

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

CWP No. 17987 of 2015

Date of decision: 11.04.2019

Balwinder Singh

.... Petitioner

Versus

State of Punjab & ors.

.... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. GK Mann, Advocate, for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. Anupam Singla, Advocate, for respondents No. 2 to 4.

ARUN MONGA, J.

Petitioner herein, *inter alia*, seeks quashing of an order dated 09.06.2006 (Annexure P-3), vide which he was awarded punishment of dismissal from service.

2. The petitioner was working as a driver with the respondent-Corporation and was tried in a criminal case vide FIR No. 7 dated 06.01.2004 at Amritsar. Consequently, on 15.07.2005, he was convicted and sentenced to undergo imprisonment for a period of six months and to pay a fine of Rs.100/- under Section 15 of the NDPS Act, 1985. Pursuant to his conviction, respondent-Corporation initiated departmental proceedings against him. He was charge-sheeted on 04.05.2006 and later dismissed vide impugned order dated 09.06.2006 (Annexure P-3). Petitioner preferred an appeal against the order of his dismissal before the Additional Managing Director, PRTC, but the same was rejected vide order dated 29.07.2009 (Annexure P-5). He represented to the Managing Director vide representation dated 15.10.2013 (Annexure P-6) but the same was not adverted.

3. Aggrieved by the inaction of the Managing Director of respondent-Corporation, the petitioner approached this Court vide CWP No. 3665 of 2015, resulting in an order, whereby the respondent-Corporation was directed to decide the representation dated 15.10.2013 (Annexure P-16) of the petitioner. In the meanwhile, the petitioner was acquitted vide judgment dated 19.09.2013 (Annexure P-4) passed by this Court in a criminal appeal preferred by him against order of conviction. The M.D. of respondent-Corporation rejected the claim of the petitioner vide order dated 16.07.2015 (Annexure P-8). Hence the present writ petition.

4. Learned counsel for the petitioner contended that the petitioner was implicated in a false case and this Court rightly observed in order dated 19.09.2013 (Annexure P-4) that prosecution failed to prove charges against the petitioner. Relevant paragraph of order/judgment (Annexure P-4) is extracted here-in-below:

“The recovery in the present case is small quantity of 3.6 kg of poppy husk in the evening hours from a bus stand and no effort has been made in this case to join independent witness.

Further after depositing the case property in Malkhana vide entry in Register 19 by the MHC. However, neither the MHC was produced in the Court and nor the record of malkhana was produced in the Court to show the case property and sample in Malkhana till its despatch to C.F.S.L. Since the prosecution has miserably failed to prove the charge framed against the appellant, he deserves to be acquitted.”

5. Learned counsel for the petitioner further submitted that the charges levelled against petitioner were absence from duty, mis-conduct,

him being found in possession of poppy husk and destroying the reputation and name of the Corporation. The entire basis of said charges was registration of FIR against him. As this Court observed that criminal charge was not proved against him, therefore, consequential departmental proceedings as also the dismissal order are unsustainable.

6. It is contended that the charge-sheet issued to the petitioner, was based on the FIR registered against him. Pursuant to the same FIR, he was later convicted. However, once the petitioner was acquitted by this Court in an appeal filed by him, the charges which were the subject matter of inquiry based on the FIR cannot be held established against the petitioner. There is no iota of evidence adduced with regard to his alleged mis-conduct. During inquiry proceedings, four witnesses were examined against the petitioner and none of them stated anything other than his absence from duty on 07.01.2004. No witness either deposed nor even otherwise it was proved that the contraband was in the possession of the petitioner.

7. Despite specific stand of the petitioner that the recovered poppy husk did not relate to him, he was arrested due to mistaken identity. No independent witness was produced to prove the recovery. Inquiry Officer did not delve into the question of possession of poppy husk being with the petitioner. He presumptuously drew upon the trial Court judgment to hold against the petitioner that recovery was effected from him. Therefore, the inquiry report furnished on the basis of trial Court judgment, which was later set aside by this Court, loses its significance.

