

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.12794 of 2009 (O&M)
Date of decision: 17.07.2015.**

Mehboob Ali

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana
for the respondents-State.

Daya Chaudhary, J.

CM-4351-CWP-2015

This application has been moved for disposal of main writ petition in view of judgment of this Court in **CWP No.17768 of 2012** titled as **Raj Kumar Tokas vs. State of Haryana and others, 2013(2) SCT 757.**

After issuing notice in the application and having no objection from other side, the main writ petition has been heard.

CWP-12794-2009

The present writ petition has been filed under Articles

226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the impugned order dated 10.04.2009 (Annexure P-5) passed by the Superintendent of Police, Yamuna Nagar (respondent No.4), vide which, the petitioner has been removed from service and also the order dated 09.06.2009 (Annexure P-7) vide which, the appeal filed by the petitioner against order dated 10.04.2009 has been rejected. A further prayer has also been made for issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioner in service with full back wages and other consequential benefits.

Briefly, the facts of the case are that the petitioner was recruited in the Haryana Police on 24.07.1992. FIR No.7 dated 01.01.2008 was registered under Sections 148, 149, 307 and 120-B of Indian Penal Code at Police Station City, Yamuna Nagar. The petitioner was charge-sheeted and thereafter, challan was submitted before the Court. During pendency of the departmental inquiry, the challan was presented by the Police in the FIR case. The petitioner faced trial before Additional Sessions Judge and ultimately, he was discharged vide judgment dated 27.09.2008 as no case was made out against him on the basis of challan submitted by the Police.

In the departmental proceedings, the petitioner was issued charge-sheet and an inquiry was conducted. Ultimately, a show cause notice dated 16.03.2009 was issued to him to explain as to why he should not be removed from the service. The petitioner submitted reply and ultimately, he was removed from service vide impugned

order dated 10.04.2009. The appeal filed against said order was also rejected.

Said impugned order of removal as well as order passed in the appeal have been challenged by learned counsel for the petitioner on the ground that the impugned orders have been passed without any application of mind; without taking into consideration the reply filed by the petitioner and order of discharge passed by the trial Court.

Learned counsel for the petitioner submits that two FIRs registered at Police Station City, Yamuna Nagar were not the subject matter of the charge-sheet. Nothing concrete was there on record to form an opinion for taking an extreme step of removal from service. The service record of the petitioner was found satisfactory and as no adverse remarks were ever conveyed to him. Learned counsel for the petitioner further submits that the appeal filed by the petitioner was also dismissed without any sufficient reason as in the departmental proceedings, no charge has been proved independently. The judgment passed by the trial Court for discharge was not taken into consideration and as such, the impugned order has been passed without any application of mind. At the end, learned counsel for the petitioner submits that even the Appellate Authority has exceeded its jurisdiction while considering the material, which was not part of the charge-sheet and no inquiry was conducted pertaining to that charge. The order of removal is violative of principles of natural justice as well as Articles 14 and 16 of the constitution of India as fair opportunity

was not given to the petitioner to defend himself. Learned counsel for the petitioner has also relied upon judgments of this Court in **CWP No.2413 of 2008 titled as Const. Kulbir Singh vs. State of Haryana and others, decided on 28.09.2011, Ramesh Kumar vs. State of Haryana and others, 2006(4) RSJ 236, Mahipat vs. State of Haryana, 1994(3) RSJ 132, State of Haryana vs. Khazan Singh, 2005(3) PLR 464, Ex. H.C. Hari Kishan vs. State of Haryana, 2000 (1) SCT 1112** as well as judgments of Hon'ble the Supreme Court in **Smt. Kanak and anr. vs. U.P. Avas Evam Vikas Parishad and ors., 2003(4) RCR (Civil) 562** and **Joginder Singh vs. Union Territory of Chandigarh and others, 2015(1) SCT 87** in support of his contentions.

Learned State counsel opposes the submissions made by learned counsel for the petitioner by raising a preliminary objection that the petitioner has not availed the remedy of filing the revision petition and as such, the present writ petition is not maintainable. Learned State counsel further submits that the departmental inquiry was conducted in accordance with the rules and the procedure. The Superintendent of Police, Yamuna Nagar had gone through the evidence, reply filed by the petitioner as well as the facts explained by the petitioner during personal hearing and agreed with the inquiry report that the petitioner had committed gravest misconduct. The petitioner was indulged in serious offences as he was having links with the criminals against whom cases of robbery, dacoity and drug smuggling were there. Learned State counsel also submits that the

impugned order of removal from service cannot be challenged only on the ground that the petitioner has been discharged in the criminal case by giving benefit of Section 25 of the Evidence Act. The technical rule with regard to sufficiency of evidence does not apply to a departmental inquiry. The rule of evidence applicable to the departmental proceedings is not the same as of trial in a criminal case. The departmental inquiry is to be guided by rules of equity and natural justice and is not bound by the formal rules of evidence.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as other documents available on the file.

Admittedly, the petitioner was discharged by the trial Court vide its judgment dated 27.09.2008 as no case was made out against him. It is also not disputed that the judgment of discharge was never challenged by the respondent-State as no appeal against judgment of acquittal was filed. Meaning thereby, the judgment of discharge had attained finality. In the departmental proceedings, a charge-sheet was issued and the inquiry was conducted wherein it was found by the Inquiry Officer that the petitioner was having links with other criminals. A show cause notice was also issued before passing of order of removal from service. Thereafter, the impugned order of removal dated 10.04.2009 was passed, which has been challenged in the present writ petition.

