

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

LPA No.703 of 2016 (O&M)IN
CWP No.3233 of 2016
Date of decision: 02.05.2016

Nachattar Singh

---Appellant

Versus

State of Punjab and others

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr. Rajeev Anand, Advocate
for the appellant**

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 17.02.2016 of the learned Single Judge, whereby, the writ petition filed by the appellant has been dismissed.

Along with the appeal, an application seeking condonation of 10 days delay in filing the appeal has also been filed. For the reasons stated in the application the same is allowed and the delay of 10 days in filing the appeal is condoned subject to just exceptions.

The appellant was a Warder posted in Central Jail, Bathinda. On 05.05.2012, he was on duty at Tower No.2. On that day, on suspicion, one prisoner namely, Jarnail Singh @ Jaila was searched by the Head Warder Mohan Singh in the presence of the Deputy Superintendent, Jail. 400 pills of Alprax and Lomotil along with four currency notes of ₹500

denomination each were found on his person. A polythene bag containing

150 grams of broken brick was also found. On being asked by the Deputy Superintendent, Jail as to where from he had obtained the same, he stated that on 04.04.2012, the appellant had given him these pills to be supplied in the prison and the money found on his person was to be given to the appellant. He also stated that the appellant was to supply him more pills that day to be sold inside the prison between 12:00 noon to 3.00 pm while he was on duty. After this Kor Singh Deputy Superintendent, Head Warder Mohan Singh and Warder Harbans Lal went to search for the appellant at Tower No.2 from where they recovered 1000 drug pills from pocket of his trouser. FIR No.78 under Sections 22/61/85 of the NDPS 1985 was registered at Police Station Civil Lines, Bathinda against the appellant and Jarnail Singh on 05.05.2012. The appellant was arrested the same day at 5.00 pm and placed under suspension on 08.05.2012.

On 11.09.2012, a departmental enquiry was initiated against him. However, the enquiry was not concluded. Instead the appellant was dismissed from service on 09.04.2013 by invoking Article 311(2) (b) of the Constitution on the ground that it was not reasonably practicable to hold enquiry against him.

Meanwhile, the appellant was acquitted in the criminal case vide judgment dated 12.11.2014 of the Special Judge, Bathinda holding that the prosecution had failed to prove its case beyond reasonable doubt, where after he filed representation claiming reinstatement in service on account of his acquittal. When no decision was taken on the representation, he filed CWP No.19593 of 2014 which was disposed of with a direction to the competent authority to consider and decide his appeal expeditiously.

Punjab passed order dated 7.1.2015, whereby the order dated 9.4.2013 of the Superintendent Headquarter Jail, Ferozepur terminating the services of the appellant was cancelled by declaring it to be illegal. However liberty was given to the Superintendent, Headquarter Jail Ferozepur to initiate disciplinary inquiry within three months. Consequently the appellant was reinstated in service, but the departmental inquiry earlier instituted was restarted. Balkar Singh Bhullar, Deputy Superintendent, Modern Jail, Faridkot was appointed Inquiry Officer to conduct the inquiry. The appellant participated in the enquiry. The charges were proved against him. The report was supplied to him. He was given opportunity of personal hearing. Thereafter he was dismissed from service on 10th June, 2015. His appeal to the Additional Director General of Police (Prisons), Punjab was also dismissed.

Aggrieved, he filed the writ petition which has been dismissed by the impugned order.

Before the Ld. Single Judge primarily the following grounds had been raised and the same have been reiterated in the present appeal:-

- (i) The appellant having been acquitted of the charges in the criminal trial and the termination order dated 9.04.2013 having been set aside by the appellate authority, conducting a second enquiry against him for the same offences amounts to double jeopardy being violative of Article 20(2) of the Constitution.
- (ii) The charges in the criminal trial and the departmental proceedings having arisen out of the same transaction and being based on the same allegations, after his acquittal in the criminal case, departmental action on the same evidence and grounds could not be sustained.

Reliance was placed on the decisions of Hon'ble the Supreme Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another* (1999) 3 SCC 679 and *G.M. Tank v. State of Gujarat and others* (2006) 5 SCC 446.

Ld. Single Judge found no merit in the arguments.

Rejecting the first argument as being fallacious the Ld. Single Judge held that when an order passed under Article 311(2) (b) of the Constitution is faulted either by the Court or a superior administrative authority then the competent authority is never precluded from holding a regular domestic inquiry on the same charges, and can always go into the conduct of an employee on the principles of preponderance of probabilities after holding an inquiry. Though the charges may have failed to meet the standards in a criminal trial, but it does not mean that a disciplinary proceeding would be barred in the same facts and circumstances.

Adverting to the second argument the Ld. Single Judge noted that a perusal of the judgment of the Special Judge, Bathinda reveals that seven prosecution witnesses were produced of which none were produced in the domestic inquiry. In the domestic inquiry, the statements of Mohan Singh, Head Warder, Harbans Singh and Jaswinder Singh, Warders and Balbir Singh, Assistant Superintendent, Central Jail, Bathinda were recorded who were not produced as witnesses in the criminal trial. Thereby the Ld. Single Judge distinguished the judgments in **M. Paul Anthony** and **G.M. Tank** cases by stating that in those cases the same witnesses were produced in the criminal trial and in domestic proceedings. It was not so in the present case as the witnesses in the inquiry were different from those produced in the criminal trial.

The Ld. Single Judge noted that all acquittals by the criminal court are honourable. As long as the government servant facing a disciplinary proceeding is allowed reasonable opportunity to meet the charges against him in a fair and effective manner, he cannot make a grievance in a court of law. Such rights had not been breached in this case.

Ld. Single judge further noted that the evidence in the case was contemporaneous. It could not be presumed that all the official witnesses produced had any personal grudge against the appellant. Nor was such a defence taken. Neither could the findings be held to be perverse nor the punishment of dismissal imposed on the appellant could be said to be disproportionately harsh warranting interference in the exercise of the limited jurisdiction of secondary review .

Accordingly the writ petition was dismissed.

It was, however, held that the dismissal of the writ petition would not preclude the department from considering compulsory retirement in lieu of dismissal in the light of the fact that the appellant was nearing the age of superannuation.

We see no reason to disagree with the findings of the Ld. Single Judge.

Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 02, 2016
Atul