

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.18689 of 2011

EHC Bambool Ram

... Petitioner

Versus

State of Haryana and others

... Respondents

2. CWP No.17320 of 2015

Ramjan Ansari

... Petitioner

Versus

State of Haryana and others

... Respondents

Date of Decision: 22.08.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Handa, Advocate,
for the petitioner in CWP No.18689 of 2011.

Mr. Sunil K. Nehra, Advocate,
for the petitioner in CWP No.17320 of 2015.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CWP No.18689 of 2011 titled *EHC Bambool Ram v. State of Haryana and others* & CWP No.17320 of 2015 titled *Ramjan Ansari v. State of Haryana and others* as they are interconnected and can be conveniently decided by a common order.

2. Both the petitioners have approached this Court against orders

of dismissal from service. EHC Bambool Ram was arrested in June 2009 in FIR No.179 dated June 11, 2009 registered at Police Station Pehowa on a complaint made by his wife Anita Devi under sections 307/498-A/406/506/323/120-B IPC and sections 25, 54 and 59 of the Arms Act and the petitioner Bambool Ram was arrested and put up for trial on the complaint made by his wife in essentially in origin a matrimonial dispute. The recovery of two country made pistols and ten live cartridges was made from Bambool Ram. During the investigation of the case, Bambool Ram made a disclosure statement before the Investigating Officer that the pistols and ammunitions were purchased by him through Ramjan Ansari, the petitioner in connected CWP No.17320 of 2015. They were both tried in the Court of the learned Additional Sessions Judge (Adhoc) Fast Track Court, Kurukshetra and acquitted by judgment dated July 01, 2010.

3. On securing an acquittal, the petitioners were charge-sheeted by the Police Department and an inquiry was conducted on the same set of allegations as were levelled in the criminal trial. In the inquiry, Bambool Ram produced his wife Anita Devi among others who deposed in favour of her husband Bambool Ram that the FIR was lodged by her on a misunderstanding and no recovery of weapon was made from him. The Inquiry Officer submitted his report dated October 26, 2010 concluding therein that the allegations levelled against the petitioner stood proven.

4. On the basis of the inquiry report, the petitioners were issued show cause notices proposing punishment of dismissal from service. The petitioners submitted replies to the show cause notice but the disciplinary

authority without appreciating the reply and the materials on record, as asserted, merely on the strength of the findings recorded in the report dismissed the petitioner from service vide order dated November 30, 2010. The judgment of acquittal was produced in the inquiry but was ignored. The petitioner's appeal and revision failed. Ramjan Ansari was tried in the same manner. His appeal and revision against the dismissal order was also rejected. They swam and sank together.

5. Against the dismissal orders, the petitioners have approached this Court under Article 226 of the Constitution of India assailing them as illegal and arbitrary.

6. Mr. Nehra submits that the dismissal orders deserve to be set aside in view of Rule 16.3 of the Punjab Police Rules, 1934 as applicable to Haryana. The rule provides the procedure which is to be followed in the case of a Police Officer of the criminal charge who has been tried and acquitted by the criminal court. Once acquitted then he cannot be punished departmentally on the same charge or even on a different charge upon the same evidence produced in the criminal case whether actually led or not. If permitted it would result in double jeopardy which Article 20 (2) of our Constitution prohibits. Rule 16.3 reads as follows:-

“16.3 Action following on a judicial acquittal.

(1) When a Police Officer has been tried and acquitted by a criminal court he shall be 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) The criminal charge has failed on technical grounds; or

(b) In the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) The Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

(d) The evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; or

(e) Additional evidence admissible under rule 16.25(1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of Deputy Inspector-General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

7. Five exceptions have been carved out in Rule 16.3 which provides that action can be taken if in the opinion of the Court or the Superintendent of Police, the prosecution witnesses have been won over. In these two cases the Superintendent of Police did not form any opinion that the prosecution witnesses have been won over in the criminal case and, therefore, the departmental inquiry can proceed in law without hindrance.

