
(2000) 01 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3074 of 1995

Daya Nand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Industrial Disputes Act, 1947 — Section 18(3)
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2000) 125 PLR 28

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Jai Vir Yadav, for the Appellant; Raghbir Chaudhary, for the Respondent

Judgement

Amar Dutt, J.—Daya Nand, petitioner, has filed the present petition under Articles 226/227 of the Constitution of India to challenge the order dated 22.1.1992 passed by respondent No.3 terminating his service and the order dated 20.12.1994 passed by respondent No.2 rejecting the appeal filed the petitioner against the order dated 22.1.1992.

2. The facts in the present case are not in dispute. The petitioner while working as a driver with respondent No.3 on 2.7.1987 was driving bus No. HYM 8120 on Ambala Jaipur road. The bus was involved in an accident near Karnal as a result whereof Daya Nand was challaned under Sections 279/304A IPC. During the pendency of the criminal case, the petitioner was also charge sheeted departmentally and after completion of the enquiry, was punished through order No.2588/SCD dated 8.7.1987 and his two annual increments were stopped with cumulative effect. The criminal trial resulted in his being convicted by the Judicial Magistrate, Ist Class, Karnal on 12.3.1991 and the appeal filed by the petitioner against this judgment has also been rejected. On the basis of this conviction, respondent No.3 passed the impugned order terminating his services which order was served on him during the period he was undergoing imprisonment. The

statutory appeal, Annexure P.7, was filed by the petitioner against this order which was dismissed. Against the dismissal of this appeal, the present petition has been filed in which he seeks interference asserting that his services could not have been terminated as this would amount to punishing him twice for the same offence. He has also submitted that according to the settlement which had been arrived at between Haryana Roadways and its workers in cases of chance accident not involving moral turpitude, an employee would not be removed from the service and this settlement was of binding nature u/s 18(3) of the Industrial Disputes Act. He also submitted that in similar cases, the employer has awarded a lesser punishment of stoppage of 5 increments to persons convicted for 18 months and has relied upon the case of one Gurnam Singh, Driver No.315 of the Chandigarh Transport undertaking as an example and has submitted that in view of the treatment meted to Gurnam Singh, the punishment awarded to him was violative of Article 14 of the Constitution and, therefore, should be set aside.

3. In the reply, the factual assertions are not denied except the averment regarding the settlement u/s 18(3) of the Industrial Disputes Act which according to the petitioner was alleged to have been entered into between the Drivers of the Haryana Roadways and the management. The respondents asserted that there was no such settlement and have also submitted that the case of Gurnam Singh is of no relevance to the case of the petitioner as Gurnam Singh was employed with the Chandigarh Transport Undertaking and not with the respondents. In view of this, it was submitted that the petition be dismissed.

4. I have heard the learned counsel for the parties and have considered the respective submissions made by them.

5. The main ground on which the impugned orders is sought to be challenged before this Court is that the law is well settled that an order imposing punishment on a government servant because he has been convicted on a criminal charge without reference to the conduct which led to the conviction is not sustainable. In the present case, according to the petitioner the punishing authority while awarding the punishment of dismissal ignored the fact that prior to his conviction he had been proceeded departmentally for the same incident and after holding him responsible for the lapse the punishment of stoppage of two annual grade increments had been imposed upon him. In these circumstances the punishment already imposed could not have been altered, unless further material was available on the record in the judgment of the criminal court on the basis of which the respondents found it necessary to order his dismissal from the service. It is further submitted that there is nothing available on the record to warrant an inference that the conduct of the petitioner which had led to his conviction merited his dismissal from service on account of his having been convicted by a criminal court. The position of law in relation to the action which could be taken against the government servant by his employer on the basis of conviction recorded against him does not brook any controversy. In *Om Prakash Vs. The Director Postal Services (Posts and Telegraphs*

Department), Ambala and Others, , this court had held that the order imposing punishment on a government servant simply because of his conviction on a criminal charge without reference to the conduct which led to his conviction was not sustainable. This view was reiterated in *Gurbachan Dass v. The Chairman, Post and Telegraphs Board, Ministry of Communications, Government of India, New Delhi and Ors* 1983 (1) S.L.R. 729. Again in *Union of India and Ors v. Tulsi Ram Patel* 1985 (2) S.L.R. 576, the Apex Court summed up the legal proposition in the following words.

"To recapitulate briefly, where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For the purpose it will have to peruse the judgment of the Criminal court and consider all the facts and circumstances of the case and the various factors set out in *Challapan's* cases. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him: This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. 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."

In view of this, while proceeding to take action against the delinquent official on the basis of a conviction recorded against him by a criminal court the disciplinary authority is required to bear in mind the fact that the conviction does not automatically entail dismissal, removal or reduction in rank of a government servant and it is obliged to take into consideration the conduct of the official in relation to the circumstances which led to the conviction.

6. In the present case, this conduct had admittedly formed the basis of disciplinary proceedings initiated against the petitioner even prior to the recording of the conviction and after taking into consideration the circumstances brought on the record and the explanation offered by the petitioner, the disciplinary authority had awarded the punishment of stoppage of two annual grade increments. From the impugned order it is not discernible as to what were the circumstances in the judgment of the criminal court which warranted the disciplinary authority to come to the conclusion that the case in hand required reconsideration/enhancement of the punishment already imposed. A perusal of the impugned order indicates that the authority while passing the impugned order was not alive to this aspect of the case and had therefore passed the order directing dismissal of the petitioner on account of the conviction recorded by the criminal court. Thus in the circumstances of the case, where the same authority had, found the misconduct of the petitioner requiring only imposition of penalty

of stoppage of two annual grade increments, the impugned order terminating his services is not sustainable and consequently will have to be set aside.

7. Accordingly this petition is accepted. The impugned order is set a side, with the result that the petitioner will the deemed to be in service with all consequential benefits.