

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

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**RSA-5696-2016 (O&M)
Date of decision:16.03.2018**

Lakhvinder Singh

...Appellant

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sat Narain Yadav, Advocate for the appellant.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellant has challenged the trial as well as appellate courts judgments dated 29.05.2015 and 05.10.2015.

2. Appellant was subjected to disciplinary proceedings and it was concluded in imposing the penalty of dismissal from service on 29.07.2010. Thereafter, he has exhausted the departmental remedy like appeal and revision in which he has suffered orders. Consequently, he has filed civil suit before the trial court. Trial as well as Appellate courts passed order against the appellant. Hence the present appeal.

3. Learned counsel for the appellant vehemently contended that before initiation of inquiry by the competent authority District Magistrate

concurrence is required under Rule 16.38 of Punjab Police Rules, 1935 which is applicable to the State of Haryana. It was further contended that there is no evidence in support of allegation. Thus, it is a case of no evidence.

4. Heard learned counsel for the appellant.

5. Undisputedly, appellant has not challenged the initiation of inquiry namely filing of charge-memo. That apart Rule 16.38 reads as under:-

“Rule 16.38 Criminal offences by police officers and strictures by courts procedure regarding-

(1) Where a preliminary enquiry or investigation into a complaint alleging the commission by an enrolled police officer or a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.”

Rule 16.38 is attracted where respondent department resorted to parallel proceedings like criminal and departmental proceedings. Undisputedly, in the present case no criminal proceeding has been launched against the appellant. Consequently, Rule 16.38 is not at all attracted. Learned counsel for the appellant relied on following decisions:-

1. ***Union of India versus Ram Kishan*** reported in 1971 AIR (SC) 1403
2. ***State of Haryana and others versus Mohinder Singh*** reported

in 2010(7) SLR 423

3. ***The Punjab State through the Secretary to Government of Punjab, Chandigarh and others versus Lachhman Singh, Ex-Constable*** reported in 2010(2) SCT 62

4. ***Delhi Administration and others versus Chanan Shah*** reported in 1969 AIR (SC) 1108.

6. Aforesaid decisions do not distinguish like whether department has taken a decision in respect of judicial prosecution and departmental proceedings since Rule 16.38 first portion is specific that judicial prosecution shall normally follow. Secondly, Superintendent of Police proposed to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained. Undisputedly, disciplinary authority has not invoked first action like taking judicial prosecution so as to obtain concurrence of the District Magistrate for the purpose of departmental action. Supreme Court in the case of ***Nair Service Society versus Dr. T. Beermasthan and others*** reported in (2009)5 SCC 545 in para 48 held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

In view of the aforesaid decision, the decisions cited by the

appellant are distinguishable with reference to language employed in Rule 16.38 (1) of Punjab Police Rules, 1935. That apart as long as charge-memo is not challenged which is the initial stage for obtaining concurrence of the District Magistrate further proceedings cannot be looked into. In other words, appellant has surrendered his right to the disciplinary proceedings pursuant to the framing of charge. Thus, appellant has not made out a case.

7. Accordingly, appeal stands dismissed.

16.03.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No