

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

**Civil Writ Petition No.827 of 2014
Decided on : 16.11.2017**

Dharamveer Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Dr. Suresh Kumar Redhu, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana
for respondents No.1 to 4.

Mr. Sameer S. Tiwari, Advocate for
Mr. Deepender Singh, Advocate for respondent No.5.

G.S. Sandhawalia, J.

The petitioner seeks quashing of the order dated 25.11.2013 (Annexure P-4), whereby the departmental inquiry has been initiated against him for conducting second marriage with Smt. Mukesh @ Krishana without giving divorce from his first wife Smt. Om Lata and one Shri Om Parkash was appointed as Enquiry Officer.

The quashing is sought on the ground that it is violative of Rule 16.3 of the Punjab Police Rules, 1934, which bars departmental inquiry after acquittal in criminal case, apart from the fact that he was exonerated earlier in the departmental inquiry conducted on the same facts.

The petition is liable to be allowed on two grounds; firstly on an earlier occasion a regular departmental inquiry has been initiated in which charge could not be proved against the petitioner, which would be

clear from the letter dated 24.04.1998 (Annexure P-1). Similarly on the second ground, admittedly the petitioner has been acquitted by the Criminal Court in FIR No.107 dated 11.06.1999 on 03.07.2009 (Annexure P-2) before the initiation of the inquiry proceedings vide the impugned order. It is not disputed that even an appeal filed by the State has been dismissed on 31.10.2014 during the pendency of the present writ petition, certified copy of which order is taken on record as Annexure P-9.

The petitioner has averred that he was recruited as a Constable in the Police Department on 14.12.1979 and was promoted to the post of officiating Head Constable on 11.08.1989. It was categorically averred in paragraph No.5 that an departmental inquiry was conducted through Shri Kharaiti Lal, Deputy Superintendent of Police, Telecommunication, in which he was found innocent. The necessary averments read as under:-

“That a departmental enquiry was conducted on the complaint of Smt. Om Lata daughter of Shri Maya Chand resident of Mayyar Tehsil and District Hisar regarding bigamy against the petitioner. The departmental enquiry was conducted through Shri Kharaiti Lal, Deputy Superintendent of Police, Telecommunication in which petitioner was found innocent and the said departmental enquiry was filed by the Superintendent of Police, Telecommunication, Haryana, Panchkula vide memo. No.12505 dated 24.04.1998 and intimation to this effect was sent to the Superintendent of Police, Hisar. Copy of letter dated 24.04.1998 is attached as Annexure P-1.”

The contents of the said paragraph have been admitted by the

respondents, as being a matter of record. Thus, there is no dispute regarding the fact that on an earlier occasion the departmental inquiry had concluded in favour of the petitioner and, therefore, there was no ground to initiate a fresh round of departmental proceedings. The defence is taken by the State in the written statement is that on 04.10.2013 (Annexure R-1), the Inspector General of Police on the complaint of Smt. Om Lata had directed denovo inquiry to be conducted and whether the petitioner has any issue with Smt. Mukesh after verifying the admission certificates of the same.

The stand of the respondents is that a preliminary inquiry was ordered regarding the issue of bigamy on 29.03.2013 and one Shri Devinder Singh had conducted the inquiry. He had exonerated the petitioner as per the preliminary inquiry report dated 10.07.2013. The IGP/Telecom, Haryana had found fresh evidence in the form of school admission forms submitted by the petitioner at the time of admission of his son, namely, Aman Kumar and, therefore, the denovo inquiry was ordered with directions on 04.10.2013 to the said Inquiry Officer to submit his report. The preliminary inquiry dated 05.11.2013 (Annexure R-3), thereafter, had come, on the basis of which the regular departmental inquiry had been ordered on 20.11.2013. Resultantly, it was justified that as per Rule 16.28, there is a power to review the proceedings or may call for the records and review the awards and modify the same.

It is, thus, pertinent to notice that when the preliminary

inquiry was started in March, 2013, acquittal had also taken place on 03.07.2009 (Annexure P-2). In the second preliminary inquiry this aspect has been noticed. However, the fact remains that nowhere the Inspector General of Police has examined this aspect that on an earlier occasion a regular inquiry has already culminated in favour of the petitioner and, therefore, reference to Rule 16.28 is without any basis.

It is, thus, apparent that the respondents failed to keep in mind the fact that a regular inquiry had already been concluded and proceedings as such had been dropped and, therefore, it could not start a denovo enquiry after a period of 15 years.

Reliance can be placed for this principle upon the judgment of the Constitutional Bench of the Apex Court in '**K.R. Deb Vs. Collector of Central Excise, Shillong**' 1971 (2) SCC 102, wherein the Central Civil Services (Classification Control and Appeal) Rules, 1957 were subject matter of consideration. It was, accordingly, held that under Rule 15 there was only provision of one inquiry and if there was no proper inquiry because of some defects, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. The setting aside of the previous inquiry on the ground that the report of the Inquiry Officer did not appeal to the Disciplinary Authority was accordingly held not to be justified, keeping in view the fact that there was power to reconsider the evidence itself. Resultantly, the order of dismissal, which was passed on the strength of the second inquiry was quashed by holding that the Collector was determined to get some officer to report against the

appellant.

Similarly, in the case of '**The State of Assam and another Vs. J.N. Roy Biswas'** 1976 (1) SCC 234, it was held that the exercise cannot be started in the absence of a specific power to review or revise.

The relevant portion reads as under:-

*“4. We may however make it clear that no Government servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be; but once a disciplinary case has closed and the official re-instated, presumably on full exoneration, a chagrined Government cannot re-start the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. For the present, this is theoretical because no such deadly defect is apparent on the record.
Appeal dismissed.”*

Another aspect would be the bar under the provisions of Rule 16.3 of Punjab Police Rules, 1934 as applicable to the State of Haryana. The same reads 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 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 the 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."

A perusal of the above Rule would go on to show that in the present case, the petitioner had been acquitted by the Criminal Court on 03.07.2009 (Annexure P-2), whereas he had been prosecuted alongwith his alleged second wife Mukesh Kumari. In the said case Smt. Om Lata had also appeared and another witness had also been examined to prove the admission forms of Raman Kumar and Aman and in spite of that it had been held that the prosecution had failed to prove the fact of bigamy, fraud or forgery and petitioner was acquitted alongwith his co-accused from the charges levelled against them.

As noticed, the State of Haryana had preferred an appeal which was also noticed by the Officer who conducted the preliminary inquiry on 05.11.2013 (Annexure R-3). The appeal has also been dismissed in favour of the petitioner. Therefore, there is a specific bar

under the Rules as such and the case would not fall under the five exceptional clauses given under the 16.3 (1) and neither this aspect has been taken into consideration by the respondents while ordering second inquiry. Therefore, to start the proposal for punishing the petitioner departmentally on the same charge is not justified.

A similar view was taken by this Court in the case of '**Punjab State through its Collector and another Vs. Ex. Constable Gulzar Singh**' 2012 (3) SCT 579, which has been followed in '**Vijay Pal and others Vs. State of Haryana and others**' 2017 (2) SCT 479, wherein also an inquiry was sought to be conducted after the criminal proceedings ended in an acquittal. It was, accordingly, held that when a judicial verdict had failed to bring the charges, the departmental proceedings could not override such a finding, which pertained to the same incident and charge.

Resultantly, this Court is of the opinion that the order initiating the second departmental proceedings is without jurisdiction and is accordingly quashed.

NOVEMBER 16, 2017

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No