

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

Date of Decision : 17.05.2017

1. CWP No.17934 of 2015 (O&M)

Ex-Head Constable Dalbir Singh

..... Petitioner

versus

State of Haryana and others

..... Respondents

2. CWP No.17935 of 2015 (O&M)

Ex-Constable Subhash Kumar

..... Petitioner

versus

State of Haryana and others

..... Respondents

3. CWP No.17936 of 2015 (O&M)

Ex-Head Constable Susheel Kumar

..... Petitioner

versus

State of Haryana and others

..... Respondents

4. CWP No.17937 of 2015 (O&M)

Ex-Constable Kuldeep Singh

..... Petitioner

versus

State of Haryana and others

..... Respondents

5. CWP No.24292 of 2015 (O&M)

Ex-ASI Mohd. Ali

..... Petitioner

versus

State of Haryana and others

..... Respondents

6. CWP No.24293 of 2015 (O&M)

Ex-Constable Satpal

..... Petitioner

versus

State of Haryana and others

..... Respondents

7. CWP No.24294 of 2015 (O&M)

Ex-Constable Kanwar Singh

..... Petitioner

versus

State of Haryana and others

..... Respondents

8. CWP No.24295 of 2015 (O&M)

Ex-Constable Lekh Ram

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.K.Malik, Senior Advocate with
Mr. Tejpal Singh Dhull, Advocate
for the petitioner (s).

Mr. Harish Rathee, Sr. DAG, Haryana.

AJAY TEWARI, J.(ORAL)

This is a bunch of eight petitions which are decided by the common order. Though there may be some different grounds and slightly different facts in all the cases yet it is admitted that the essential issue on which they have been ordered to be heard together is the fact that in all the cases the petitioner (s) were Police Officers who were accused in a criminal case and on the same allegations were also proceeded against departmentally. At different stages of the disciplinary proceedings all the petitioner(s) in all the cases were acquitted by the Criminal Court/s. The grouse is that the authorities before whom the departmental proceedings were pending at that time be it disciplinary authority or appellate authority or revisional authority did not consider the impact of Rule 16.3 of the Punjab Police Rules on the case/s.

“Rule 16.3 of the said Rules 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 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.”*

It is the contention of the learned senior counsel appearing on behalf of the petitioner (s) that the authority concerned would have had to apply its mind and come to a reasoned conclusion if any of the exceptions to Rule 16.3 was applicable and then proceed to decide the matter. He has relied upon ***Baljit Singh Vs. State of Haryana and others, 2014 (11) RCR (Civil) 407*** where this Court held as follows :-

“7. In my opinion, the argument of learned counsel for the petitioner carries weight. Once the rule envisages that on acquittal no further action can be taken against the police officer saved for certain exceptions, those exceptions must be recorded and must be put to the delinquent in the show cause notice so that he should respond thereto. For instance, a delinquent may be able to show that he has not won over any witness or that the criminal charge against him has not failed on technical grounds. Thus, a failure to mention any of the exceptions would in my considered opinion be illegal. In the circumstances, the order of dismissal has to be set aside.”

Learned Assistant Advocate General, however, argues that Rule 16.3 is applicable only where an acquittal has come before the initiation of a departmental inquiry. As per her once a departmental inquiry has been initiated there would be no impact of acquittal.

I regret my inability to agree with this contention. It may be noticed that the words used in Rule 16.3 are 'he shall not be punished departmentally'. If what is being said by the learned Assistant Advocate General was correct then it would have been mentioned 'no disciplinary

inquiry shall be initiated against him.' The expression used clearly indicates that if the acquittal occurs at any time before punishment the same has to be considered.

Learned Assistant Advocate General has relied upon ***Constable Pale Ram Vs. State of Haryana and others*** passed in CWP No.24413 of 2012 decided on 14.12.2012. In the said case the chronology of facts would show that the acquittal order had come after the punishment order in the departmental proceedings and consequently this Court held that Rule 16.3 would have no application. In ***EHK Dalbir Singh Vs. State of Haryana and others***, passed in CWP No.17234 of 2009 decided on 11.11.2009, this Court had found that the allegations in the criminal case and the departmental inquiry were different and consequently held Rule 16.3 to be inapplicable. She has further relied upon ***Rohtas Vs. Commissioner of Police, Faridabad and others***, passed in CWP No.14295 of 2013 decided on 09.07.2013 wherein this Court had held that till the date the petition was filed the petitioner had not been acquitted and therefore, Rule 16.3 was held to be not applicable. Consequently none of these judgments would cover the facts.

In my opinion, the more reasonable interpretation would be that whatever be the stage of the disciplinary proceedings, once a police officer is acquitted, the competent authority would have to consider the impact of Rule 16.3 at that point of time. If at that stage, whether it is the original inquiry or the appeal or the revision, the competent authority comes to the conclusion that none of the exceptions mentioned in Rule 16.3 (1) are available it would have to drop the disciplinary proceedings. If on the other

hand the competent authority comes to the conclusion that any or more than one of the exceptions to Rule 16.3 (1) are applicable and records so, then it would be justified for him to proceed further with the departmental proceedings. In this view of the matter in all these cases the order which has been passed after the acquittal of the petitioner concerned is set aside and that very competent authority is directed to proceed in accordance with the judgment in ***Baljit Singh's case (supra)*** which has been quoted above. If there is a case where the disciplinary proceedings were pending at the original stage then the effect of setting aside the punishment order would remain in abeyance till such time as the competent authority has re-determined the issue.

Learned senior counsel for the petitioner(s) states that once the petitions are being allowed on this short ground he does not press the other grounds at this stage. Consequently, these petitions are allowed in the above terms and the competent authority is directed to re-consider the case along with the judgment of acquittal and then proceed further. For this purpose the petitioner(s) would file the necessary representation to the authority concerned who will decide the same by passing a speaking order thereon within three months of the receipt thereof.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

17.05.2017
pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No