8. On the other hand, learned counsel for respondents No. 2 to 4 contended that the petitioner had been acquitted in the criminal case

registered against him but it was not the sole ground for termination of his services. The petitioner misled the court by stating that he was charge-sheeted on 04.05.2006. The charge-sheet was infact issued on 14.09.2004 on the multiple allegations of misconduct, registration of criminal case, absence from duty and for lowering the reputation of the respondent-Corporation. Based on these allegations a departmental inquiry was conducted in which the petitioner was indicted and his services were terminated vide order dated 09.06.2006 (Annexure P-3). The inquiry report/departmental proceedings are not under challenge in this petition.

9. It is further stated that the petitioner was acquitted by merely giving him benefit of doubt by this Court. It is settled position of law that acquittal in criminal case would not affect the outcome of the departmental proceedings. The nature of both the proceedings is different and both are governed by different standards of proof. The acquittal of the petitioner in the criminal case, thus would not affect the outcome of the departmental proceedings. He cannot, therefore, claim reinstatement.

10. I have heard learned counsel for the respective parties and have also gone through the pleadings.

11. Learned counsel for the petitioner has relied on a judgment rendered in **Khurshid Ahmad vs. State of Haryana and others**, reported as **2009 (4) SCT 278**, wherein it has been held by Coordinate Bench of this Court that where departmental and criminal proceedings are based on identical facts and evidence in both the proceedings is common and employee is acquitted in the criminal case, then said acquittal order would vitiate the departmental proceedings.

12. On the other hand, learned counsel for the respondent(s) has

relied on a judgment rendered in ***Deputy Inspector General of Police and another vs. S. Samuthiram***, reported as ***2013 (1) SCT 115***, wherein it has been held by Hon'ble the Supreme Court that where acquittal is based on benefit of doubt, no right is conferred on the employee to claim any benefit of the acquittal in departmental proceedings.

13. Having gone through the inquiry report (Annexure P-2), I find that no evidence, let alone independent evidence, was adduced before the inquiry officer on the charge of the petitioner being in possession of poppy husk. Whatever evidence was led, related only to the charge of being absent from duty. The said charge was the consequence of his arrest pursuant to FIR and was beyond the control of the petitioner. The Inquiry Officer, however, indicted him of all the four charges levelled against him. Nothing is mentioned in the inquiry report regarding involvement of petitioner in crime being attributed to him. What is opined by the Inquiry Officer is based on quite an ambiguous and which in fact is more of an exculpatory statement of the petitioner. The relevant portion of the said statement (Annexure P-2) is extracted here-in-below:

“ Worker has made all statement which is on page no.73 Mark A and has confessed everything as mentioned above. But after confessing all things he said this bag was not mine, somebody to take revenge replaced my bag. This is wrong statement made by worker because it is not possible to replace it so soon. Apart from this as above mentioned that answer of the letter which was given by worker on page no. 39 the statement about mark B in this does not match with Mark (A). Above mentioned facts are against worker and prove that he is guilty, because of that the accusation no. 1, 2, 3 & 4 has been proved against worker. Report is

presented.”

14. It is the stand of the respondent that the acquittal in criminal case would not affect the departmental proceedings as both are governed by different standards of proof. But dehors the criminal proceedings, the respondent-Corporation has failed to establish its allegations except the one that petitioner was absent from duty. The fact is that his absence was beyond his control as he was in custody in relation to the case in which he was later on acquitted. Witnesses produced before the Inquiry Officer failed to prove that the petitioner was in possession of the contraband on the relevant day or his absence from duty was intentional. The Inquiry Officer was swayed by the judgment of conviction rendered by the trial Court, which stands reversed by this Court. The Inquiry Officer did not give any cogent reasons for his findings. The inquiry report itself does not, therefore, stand judicial scrutiny.

15. In view of my discussion above and reasoning contained therein, the petition is allowed. Order of dismissal dated 09.06.2006 (Annexure P-3) and order 29.07.2009 (Annexure P-5), passed by the Appellate Authority and order dated 16.07.2015 (Annexure P-8), passed by Managing Director, PRTC, Patiala, upholding the dismissal of the petitioner are set aside. It is directed that the respondents shall pass a fresh speaking order within 3 months from the date of receipt of certified copy of this order, by considering the representation of the petitioner for reinstatement, in view of his acquittal in the criminal case and in the light of observation made by this Court above.

April 11, 2019
smriti/R

(ARUN MONGA)
JUDGE

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