

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.2123 of 2013 (O&M)
Date of Decision:- 01.04.2015.

Katar Singh

.....Appellant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Dr. Suresh Kumar Redhu, Advocate for the appellant.

Mr. R.D. Sharma, DAG, Haryana.

P.B. BAJANTHRI, J.

The appellant has questioned the validity of the order dated 16.08.2013, passed in CWP No.17818 of 2013.

The appellant has also filed an application for condonation of delay in filing of aforesaid LPA. The delay of about 71 days in filing the LPA is condoned for the reasons mentioned in the application.

The facts of the case are that the appellant joined service as Constable on 1.11.1989. On 22.01.2009, an FIR was registered

bearing No.25 under Section 15 of the NDPS Act at Murthal Police Station, on the allegations that he was selling poppy straw at Satnam Dhaba, GT Road, Murthal to truck drivers and other customers. Arising out of the aforesaid alleged misdeeds, the appellant was placed under suspension on 24.01.2009. At the same time, disciplinary proceedings were initiated by appointing Deputy Superintendent of Police, City, Sonapat as Inquiring Authority. In the criminal proceedings, he was acquitted on 07.02.2011. Whereas in the disciplinary proceedings, the Inquiring Authority held that the charges levelled against the appellant were proved. To that extent, an inquiring officer's report was submitted to the disciplinary authority. The disciplinary authority after following due procedure on receipt of the Inquiring Officer's report imposed the penalty on the appellant, namely, stoppage of two future annual increments with cumulative effect. Feeling aggrieved by the order of penalty, appellant preferred the appeal before the Appellate Authority contending that he has been acquitted in the criminal proceedings. The same has not been taken into consideration by the disciplinary authority. That apart, he contended that unnecessarily, he has been implicated in a false case relating to transaction of poppy straw. The Appellate Authority rejected the appeal on 04.03.2012. Consequently, the appellant preferred a revision petition and the same was rejected on 10.12.2012. Aggrieved by the orders of the disciplinary authority, the Appellate Authority and revisional authority,

the appellant preferred Civil Writ Petition No.17818 of 2013.

On 16.08.2013, the learned Single Judge rejected the CWP No.17818 of 2013 while upholding the impugned orders which were the subject matter of aforesaid CWP. The learned Single Judge considered each of the contentions urged by the appellant. The learned Single Judge also appreciated how the appellant was acquitted in the criminal case. In other words, the Investigation Officer and one SHO Ram Phal did not assist properly in the matter. The said factual aspect has been taken note by the trial Court. Certain remarks have been passed against the Investigation Officer and so also SHO Ram Phal. The learned Single Judge extracted the Order of the Special Judge and he is of the view that the appellant has not been acquitted of the criminal charge on merit and he had been acquitted "due to not giving proper evidence by the prosecution witness before the Court". It was also noticed that appellant was acquitted by giving benefit of doubt and not having secured honourable acquittal is not entirely correct. Thus, the learned Single Judge dismissed the petition.

In support of the appeal, the appellant counsel vehemently contended that the appellant has been falsely implicated for the offences under Section 15 of the NDPS Act and it is also evident from the fact that the appellant has been acquitted of the charges in the criminal proceedings. He further contended that the official respondents have not passed speaking orders and there is a

violation of principle of natural justice in passing the orders. It was also contended that evidence adduced in the disciplinary proceedings have not been taken into consideration by the official respondents. The other contention is that sanction from District Magistrate has not been taken under PPR 16.38 which was mandatory.

The appellant's learned counsel relied on the following judgments:-

1. *G.M. Tank Vs. State of Gujarat and Another* 2006(3) RCR (Criminal) 251.
2. *Joginder Singh Vs. Union Territory of Chandigarh and others* 2015(1) SCT 87.
3. *Shiv Kumar Goel, Vs. State of Haryana and Another* 2007 (1) SCT 739.
4. *Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam and another* 2005(1) SCT 576.

Per contra, it was submitted on behalf of the respondents that disciplinary proceedings and criminal proceedings are two separate and independent proceedings as held by the Apex Court in number of cases, therefore, reliance on the cited judgments by the appellant's counsel are not at all relevant to the facts of the present case.

The judgments relied upon by the appellant have been considered and distinguished by the Apex Court in the case of **West**

Bengal Vs. Sankar Ghosh reported in (2014)3 SCC 610. Facts of the each case may differ. Therefore, there is no application of those cited precedents to the present case. The appellant failed to furnish necessary materials relating to charges framed in the criminal proceedings and charges framed in disciplinary proceedings are identical and so also evidence adduced by the witnesses are same. In the absence of the aforesaid material information, the appellant cannot contend that he has been acquitted in the criminal proceedings, therefore, he is entitled to be exonerated in the disciplinary proceedings as well. At this stage, it is relevant to submit that criminal proceedings are initiated against a person for the offences alleged to have committed under NDPS Act read with procedural laws, whereas, in the disciplinary proceedings, employee is charged for the alleged misconduct committed as a public servant. These are two different and independent proceedings.

The appellant counsel heavily relied on the acquittal in the criminal proceedings as recorded by the Special Judge in the trial Court as well as same was taken note by the learned Single Judge. It is evident that the appellant has not been acquitted honourably. The other contention of the appellant that orders of the official respondents are not speaking and evidence adduced by the prosecution witnesses and witnesses have not been taken note by the official respondents are vague contentions. In other words, the specific contentions with reference to the factual aspects has not

been urged, therefore, the aforesaid contentions are not at all tenable.

Insofar as obtaining sanction from District Magistrate under P.P.R. 16.38 is concerned, it is not at all relevant and it is directory in nature. Moreover, the said clause is not applicable to the present case. The aforesaid contention thus is liable to be rejected.

The appellant counsel has not specifically pointed out any error or violation of provisions of law in initiation and concluding the disciplinary proceedings. Since judicial review is limited in a disciplinary proceedings, we decline to interfere with orders passed in the disciplinary proceedings. Thus, the appellant counsel has not made out a case so as to interfere with the orders of the official respondents in the disciplinary proceedings and so also of the learned Single Judge.

Accordingly, the appeal is dismissed.

No order as to cost.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

April 01, 2015.

sandeep sethi