

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00726/2016

Orders pronounced on: 05.10.2018
(Orders reserved on: 13.09.2018)CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Ikkatar Singh son of Shri Mukhiar Singh,
age 54 years, Group-D,
Resident of Village Badhani Kalan,
Tehsil and District Moga, working as Regular Majdoor,
Office of Telecom Engineer, Himatpura, Tehsil Nihal Singhwala,
District Moga.

APPLICANT

**(BY: DR. G.K.S. TAANK ALONG WITH DR. ASHISH SINGH TAANK,
ADVOATES)**

Versus

1. Union of India through the Secretary, Department of Telecommunication, Sanchar Bhawan, 20, Ashoka Road, New Delhi.

(BY: NONE)

2. The Chief General Manager, Bharat Sanchar Nigam Ltd., Punjab Telecom Circle, Department of Telecommunication, Sector 34, Chandigarh.
3. The General Manager, Bharat Sanchar Nigam Ltd., Ferozepur.
4. The General Manager Telecom, Bharat Sanchar Nigam Ltd., District Ferozepur, 152001.

RESPONDENTS**(BY : MR. RAJESH GUPTA, ADVOCATE)**(O.A.No. 060/00726/2016
Ikkatar Singh Vs. UOI etc.)

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, for quashing the orders dated 16.10.2014 (Annexure A-2) vide which the penalty of removal from service upon applicant was ratified and imposed vide order dated 2.12.2014 (Annexure A-1) and appeal filed by him against the same was rejected vide order dated 27.6.2016, legality of which has also been challenged. He seeks benefit of full pay and allowances for the period of his illegal termination etc.

2. The brief facts, leading to the filing of the instant Original Application (OA), are that the applicant was initially recruited as Mazdoor in the year 1982-83 and was regularized as such w.e.f. 10.10.1995. He was involved in a criminal case in FIR No. 75/2003 dated 6.9.2003 at Police Station Nihal Singhwala, District Moga (Punjab) under sections 323/324/34 IPC. He was convicted of the offences vide judgment dated 23.2.2012 and was sentenced. He filed an appeal which was dismissed on 14.10.2013.

3. The applicant filed Criminal Revision Petition No. 3388 of 2013 in Hon'ble Punjab & Haryana High Court and vide order dated 14.3.2014 and was granted bail. The Crl. Rev. No. 3388 of 2013 was disposed of on 25.9.2014 (Annexure A-6). Finding that the applicant had no other criminal case against him and his conduct was unblemished even after the registration of the instant case, it was held that a lenient view can be taken on the quantum of sentence of the applicant. His prayer for release on probation was accepted, as he was not having any criminal background and was released on probation accordingly.

Meanwhile, the respondents passed order dated 2.12.2014, removing him from service, on the basis of his conviction in the criminal case.

The appeal filed by him against dismissal order was rejected on 27.6.2016. Hence, the O.A.

4. The respondents have filed a reply. They submit that since the applicant was convicted in a criminal case, which was upheld upto Hon'ble High Court, and on involvement in a criminal case, he has failed to maintain absolute integrity during his service and lowered the image of company in the eye of public and as such was punished invoking provisions of rule 51 of B.S.N.L. (CDA) Rules, 2006 and Article 311 (2) of the Constitution of India. His appeal was also rejected as there was no illegality in the punishment order. A replication has also been filed by the applicant.

5. We have heard the learned counsel for the parties at length and examined the material on file.

6. The learned counsel for the applicant would vehemently argue that since the Hon'ble High Court has released him on probation, after considering his act and conduct, so he is entitled to review of the penalty imposed upon him, based on judicial pronouncements on the issue. He placed reliance on **GURBACHAN DASS V. THE CHAIRMAN, P&T BOARD**, 1983 (1) SLR, 729, in which it was held that an order passed by authorities, merely on conviction of any employee in criminal case, without reference to his misconduct. On the same point, reliance is also placed on **STATE OF HARYANA & ANOTHER VS. RAM CHANDER**, 2013 (3) SLR, 624, **KULWANT SINGH V. THE DEPUTY DISTRICT PRIMARY EDUCATION OFFICER, GURDASPUR**, 1997 (1) SCT 282, **OM PARKASH VS. THE DIRECTOR, POSTAL SERVICES & OTHERS**, 1971 (1) SLR, 648. He pressed into service decision of

Hon'ble Apex Court in the case of **SHANKAR DAS VS. UNION OF INDIA**, AIR 1985 (SC) 772, to argue that if one is released on probation and convicted in a criminal case, then dismissal has to be imposed after fair, just and reasonable exercise of power and not in a mechanical manner. On the other hand, learned counsel for respondents would support the impugned order stating that same is as per rules and law and does not require any interference.