8. It is the contention of Mr. Nehra that procedural safeguards in Rule 16.3 have not been followed by the department in the right perspective. The petitioners were acquitted in the present case prior to conclusion of departmental inquiry. He relies on the judgment of this Court

in Khurshid Ahmad v. State of Haryana and others, 2009 (4) SCT 278 to press the legal proposition that acquittal concludes the departmental proceedings. It is contended that the Superintendent of Police committed grave error by accepting the inquiry report submitted by the Inquiry Officer without calling for comments from the petitioner on the inquiry report. This is a major flaw in the proceeding and Mr. Nehra cites the law in Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588 and a judgment of this Court in Ramesh Kumar v. State of Haryana and others, 2006 (3) SCT 799. The petitioner lost valuable right to represent against the findings of the Inquiry Officer against him and was denied an opportunity to convince the punishing authority as to the illegality or irregularities committed by the Inquiry Officer. This Court in *Ramesh Kumar* held that non-supply of inquiry report has to be an independent act and a copy cannot be supplied with the final show cause notice as that would be violative of the principles of natural justice.

9. In reaching the conclusion the Division Bench relied on the Supreme Court judgment in Managing Director, ECIL v. B. Karunakar, (1993) 4 SCC 727. In the present case, with the statement of Anita Devi recorded in the departmental inquiry there was no firm evidence against the petitioner of commission of misconduct and there is no gain-saying that the trial failed with the acquittal of the accused and thus there was nothing left to reflect on, to the detriment of the petitioners. The case, therefore, falls in the category of cases of 'no evidence' rendering the result of dismissal as perverse and legally untenable.

10. The impact of acquittal by the Criminal Court on disciplinary proceedings has been discussed by the Supreme Court in Deputy Inspector General of Police and another v. S.Samuthiram; (2013) 1 SCC 598 holding in para.24 as follows:-

“24. The meaning of the expression ‘honourable acquittal’ came up for consideration before this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal (1994) 1 SCC 541. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions ‘Honourable acquittal’, ‘acquitted of blame’, ‘fully exonerated’ are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression ‘honourably acquitted’. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.” (Flag 4)

11. Mr. Nehra would then rely on Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496 of the necessity of passing a speaking order. It is incumbent on the appellate and revisional authorities to record reasons in support of the conclusion. Insistence of recording of reasons is meant to serve the wise principle of doing justice in as much as justice must not only be done it must also appear to be done. Recording of reasons also operate as a valid restraint on any possible arbitrary exercise of judicial and quasi judicial or even administrative power and this has become

an indispensable part of the decision making process. See basic law propounded in constitution Bench ruling in S.N.Mukherjea v. Union of India, (1990) 4 SCC 594, that there is not only a necessity but a duty to record reasons. It is equally well settled principle of law that judicial review is not directed against the decision but the decision-making process. He submits that for these reasons, the impugned orders from the inquiry report till the revision was declined suffered from lack of cogent and valid reasons to support the extreme punishment of dismissal from service.

12. Reliance is also placed on *Khurshid Ahmad's* case (Supra) that where departmental proceedings in a case are based on identical facts and evidence in both the proceedings is common and employee is acquitted in the criminal case then the said order of acquittal brings the matter to an end and cannot be re-opened. There is no doubt that prosecution witnesses turned hostile. I have read the order of acquittal. PW-1 Anita Devi wife of Bambool Ram resiled from her previous version while appearing as the star witness against the husband in the criminal trial. The Court has noticed that the public prosecutor failed to extract anything favourable to the prosecution from the mouth of the witnesses. In fact, the trial court held that the evidence on record is inconsistent with the hypothesis of the guilt of the accused and on the other hand is consistent with their innocence. The Court has recorded that evidence on record completely exposes the hollowness of the claim of the prosecution. The recovery witnesses were declared hostile and the version put forth by them is intrinsically unreliable and inherently improbable as to what were the telling circumstances to compel the

