

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 24214 of 2015 (O&M)

Date of decision: 21.03.2017

Suraj Bhan

... Petitioner

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Jai Vir Yadav, Advocate for the petitioner.
Mr. Keshav Gupta, AAG Haryana.

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

KULDIP SINGH, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ of certiorari quashing the impugned order dated 07.01.2015 (Annexure-P3) passed by Inspector General of Police (South Range), Rewari, whereby 15% cut in the pension has been imposed and order dated 09.07.2015 (Annexure-P5) passed by Director General of Police, Haryana whereby the appeal has been dismissed.

The petitioner was appointed as ASI in Haryana Police and the promoted to the rank of SI and then further promoted as Inspector. He has challenged the orders dated 07.01.2015 (Annexure-P3) & dated 09.07.2015 (Annexure-P5) vide which 15% cut in the pension has been

imposed and his appeal against impugned order was dismissed. He was booked in an FIR No. 17 dated 07.07.2012 under Sections 7 & 13 of the Prevention of Corruption Act registered at a Police Station, State Vigilance Bureau, Gurgaon. On the same set of allegations, the departmental enquiry was also ordered. It comes out that the Enquiry Officer after following the procedure submitted the enquiry report dated 28.02.2014 (Annexure-P2) holding the petitioner guilty. In the meanwhile, in the criminal trial, the Special Judge, Palwal vide order dated 14.10.2014 (Annexure-P1) acquitted the accused-petitioner, but, thereafter, in the impugned order dated 07.01.2015 (Annexure-P3) punishment was imposed by the Inspector General of Police imposing 15% cut in the pension against which an appeal was preferred and the same was dismissed by Director General of Police, Haryana vide order dated 09.07.2015 (Annexure-P5).

It is stated by the petitioner that once the petitioner get acquitted in the criminal case, he could not be punished departmentally as laid down in Rule 16.3 of Punjab Police Rules as applicable to Haryana and that the order under Rule 2.2 (a) Volume II, Punjab Civil Service Rules applicable to Haryana could not be passed as done by the Appellate Authority.

The respondents in the reply have taken the stand that the petitioner being the member of the disciplined force was responsible for protecting life and property of the citizen of the country but instead of

discharging his duties honestly and sincerely, he himself indulged in crime involving moral turpitude and had tarnished the image of the Police Department. It was further stated that pending the departmental enquiry, petitioner superannuated on 31.01.2014. He has also been acquitted vide judgment dated 14.10.2014 by Special Judge (Palwal). The enquiry officer further considered the evidence on record and submitted the report earlier to the acquittal i.e. on 28.02.2014 holding the petitioner guilty of charges levelled against him. The grave misconduct of the petitioner has been duly proved in the departmental enquiry. The impugned order was passed after hearing the petitioner and taking a lenient view. The order is just and reasonable and there is no illegality in the same.

I have heard learned counsel for the parties and have perused the record carefully.

Learned counsel for the petitioner has relied upon rule 16.3 Punjab Police Rules which is reproduced as under:

*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 honorably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.

The rules suggests that in the departmental proceedings officer can be punished on the same charges, in case the prosecution witnesses have been won over, in the opinion of the Court or of the Superintendent of Police. Admittedly, departmental enquiry was started when petitioner was still in service. Simultaneously, he was being tried by the criminal Court. The perusal of order dated 07.01.2015

(Annexure-P3) shows that in this case, complainant Mukesh Kumar was apparently won over. He turned hostile and did not support the prosecution case. It was for this reason that the demand and acceptance of bribe could not be proved. However, it was proved by the other witnesses that the money was handed over by the accused to the raiding party. Now the question would arise as to whether merely on the basis of acquittal, no punishment order could be passed? The departmental enquiry also shows that there also complainant-Mukesh Kumar did not support the prosecution case. However, other witnesses did prove that when the raid was conducted, the petitioner took out the tainted money of Rs. 10,000/- below his mattress and hand over the same to the raiding party. On the said tainted notes Inspector and Duty Magistrate had already put their signatures and phenolphthalein powder was applied. The shadow witness i.e. Tehsildar was also there and he supported the case of the Department. The standard of proof in the departmental enquiry and criminal trial is not the same. Departmental proceedings can be decided on the basis of preponderance of probabilities whereas in the criminal trial under the Prevention of Corruption Act, the strict rule of 'proof beyond all reasonable doubts' applies and demand and acceptance of bribe must be proved whereas in the departmental proceedings mere recovery of tainted money from an employee coupled with the other circumstances can be a sufficient ground to conclude that the illegal gratification was taken. It is immaterial whether it is proved

or not that the complainant was handed over the said money to employee. This court, otherwise, cannot replace the findings of the Enquiry Officer with its own findings and take a different view. The Enquiry Officer had held that the charges against the petitioner are proved in the present case. The petitioner has not challenged the enquiry report dated 28.02.2014 (Annexure-P2), he has merely challenged the punishment order. While passing the punishment order dated 07.01.2015 (Annexure-P3) note was taken of Rule 16. 3 (1) of the Punjab Police Rules. It is also mentioned that lenient view is taken.

Learned counsel for the petitioner placed his reliance upon the judgment of Madhya Pradesh High Court in **Harinaravan Dubey Khandwa Vs. State of Madhya Pradesh and others, 1975 LIC 1073** which pertains to the charges of murder by the employee of his wife. Another judgment relied upon is **Mohinder Pal Vs. The State of Punjab through Secretary Punjab Home Department, Chandigarh and others, 1987 (2) SLJ 8.** These judgment do not apply to the facts of the present case.

Keeping in view the facts and circumstances of the case, there is no error or illegality in impugned orders. The present petition is dismissed.

(KULDIP SINGH)
JUDGE

21.03.2017

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Whether speaking/non-speaking : Yes/No

Whether reportable : Yes/No