In the inquiry report, simply it was mentioned that the petitioner was having links with some criminals but no such evidence

had come in the inquiry. It has also been argued by learned State counsel that two FIRs were registered at Police Station City, Yamuna Nagar but the same were not the subject matter of charge-sheet. The service record of the petitioner was found to be satisfactory as no adverse remarks were ever conveyed to him.

Rule 16.24 of the Punjab Police Rules, 1934 provides procedure for departmental inquiry. Rule 16.24(1)(v) is relevant for deciding the controversy in the present case, which is reproduced as under: -

“16.24(1)(v). The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, in no case exceeding forty-eight hours, to prepare a list of such witnesses, together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witnesses whose evidence he considers will be irrelevant or unnecessary in regard to the specific charge framed. He shall record the statements of those defence witnesses whom he decided to admit in the presence of the accused, who shall be allowed to address questions to them, the answers to which shall be recorded; provided that the enquiring officer may cause to be recorded by any other police officer superior in rank to the accused the statement of any such witness whose presence cannot be secured without undue delay or inconvenience, and may bring such statement on to the record. The accused may file documentary evidence and may for this

purpose be allowed access to such files and papers except such as form part of the record of the confidential office of the Superintendent of Police, as the enquiring officer deems fit. The supply of copies of documents to the accused shall be subject to the ordinary rules regarding copying fees.”

On plain reading of said rule, it is clear that the intention of the rule making authority and the principles of natural justice is to give an opportunity to the delinquent to lead evidence. The delinquent is duty bound to give list of witnesses with summary of facts to testify. The Inquiry Officer is also empowered to refuse to hear any witness or not to consider irrelevant or unnecessary evidence of the witnesses in relation to specific charges. Thereafter, the Inquiry Officer is bound to record the statements of defence witnesses in the presence of the delinquent, who may put questions to them. The Inquiry Officer is also authorized to get the statement recorded by other officer of the witnesses whose presence is not secured.

Undisputedly, each case has to be considered on its own facts and circumstances but it can be held that the delinquent is responsible for producing his defence witnesses. Fairness in procedure is the watch word of the principles of natural justice.

In the present case, Rule 16.2 of the Punjab Police Rules, 1934 is relevant, which is reproduced as under: -

“16.2. Dismissal – Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct

proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.”

On plain reading of Rule 16.2, it emerges that the order of dismissal from service is to be passed after finding that the act of misconduct attributed to the delinquent is of gravest nature or there is a cumulative effect of continuous misconduct proving incorrigibility and complete unfitness for the police service. The authorities before awarding the severest punishment of dismissal from service is to take into consideration or give due regard to the length of service of the delinquent. There is nothing on record to show that the Punishing Authority or the Appellate Authority has taken into consideration the total length of service either specifically or impliedly. Even there is nothing on record to show that the Punishing Authority has taken into consideration the length of service while awarding the punishment. This view has been supported in **The Punjab State and another vs. Balwant Singh Ex. Constable 1989(4) SLR 105** wherein it was observed that after taking into consideration the various judgments, the punishing authority has to take into consideration the complete unfitness of the delinquent for police service, the length of service, incorrigibility and claim to the pension. The authorities cannot be oblivious to the provisions of Rule 16.2 which is in the nature of command to the disciplinary authority while awarding punishment of dismissal. Similar view has been taken by this Court in **State of Haryana through Collector, Hissar and another vs. Lachman**

Singh, 1992(2) RSJ 398, Bhim Singh vs. Haryana State etc. relied upon in **Mahipat's case (supra)**.

Rule 16.3 of the Punjab Police Rules, 1934 is also relevant to show that in case of acquittal by criminal Court, the department has no power to punish the delinquent employee and the same is reproduced as under: -

“When a Police Officer has been tried and acquitted by a criminal Court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless:

*(a) ** ***** ** ** ** ***

(b) in the opinion of the court or of the Superintendent of Police, the prosecution witnesses have been won over, or

*** *** ***** ***** ***”

From perusal of above said rule, it is apparent that the delinquent employee can not be punished departmentally in case, he is acquitted by the Court after winning over the prosecution witnesses.

In the present case, the petitioner has been discharged on the basis of allegations levelled in the charge and that judgment of discharge has not been challenged by the respondent-State. The Punishing Authority has punished the petitioner after his discharge by the criminal Court. Rule 16.3 itself precludes a departmental inquiry after a police officer has been acquitted by a criminal Court except in a few situations set out in Clause (a) and (e).

Undisputedly, no evidence has been placed on record to

show that he was having links with criminals. The Inquiry Officer has recorded a finding but without having any material or evidence. It may not be fair to punish an employee only on the basis of mere statement.

Undisputedly, this is a case of no evidence as such, no finding has been recorded by the Inquiry Officer except mere mentioning that he was having links with criminals. The Punishing Authority agreed with the Enquiry Officer and has imposed punishment. Similarly, the Appellate Authority has also not considered the submissions raised by the petitioner.

Accordingly, the writ petition is allowed and order of removal from service dated 10.04.2009 (Annexure P-5) as well as order passed by the Appellate Authority dated 09.06.2009 (Annexure P-7) are hereby set-aside.

Since the petitioner has not worked during these years and to balance the equities between the parties, he is not held entitled to back wages for the period he has remained out of service.

17.07.2015
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(DAYA CHAUDHARY)
JUDGE