

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

**CWP NO. 14180 OF 2015
DATE OF DECISION : 27.08.2019**

Hardev Singh

...Petitioner

versus

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rajeev Anand, Advocate,
for the petitioner.

Mr. Rajiv Sharma, Advocate,
for the respondents-UOI.

ARUN MONGA, J. (ORAL)

The petitioner herein, *inter-alia*, seeks quashing of Charge Memo Order dated 08.07.2009 (Annexure P-1), whereby his Commandant has ordered compulsory retirement and further seeks quashing of order dated 07.09.2009 (Annexure P-3) rejecting his appeal.

2. Adverting to the facts first, shorn of unnecessary details, the petitioner, at the relevant time, was serving as a Havildar (Head Constable)/(General Duty). He was deputed by his battalion for convoy protection and while discharging his duties, he was allegedly carrying poppy straw in his sleeping bag. The SHO of Police Station Banihal stopped the vehicle forming part of convoy, when he found the petitioner carrying 6 kgs of poppy straw in his sleeping bag. The petitioner was arrested on

10.01.20109 and taken into police custody. In the criminal appeal/proceedings initiated against the petitioner, he was acquitted vide order dated 30.5.2013 (Annexure P-4) by the trial Court and an appeal preferred against the said acquittal was dismissed by the High Court of Jammu and Kashmir, vide order dated 20.12.2013 (Annexure P-5).

3. I have heard rival contentions of learned counsels and perused the case file along with appended record.

4. Learned counsel for the petitioner argues that on account of acquittal of the petitioner, he was entitled to be taken back in service.

5. Learned counsel for the respondent argues that it is settled position in law that departmental proceedings and criminal proceedings can be conducted on the same set of allegations and one is not the substitute of other. More so, both stand on a different footing and acquittal/exonerating in one, would not necessarily mean that an employee is to be treated as a non-delinquent, unless proved otherwise.

6. In the present case, the petitioner was found in possession of 6 kgs of poppy straw from his sleeping bag, while he was performing duty of convoy protection. Without going into the merits of criminal proceedings where petitioner has been acquitted, though to be noted that he was acquitted merely on the ground of giving him the benefit of doubt, an independent departmental inquiry was conducted, wherein after following due procedure, he was indicted, which led to awarding of punishment

of compulsory retirement from service. Even the appellate order has threadbare gone into the merits of the contentions of petitioner. Having gone through the same, I am in agreement with the reasoning assigned therein.

7. In any case, the settled position in law is that ordinarily this Court should refrain from interfering with the findings in the departmental enquiry recorded by the competent authority in course of departmental proceedings, unless the same suffers from patent absurdity or legal infirmity. This Court would not ordinarily substitute its own findings by re-appreciating the evidence. Neither it is a position in law that acquittal in criminal proceedings, in any manner, is a fetter in the discretion of competent authorities to initiate and rely in departmental proceedings/inquiry report to take action against a delinquent employee, in accordance with law.

8. Looking at the gravity of the charges levelled against the petitioner and the findings of Enquiry Officer, I am not inclined to interfere in extraordinary writ jurisdiction vested under Article 226 of the Constitution of India.

9. The writ petition being devoid of any merit, is accordingly dismissed.

(ARUN MONGA)
JUDGE

AUGUST 27, 2019
shalini/vandana

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No