

CWP No. 15047 of 2013 (O&M)

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

CWP No. 15047 of 2013 (O&M)
Date of decision : January 30, 2017

Ishwar Singh,

..... Petitioner

v.

State of Haryana and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. R.K Malik, Sr. Advocate with
Mr. Bhupinder Malik, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG Haryana

Ajay Tewari, J (Oral)

By this writ petition, the petitioner has challenged the order dated 30.7.2013 (Annexure P-11), vide which he has been dismissed from service.

Allegations were that though he was a member of the police force yet he connived with some other persons and committed dacoity. It is not disputed that the petitioner was acquitted in the criminal case by

the trial Court which was upheld upto this Court. In the parallel

departmental proceedings, the petitioner was held guilty. The other similarly situated employees who were also held guilty along with the petitioner in the same inquiry filed CWP No.15207 of 2014, (Vijay Pal and others vs. State of Haryana and others), which was decided on 17.01.2017 and the punishment orders were set aside, and those persons were ordered to be reinstated to service with all consequential benefits flowing therefrom.

Learned senior counsel for the petitioner has argued that the petitioner cannot now be discriminated against because the persons who were accused of the same offence and against whom there was same evidence have been granted the benefit.

Learned AAG Haryana has argued that main plank which weighed with the criminal Court was on the basis of rule 16.3 of the Punjab Police Rules, 1934.

In my opinion, even if the arguments on the basis of rule 16.3 of the PPR are taken out of the equation, the punishment order cannot sustain. Admittedly, the victims had steadfastly refused to identify the petitioner as a dacoit both in the criminal as well as departmental proceedings. Also in both the proceedings they had stated that they had never participated in any test identification parade and, therefore, the assertion that the present petitioner was duly identified was wrong.

Admittedly, this was one of the main reasons on the basis of which the criminal Court refused to accept the test identification parade and consequently acquitted the petitioner.

The contention of learned AAG Haryana is that the standard of proof in a criminal trial being higher than that of departmental proceedings, it was not illegal for the departmental authorities to have accepted the test identification parade and once that was accepted the subsequent exculpation by the victims would still lead to a reasonable conclusion that the petitioner was guilty.

After giving my careful consideration, I regret my inability to agree with this argument of learned AAG Haryana. Had there been some independent evidence that in fact the victims had associated with the test identification parade it would have been a different thing and I may have been in agreement with the argument of learned AAG Haryana, but as the matter stands that is not the case. On the one hand the victims have denied that they had not been associated with the test identification parade and on the other hand there is a statement of the then Superintendent of Police who had got this test identification parade conducted and who testified in its favour. It was open to the department to have proved that notwithstanding their denial, the signatures of the victims appeared in the test identification parade and this could have

been done by examining a handwriting expert. Had that been there, the departmental authorities or the Court may have been justified in coming to the conclusion that there was objective evidence about the test identification parade but in view of the fact that in the present case on one side there is denial by the victims and on the other side there is affirmation by the officer who was incharge of the investigation, it would not be possible for me to come to the conclusion that the statement made by the officer in charge of the investigation would have to be accepted over the statement made by the victims. In the absence of such evidence, the findings of the Inquiry Officer and of the disciplinary authority that the petitioner had won over the victims would only be speculative. In the circumstances agreeing with the decision of this Court in Vijay Pal and others' case (supra), the present writ petition is allowed in the same terms.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

January 30, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No