

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

CWP 11855 of 2015

DATE OF DECISION :- October 06, 2015

**Chandigarh Police through Inspector General of Police, Police
Headquarters, Chandigarh Administration, Chandigarh.**

...Petitioner

Versus

**Central Administrative Tribunal, Chandigarh Bench, U.T.,
Chandigarh and another.**

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. B.S. Randhawa, Advocate for the petitioner.

Mr. Sanjeev Pandit, Advocate for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. De novo inquiry ordered by the Senior Superintendent of Police, U.T., Chandigarh as against the 2nd respondent in the aftermath of the acquittal recorded in the criminal case faced him and the inquiry report exonerating him from the charges was challenged before the

learned Central Administrative Tribunal, Chandigarh Bench. The learned Tribunal quashed the impugned order passed by the Disciplinary Authority directing de novo inquiry as against the 2nd respondent. The Chandigarh Police through Inspector General of Police has challenged the said order passed by the learned Tribunal.

2. The 2nd respondent, who was serving as an Inspector under the petitioner faced trial in a case under Sections 147, 148, 149, 342, 382 and 506 of the Indian Penal Code. He was acquitted of the above charges in the trial conducted by the Criminal Court. Departmental inquiry was initiated as against the 2nd respondent. Sh. R.C. Meena was appointed as an Inquiry Officer, who submitted a report on 13.12.2013 exonerating the 2nd respondent from the charges. The Disciplinary Authority passed an order on 24.2.2014 directing de novo inquiry as against the 2nd respondent.

3. It was contended by the counsel for the petitioner citing Rule 16.3 of Punjab Police Rules, 1934 and the judgment of acquittal recorded by the competent Criminal Court that the petitioner has rightly initiated disciplinary proceedings as against the 2nd respondent. As an exceptional circumstance to initiate proceedings has arisen on account of the fact that material prosecution witness had been won over during the course of criminal trial, the decision taken by the Disciplinary Authority cannot be upset in the guise of judicial review, it was further submitted on the side of the petitioner.

4. It was contended by the counsel for the 2nd respondent referring to Rule 16.3 of the Punjab Police Rules, 1934, that no

departmental inquiry could be conducted as against an employee who faced criminal case and received a judgment of acquittal except in certain exceptional circumstances enumerated thereunder. It is further contended that the charge framed as against the 2nd respondent suffers from illegality as the exceptional circumstances under which departmental proceedings were initiated against him were not specifically brought to his notice. The last contention is that disciplinary Authority jumped to a conclusion that de novo inquiry was warranted without any reason assigned by him to differ from the conclusion arrived at by the Inquiry Officer that it was a fit case for exoneration of the 2nd respondent from the disciplinary proceedings.

5. The fact remains that the 2nd respondent who faced criminal trial in F.I.R. No. 482 dated 14.11.2011 under Sections 147, 148, 149, 342, 382 and 506 of the Indian Penal Code was acquitted of all the charges. Of course, on a careful perusal of the judgment of acquittal recorded by the Criminal Court, it is found that the material witness had turned hostile and declined thereby to support the case of the prosecution.

6. Rule 16.3 of the 1934 Rules imposes an embargo to initiate disciplinary proceedings as against an employee who was acquitted on the same charge or on a different charge upon the evidence cited in the criminal case. Though departmental proceeding cannot be initiated under such circumstances, an exception has been incorporated thereunder. One of the exceptions would read that disciplinary proceedings can be initiated on the same charge in a case where in the

opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over.

7. Admittedly, charges have been framed and served upon the 2nd respondent by the petitioner only after the 2nd respondent was acquitted in the criminal case. A right under Rule 16.3 of the 1934 Rules had accrued to the benefit of the 2nd respondent and as a result of which, no disciplinary proceedings on the very same charge could be initiated against him. But if the department has thought it fit to initiate departmental proceedings on the very same charges, it should specifically mention in the charges framed as against the delinquent in the departmental proceedings that disciplinary proceedings had been warranted as the prosecution witness in the criminal case had been won over either in the opinion of the Court or in the opinion of the Superintendent of Police. In other words, an employee who has been charge sheeted under an exception provided under the above Rules, is entitled to know under what specific exception he has been charge sheeted in the departmental proceedings despite an embargo found in the Rules in his favour.

8. On a careful perusal of the charge formulated as against the 2nd respondent, we find that there is no reference to the exceptional circumstances under which the 2nd respondent was departmentally proceeded upon the same set of charges he was prosecuted before the Criminal Court. Such a procedural impropriety committed by the department calls for judicial review of the action initiated as against the 2nd respondent.

9. Further, the accused is presumed to be innocent till he is convicted of the charges. His innocence is further strengthened by the acquittal recorded by the trial Court. The Inquiry Officer in the instant case had also concluded that it was a fit case to exonerate the 2nd respondent from the departmental proceedings. The innocence of the 2nd respondent had been reiterated not only by the Court of Law but also by the Inquiry Officer appointed by the Disciplinary Authority. Under such circumstances, the innocence of 2nd respondent reinforced as stated above cannot be lightly dealt with by the disciplinary Authority by ordering de novo inquiry without assigning any reason therefor.

10. Surprisingly, no reason was assigned by the Disciplinary Authority while registering dissenting view before ordering de novo inquiry as against the 2nd respondent. As rightly pointed out by learned counsel appearing for the respondents, the impugned order passed by the Disciplinary Authority directing de novo inquiry suffers miserably from non application of mind.

11. Under such circumstances, we are of the view that there is no merit in the Writ Petition and, therefore, it stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

October 06, 2015

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