7. We have considered the submissions made on both sides carefully.

8. A conjunctive perusal of the pleadings would indicate that a fight had taken place between two people, one of whom was known to the applicant. The applicant also joined him and gave a dang blow of simple in nature. He had no previous criminal case against him and his conduct, after registration of the case, was also found to be normal by the Hon'ble High Court and as such he was released on probation, while upholding his conviction done by lower courts. He was not performing any official duty at the relevant point of time of incident upon which he was convicted by lower courts. However, the disciplinary authority held that the conduct of the applicant which led to his conviction is such, as to render his further retention in public service undesirable, in view of the gravity of charges and punishment of removal from service was imposed upon him. The applicant submitted a representation against proposed notice of punishment, which was disposed of by using few words only, like "which has been considered by the undersigned". Not a single observation has been made by the authority, as to what kind of defence was taken by the applicant and as to why it did not invite any favourable or negative response from the authority and it just proceeded to impose the indicated punishment upon the applicant.

However, the appellate authority has gone a step further to record a finding that upon conviction in a criminal case, the applicant has "failed to maintain the absolute integrity during his service and lowered the image of company in the eye of public". The authorities have not even taken into consideration the factum of applicant having been released on probation, and that even Hon'ble Court has recorded finding on the act and conduct of the applicant, which too has not been taken into consideration.

9. Secondly, learned counsel for the applicant referred to section 12 of the Probation of Offenders Act, 1958, which clearly provides that if one is held guilty of an offence and is dealt with under the provisions of section 3 or 4 of the said Act, he shall not suffer any disqualification attaching to the conviction under any law. It is argued, and rightly so, that the respondents have punished the applicant, merely upon his conviction in the criminal case, without reference to his conduct which lead to his conviction. As to how the conduct of applicant, a casual labour, lowered the image of the company in the eye of public, is not explained. In fact, the impugned order passed by the learned Appellate Authority also leaves much to be desired. He has also not considered even a single point raised by the applicant in his appeal.

10. Lord Denning M.R. in **BREEN V. AMALGAMATED ENGINEERING UNION** (1971 (1) All E.R. 1148) has observed that the giving of reasons is one of the fundamentals of good administration. In **ALEXANDER MACHINERY (DUDLEY) LTD. V. CRABTREE** (1974 LCR 120) it was held that 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 emphasis on

recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

11. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the well celebrated case of **M/S MAHAVIR PRASAD SANTOSH KUMAR VS. STATE OF U.P. & OTHERS** 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim". It was also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass

reasoned and speaking order. This principle has been followed in a numerous decisions by courts of law from time to time.

12. Not only that, an identical issue also came up for consideration before jurisdictional High Court in **RAJINDER SINGH & ANOTHER VS. U.T. CHANDIGARH & OTHERS**, CWP No. 19146 of 2011 decided on 8.2.2013. In this case, the Hon'ble High Court has settled the issue as under :

"The petitioners-Rajinder Singh and Harwant Singh, were recruited as Constables in Chandigarh Police in the year 1983 and 1991, respectively. The 2nd petitioner who joined in the year 1991 had earlier served the Indian Army for 10 years. A criminal case under the Excise Act was registered against them for consuming liquor while on duty. They were found guilty and convicted on 14.1.2006, though released on probation. The conviction has been upheld by the trial Court but there revision petition is pending in the High Court.

Based upon their conviction, the Competent Authority in purported exercise of its powers under Proviso to Article 311 (2) of the Constitution dismissed them from service. Their departmental appeal and revision petition were also dismissed and so was the fate of their Original Application before the Central Administrative Tribunal.

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 an 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. The observations made above, by the Hon'ble High Court apply on all fours to the facts of this case. Admittedly, in this case also, order of removal from service is based under Clause (a) of Proviso to Article 311 (2) of the Constitution read with relevant rules, which cannot be passed only on the basis of conviction. In fact, the conduct of the person, which led to his conviction, on a criminal charge, will have to be kept in view. Secondly, Section 12 of the Probation of Offenders Act, 1958, says that notwithstanding anything contained in

any other law, a person found guilty of an 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. Thirdly, 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.

14. In view of the aforesaid discussion, this Original Application is allowed. The impugned orders are quashed and set aside. The matter is remitted back to the respondents to re-consider the claim of the applicant in the light of the observations made hereinabove and pass a fresh order, in accordance with rules and law, within a period of three months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 05.10.2018

HC*