

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

1. **CWP No.19291 of 2015**
Date of Decision:-04.09.2018

Anil Kumar (deceased) through LRs

...Petitioners

Versus

State of Punjab and others

...Respondents

2. **CWP No.20201 of 2015**

Anil Kumar (deceased) through LRs

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present:- Mr. Mandeep K. Sajjan, Advocate
for the petitioner(s).

Ms. Kanica Sachdeva, AAG Punjab.

JITENDRA CHAUHAN J.(Oral)

Vide this common judgment both the aforementioned writ petitions are being disposed of together as common question of law and facts are involved therein. For the sake of brevity, the facts are being taken up from CWP No.19291 of 2015.

Prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of certiorari for quashing the orders dated 30.07.2015 (Annexure P-7) passed by respondent No.3, order dated 21.05.2015 (Annexure P-5) passed by respondent No.4, order dated 02.02.2015 (Annexure P-4) passed by respondent No.5 and order dated 10.3.2011 (Annexure P-1) passed by respondent No.6 whereby penalty of forfeiture of one year approved service with permanent effect for the purpose of annual increment had been imposed. Further prayer has been made to release the arrears of petitioner(s) w.e.f. 03.10.2010 to 21.2.2011 during the period of suspension alongwith 18% interest on delayed payment.

In brief, the petitioner-Anil Kumar was recruited in PAP, 36th Battallion, 2000 as Special Police Officer (SPO) in the respondent-department. The services of the petitioner were governed under the Punjab Civil Services Rules, Constitution of India and Government Instructions issued by the State Government from time to time as per the provisions of Punjab Police Rules and Punjab Police Act. An FIR No.205 dated 03.10.2010 under Sections 454 read with Section 511 and 380 IPC was registered against the petitioner at Police Station City, Ferozepur, on the basis of which the petitioner was placed under suspension vide office order No.29053-61/Steno dated 03.11.2010 and thereafter petitioner was charge-sheeted. It is submitted that without adhering to the facts submitted by the petitioner, the Inquiry Officer concluded the inquiry and made the recommendations for imposing penalty of forfeiture of one year approved

service with permanent effect of annual increment. On the basis of those recommendations, respondent No.6 passed order dated 10.03.2011 (Annexure P-1) whereby a penalty of forfeiture of one year approved service with permanent effect of annual increment was imposed and the period w.e.f. 03.10.2010 to 21.02.2011 was considered as suspension period. In the meantime, the Chief Judicial Magistrate, Ferozepur vide order dated 02.9.2014 (Annexure P-2) acquitted the petitioner. Thereafter, the petitioner preferred an appeal (Annexure P-3) before Deputy Inspector General of Police (Admn.), PAP, Jalandhar Cantt against the order of punishment alongwith copy of the order (Annexure P-2) praying for setting aside the order of penalty and for restoration of the service forfeited and increments withheld and further praying for exonerating him of the charges/allegations against him and for treating the suspension period on duty for all purposes, but his claim was rejected vide order dated 02.2.2015 (Annexure P-4) on the ground of limitation. Aggrieved against the order dated 02.2.2015 (Annexure P-4), the petitioner filed an appeal before the Inspector General of Police, Punjab Armed Police, Jalandhar Cantt, however, the same was dismissed vide order dated 21.5.2015 (Annexure P-5). The petitioner approached respondent No.3 and filed an appeal-cum-mercy petition (Annexure P-6) with a prayer to set aside the above mentioned orders and waive the penalty imposed by respondent No.6 which was sought on the ground of registration of FIR wherein the petitioner stood acquitted vide judgment and order dated 02.9.2014 (Annexure P-2). Respondent No.3 vide order dated 30.7.2015 (Annexure

P-7) dismissed the appeal-cum-mercy petition filed by the petitioner. It is asserted that the respondent-department has misinterpreted Rule 16.32 of the Punjab Police Rules. It was incumbent upon the authorities to decide the appeals on merits by passing a speaking and reasoned order as the petitioner is totally illiterate qua the intricacy of the law of limitation. The respondent-department has also withheld the arrears of suspension allowance despite petitioner being fully entitled to the same as per Rule 7.2 of the Punjab Civil Services Rules, alongwith 18% interest on the delayed payment from the date of its actual payment till realization.

On the other hand, learned State counsel submits that the petitioner is not entitled to claim the relief aforementioned and states that the petitioner while was posted at Chandigarh for security duty, the Senior Superintendent of Police, Ferozepur vide his office Memo No.29962/B dated 19.10.2010 informed the respondents that an FIR No.205 dated 03.10.2010, under Sections 457, 380 and 511 IPC had been registered against the petitioner-Anil Kumar No.36/610, now 75/332, at Police Station City, Ferozepur and was arrested from the spot. She further contends that registration of criminal case against the petitioner and remaining under police custody has damaged the image of police force and the petitioner being a member of disciplined police force has misconducted him. Due to the above serious misconduct, petitioner was placed under suspension vide order No.29053-61/St. Dated 03.11.2010 and Shri Pushpinder Pal Gill, the then Assistant Commandant (now retired) of this Battalion had ordered to conduct a regular departmental inquiry against the petitioner under the rules.

