

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

CWP No.1550 of 2018 (O&M)

Date of decision: 25.01.2018

Rahul Kumar

...Petitioner(s)

Versus

Director General of Police and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Prateek Sodhi, Advocate for the petitioner(s).

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks issuance of a writ in the nature of certiorari for quashing of impugned order dated 01.09.2017 (Annexure P-4) and order dated 14.11.2017 (Annexure P-6), whereby, the respondents illegally discharged the petitioner from service.

It is asserted that the impugned orders have been passed by misinterpreting Clause-11 of the appointment letter (Annexure P-1), whereby the petitioner was directed to explain as to whether he was ever convicted in any FIR. The petitioner though was an accused in FIR under NDPS Act, however, subsequently, he has been acquitted, vide judgment dated 06.10.2017. In fact, the petitioner has not concealed any fact from the authorities as in the Clause-11 of the appointment letter, it is mentioned that you have never been sentenced in any criminal case, whereas, the petitioner was suffering trial at that time and he was not convicted.

Heard.

Hon'ble the Apex Court in Ajay Kumar Singh Vs. The Flag Officer Commanding-In-Chief and others, 2016(4) RCR (Criminal)

114 has observed as under:-

“22. Acquittal in a criminal case does not entitle a person to automatic reinstatement. In Union of India and Anr. v. Bihari Lal Sidhana (1997) 4 SCC 385, it was held as under:-

5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.

23. Only if the employee had been honourably acquitted, could he make a claim for reinstatement. In the case in hand, the tribunal acquitted the appellant-DK Singh:-(i) as in the case of AK Singh and UK Singh, tribunal disbelieved the identification of appellant-DK Singh by PW- 14 (Manager) and PW-18 (Cashier) and (ii) the weapons that were alleged to have been recovered on

the basis of confession of DK Singh on 12.08.1998 appears to have been photographed on 29.07.1998 by the prosecution, the tribunal thus rejected the prosecution case that weapons, bag and suitcase were recovered on the basis of confession given by DK Singh. Unlike AK Singh and UK Singhs case, DK Singh did not have incriminating fingerprint evidence at the scene of occurrence and DK Singh raised defence plea of alibi. According to DK Singh he was on duty along with four others on aboard Indian Naval Ship, Anjadip on 04.06.1998 from 0900 hours to 1300 hours and then again from 1525 hours to 0740 hours on 05.06.1998. To examine this plea of alibi, the tribunal called for the Duty Ashore Book maintained at INS Anjadip (Original of Ex. P.32). DK Singh claimed that the document entry at Sl. No.53 was tampered with and consequently, tribunal noted that there indeed was some overwriting in Sl. No.53 besides the column for the name of the individual. The tribunal concluded that prosecution had not placed any material on record to show that after finishing his duty at 1300 hours, appellant-DK Singh was allowed to avail off and thus the tribunal concluded that in the absence of evidence that DK Singh was allowed to go off after 1300 hours on 04.06.1998, the benefit of doubt must be afforded to him.

24. The tribunal came to the collective conclusion that no satisfactory evidence had been adduced by the prosecution to sustain the conviction of DK Singh and therefore the tribunal set aside the conviction giving him the benefit of doubt. From a perusal of the impugned judgment, it is clear that the tribunal has acquitted the appellant-DK Singh on the ground that the prosecution has not established the guilt of the accused beyond reasonable doubt. It is not as if, the appellant-DK Singh was honourably acquitted. It is also to be pointed out that as discussed above, that we have taken the view that the identity of the appellants by PW-14 (Manager) and PW-18 (Cashier) is credible and acceptable. Evidence of PW-14 and PW-18 identifying DK Singh as one of the culprits is a factor to be reckoned with while considering the plea of the appellant-DK Singh for reinstatement.

Additionally, it is to be pointed out that as seen from the evidence of K. Rama Krishna Rao-Inspector of Police (PW-17) on 10.06.1998, DK Singh deposited Rs.90,000/- in his bank account No.3395 of SBI BR Township Branch and the explanation of the appellant for this deposit is not convincing. Having regard to our findings on the evidence of PWs 14 and 18, the acquittal of appellant-DK Singh itself becomes a debatable point. However, we do not propose to go into this aspect since the Union of India has not filed any appeal challenging acquittal of DK Singh. Appellant DK Singh who was only granted benefit of doubt cannot seek for reinstatement and the consequential benefits and his appeal is also liable to be dismissed.”

Though the petitioner has been acquitted in the trial, however, the fact remains that the acquittal is not honourable acquittal and it was by extending benefit of doubt, therefore, in view of the ratio of Ajay Kumar Singh's case (supra), the Court feels that such a person is certainly not to be inducted in service. No case for quashing of impugned orders dated 01.09.2017 (Annexure P-4) and 14.11.2017 (Annexure P-6) is made out.

Dismissed.

25.01.2018

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No