prosecution witnesses to give such type of statements which completely erode the prosecution case. While appearing in the witness box Anita Devi deposed that her husband neither demanded any dowry or share in the land or in lieu thereof ₹ 10 lacs in cash and nor did he torture her. He never fired any pistol shot upon her nor threatened or caused any injury upon her person. She was declared hostile and the public prosecutor was allowed to cross-examine the witness. She denied her earlier story. She stated that she had not produced any empty cartridge before the police. She was put to lengthy cross-examination but nothing could be elicited from her to establish the guilt of the petitioner. In short, the acquittal was fair and square and the Court did not resort to benefit of doubt. In any case, as explained above, acquittal in any case is always to be read as honorable as explained in *S.Samuthiram*. In these set of facts it would be highly unsafe to sustain and record a finding of grave misconduct.

13. It is argued by the State that evidence of Shamsher Singh was not before the trial Court and, therefore, it cannot be said that both the proceedings rested on the same evidence. Even if there was an element of misconduct it was not in the line of duty. It has no nexus with employment.

14. While we deal with evidence collected in a domestic proceedings or in a Criminal Court the matching cannot be viewed with mathematical precision. If the criminal charge failed there was no reason for the authorities not to have applied Rule 16.3 in the case of the petitioner. The five exceptions in Rule 16.3 do not fit into this case. Ultimately, the criminal charge did not fail on technical grounds. There is no finding in the

judgment of acquittal that prosecution witnesses have been won over. Mere conjectures and surmises will not suffice on the hard pumice stone of Rule 16.3 (b). The Court did not hold in its judgment that the offence was actually committed. In fact, the indication is to the contrary. Therefore, suspicion did not rest its shadow upon the police official concerned. Besides, Rule 16.3 (b) also would not come into play since the evidence in both the proceedings was mostly common and inseparable. Lastly, this is not the case of the department itself that additional evidence under Rule 16.25 (1) in departmental proceedings is available. I am not, therefore, able to persuade or convince myself that any of the exceptions in Rule 16.3 are attracted to the facts of these cases and especially the plea raised by the State that acquittal of the petitioners in the criminal trial was on account of the fact that the witnesses were won over. There was, therefore, no justification in passing the impugned order of dismissal and confirming the same in appeal and revision by orders which are mostly cryptic and colourless and contain no valid or cogent reasons sufficient to justify the conclusion.

15. For all these reasons, I think that intervention of this Court has become necessary to avoid a miscarriage of justice. I can only say that the accused in the dock were policemen being prosecuted by the department in the criminal trial and if they collectively fail to bring home the charge then they must gracefully accept that domestic misconduct was not committed by either of them to support a conclusion that dismissal and dismissal alone was the fair and proper thing to order in the circumstances.

16. Having failed in the trial, the prosecution cannot turn around and become a persecutor and this unholy bent of mind is evident in the rather elaborate order of dismissal passed by the Superintendent of Police, Ambala which contains more mass than reason.

17. Apart from this, there was a grave procedural error committed by the authorities in not supplying a copy of the inquiry report to the delinquents, receiving their replies and then considering the question of punishment. Moreover, the extreme and harsh punishment of dismissal disturbs the conscience of the Court that dismissal should arise out of a matrimonial dispute. To my mind, this is like giving the proverbial dog a bad name and then killing it. Such a harsh punishment would not only deprive the petitioners of their livelihood and right to pension but also inflict untold misery on the innocent family. The dispute was started by the wife and was ended by her appearing in the witness box in the criminal proceedings and in the domestic inquiry removing the base of the charge, both domestic and criminal. If she had no complaint left then it would I think be a travesty of justice to support the order of dismissals which are found neither legal nor valid nor justified. Moreover, punishment of dismissal is far too extreme and out of proportion. The only sustainable question which was serious enough regarding the weapon story has not passed muster of direct evidence at the trial. The rest was private matter which should not have formed subject matter of a domestic enquiry.

18. As a result, these petitions are allowed. The impugned orders are quashed. The petitioners are reinstated to service and held entitled to the

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consequential benefits arising therefrom. The same are directed to be determined and paid within reasonable time, say three months.

(RAJIV NARAIN RAINA)
JUDGE

22.08.2016
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>