During the enquiry proceedings, the petitioner remained associated throughout the enquiry proceedings and was given ample opportunities to defend his case. Statements of all prosecution witnesses were recorded in his presence and he had signed all these statements and was also allowed to cross-examine the prosecution witnesses. After completing the enquiry proceedings, enquiry officer held the petitioner guilty of charges levelled against him. On the basis of report dated 31.1.2011, show cause notice, bearing No.4419/St. Dated 15.2.2011 proposing the punishment of forfeiture of one year service with permanent effect for increment purpose alongwith finding report was issued to the petitioner and he was directed to submit his written/oral reply within the stipulated period. It was also directed that if he would not submit the reply to show cause notice within the stipulated period, proposed punishment would be imposed upon him. The petitioner received the said show cause notice on 16.2.2011. The petitioner was reinstated by the Deputy Inspector General of Police PAP-2 and Training Punjab Chandigarh vide order No.743/A-3 dated 21.2.2011 without prejudice to the departmental inquiry pending against him. The petitioner submitted written reply to the above said show cause notice on 21.2.2011 and was also heard personally. After considering all the facts of this case as well as enquiry report submitted by the enquiry officer, petitioner was awarded the punishment of forfeiture of one year service with permanent effect for increment purpose as a result of departmental enquiry vide order No.6323-30/Steno dated 10.3.2011 and suspension period with effect from 03.10.2010 to 21.2.2011 was treated as suspension

period. She further submitted that the appeal filed by the petitioner against the order of forfeiture of one year service with permanent effect was rejected by the Deputy Inspector General of Police Admn, PAP, Jalandhar Cantt.-respondent No.5 vide order dated 02.2.2015 (Annexure P-4). His second appeal also stood rejected by respondent No.4 vide order dated 21.5.2015 (Annexure P-5). His third appeal was also rejected by respondent No.3 vide order dated 30.7.2015 (Annexure P-7) respectively being time barred. Learned State counsel submits that it is therefore, the petitioner has no cause of action to file the present civil writ petition.

It is pertinent to mention here that during the pendency of the present petition, petitioner Anil Kumar died and his LR's were brought on record as petitioners to pursue the present petitions.

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

Criminal proceedings and departmental proceedings occupy different domains. The standard of proof in above two proceedings are also different. It is settled law that acquittal in the criminal case would not entitle a delinquent employee to claim benefit thereof in departmental proceedings. Thus, the fact that the petitioner was acquitted in the criminal case does not help the petitioner in departmental proceedings. It is not a case wherein it can be said that there is no evidence available on the record against the petitioner. The standard of proof in disciplinary proceedings is preponderance of probability that petitioner while posted at Chandigarh for security duty then Senior Superintendent of Police, Ferozepur vide his

office memo No.29962/B dated 19.10.2010 informed to the office of answering respondents that case of FIR No.205 dated 03.10.2010, under Sections 457, 380 and 511 IPC, Police Station City, Ferozepur has been registered against Constable Anil Kumar No.36/610 now 75/332 and also arrested from the spot. Sh. Pushpinder Pal Singh Gill then Assistant Commandant (now retired) of the Battalion was ordered to conduct a regular departmental enquiry against the petitioner under rules. The enquiry officer conducted the departmental enquiry as per rules. During the enquiry proceeding petitioner remained associated throughout the enquiry proceeding and he was given ample opportunity to defend his case. All the statements of the prosecution witnesses were recorded in his presence and he has signed all these statements and he was also allowed to cross-examine the statements of prosecution witnesses. After completing the enquiry proceeding enquiry officer held the petitioner guilty of charges levelled against him. The view taken by the disciplinary authority cannot be stated to be perverse. In **Commissioner of Police, New Delhi and another vs. Mehar Singh (2013) 7 SCC 685**, Hon'ble the Supreme Court held as under :-

“19. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal

is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such persons involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

20. We find no substance in the contention that by cancelling the respondents candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of correlation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged

trial, where there is no indication of the witnesses being won over. In R.P. Kapur v. Union of India[11] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

21. The expression honourable acquittal was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal[12], where in somewhat similar fact situation, this Court upheld a banks action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal', 'acquitted of blame' and 'fully exonerated' are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression honourably acquitted. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to

prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

22 to 27. xxx xxx xxx

28. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of

crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand.

29. The Screening Committees proceedings have been assailed as being arbitrary, unguided and unfettered. But, in the present cases, we see no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality (Fuljit Kaur). It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force,

deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but we cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. We expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented.”

Accordingly, in the instant case there is no scope for interference with the order of punishment of forfeiture of one year approved service with permanent effect for the purpose of annual increment. The impugned orders are perfectly legal and valid.

In view of the above, the present petitions being devoid of merits are hereby dismissed.

A photocopy of this order be placed in the files of connected cases.

September 04, 2018
Vijay Asija

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No