

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

CWP-7460-2017

Date of decision-30.04.2018

Raj Kumar

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gagneshwar Walia, Advocate for the petitioner.

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing of the enquiry report dated 10.05.2007 (Annexure P-2/A) and punishment order dated 13.12.2008 (Annexure P-3) passed by respondent No.5 whereby the petitioner was dismissed from service and order dated 19.10.2009 (Annexure P-4) passed by respondent No.4 whereby service appeal filed by the petitioner against the dismissal order was dismissed. Further challenge is to the orders passed by the Revisional authorities, in terms of which order of dismissal has been affirmed.

It is the case of the petitioner that he was involved in a false criminal case and on account thereof, he was suspended from service vide order dated 24.10.2003 (Annexure P-1). The petitioner, after his suspension, was directed to report at Police Lines, where he had been regularly reporting and performing such duties as were assigned to him during this period. The

petitioner was convicted by the Court of Learned JMIC, Amritsar vide judgment dated 20.10.2003. Feeling aggrieved against the judgment, the petitioner preferred an appeal before learned Additional Sessions Judge, Amritsar which was allowed vide judgment dated 26.02.2013 (Annexure P-2) and the petitioner was acquitted of the charges framed against him. In the interregnum, vide order dated 17.05.2008, issued by DIG, Amritsar Border Range, the petitioner was reinstated in service. The petitioner submitted his joining report on 22.05.2008 at Police Station, Majitha. In the year 2006, the petitioner was issued a charge sheet alleging that while being posted at Police Lines, Majitha, he absented himself from duty during the period 21.04.2006 to 04.07.2006, i.e. 75 days and 8 hours. The petitioner filed reply to the charge sheet, however, vide enquiry report dated 10.05.2007 (Annexure P-2/A), the charges were held to be proved against him. The said enquiry report was accepted by respondent No.5 vide order dated 13.12.2008 (Annexure P-3) and the petitioner was dismissed from service. The appeal, revision petition and mercy petition preferred by the petitioner also stood rejected.

Learned counsel refers to Rule 16.2 of the Punjab Police Rules, 1934 (for short 'the Rules') to contend that the respondent/authorities failed to appreciate the provisions in the right perspective as the punishment of dismissal from service is to be awarded in the cases of gravest act of misconduct. The petitioner had already been placed under suspension during the period in question and he had been regularly marking his attendance with the concerned officer. Due to the registration of a false case against him,

which led to his suspension, the petitioner remained under stress and depression and was getting treatment from a private clinic. Therefore, he could not report for marking his attendance for about 75 days. Thus, learned counsel contends that the punishment awarded to the petitioner is disproportionate to the offence alleged to have been committed by him. In support of his assertion, learned counsel placed reliance on judgment passed by a Division Bench of this Court in CWP-725-1993, titled as “**Constable Om Parkash Vs. State of Haryana and others**”, 1995 (3) SCT 170.

I have heard learned counsel for the petitioner and have gone through the case file.

In “**Union Territory, Chandigarh Administration and others Vs. Pradeep Kumar and another**” it was held as under:-

“11. Entering into the police service required a candidate to be of good character, integrity and clean antecedents. [In Commissioner of Police, New Delhi and Another v. Mehar Singh](#) (2013) 7 SCC 685, the respondent was acquitted based on the compromise. This Court held that even though acquittal was based on compromise, it is still open to the Screening Committee to examine the suitability of the candidate and take a decision. Emphasizing upon the importance of character and integrity required for joining police force/discipline force, in Mehar Singh case, this Court held as under:- "23. 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 person's 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.

24. 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 co-relation between a criminal case and a departmental enquiry 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 a 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](#) AIR 1964 SC 787 this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression "honourable acquittal" was considered by this Court in [S. Samuthiram](#) (2013) 1 SCC 598. 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](#) 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 RBI v. Bhopal Singh Panchal (1994) 1 SCC 541, where in somewhat similar fact situation, this Court upheld a bank's 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 the 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 the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.....

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the [Legal Services Authorities Act, 1987](#). We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.....

35. *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 the trust reposed in it and must treat all candidates with an even hand."*

The same principle was reiterated in [State of Madhya Pradesh and Others v. Parvez Khan](#) (2015) 2 SCC 591.

12. *While considering the question of suppression of relevant information or false information in regard to criminal prosecution, arrest or pendency of criminal case(s) against the candidate, in [Avtar Singh v. Union of India and Others](#) (2016) 8 SCC 471, three-Judges Bench of this Court summarized the conclusion in para (38). As per the said decision in para (38.5), "In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to*

consider antecedents, and cannot be compelled to appoint the candidate."

It is the case of the petitioner that he remained absent from duty for about 75 days on account of mental illness caused to him due to registration of criminal case against him. Thus, there is express admission on the part of the petitioner with regard to his being absent without any intimation and/or permission from the competent authority. It has also come in order dated 13.12.2008 (Annexure P-3) that the petitioner admitted his guilt before the disciplinary authority. Moreover, the details of the treatment for alleged mental illness have not come on record. Therefore, the plea raised by him deserves to be rejected. The petitioner being part of a disciplined force was expected to act in a responsible manner. The conduct of the petitioner is unbecoming of a member of the disciplined force. The case cited by the learned counsel is distinguishable on facts.

Thus, in view of the discussion this Court is not inclined to interfere in the impugned order.

Consequently, the present writ petition sans merit, stands dismissed.

(JITENDRA CHAUHAN)
JUDGE

30.04.2018

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