insurance Company***-2006(4) SCC 713 in para 36 has held as under:-

> "36. The order of the appellate authority demonstrates total non-application of mind. The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression 'consider' is of some significance. In the context of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

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.

> "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."

11. In view of the above, we can safely record that the impugned order is unreasonable. Vide order dated 05.03.2014 the respondents were directed to pass a fresh order by revisiting the matter again. In reconsideration the authorities have not cared to see the conduct of

the applicant leading to his conviction but have rejected his claim for reinstatement on the advise rendered by the Vigilance Department only. This consideration cannot be justified and legally tenable from any angle. Therefore, the impugned order dated 12.06.2014 is quashed & set aside. The respondents are directed to reconsider the case of the applicant in the light of the above observation objectively, by passing a speaking order within a period of one month from the date of receipt of a certified copy of this order.

12. No cost.

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 18.11.2014

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