

CWP No.7794 of 2018

ANKUR GOYAL
2019.10.29 17:01
I attest to the accuracy and
authenticity of this document
--1--

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

**CWP No.7794 of 2018
DECIDED ON: 16.10.2019**

Ex. HC (GD) SURENDER SINGH

..PETITIONER

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. K.S. Nalwa, Advocate, for the petitioner.

Mr. Amit Arora, Advocate, for respondents No.1 to 5.

ARUN MONGA, J.

Inter alia, issuance of a writ in the nature of certiorari to quash order dated 02.12.2009 (Annexure P-2), whereby the petitioner was dismissed from service, has been sought herein. The said dismissal order was in turn upheld by an appellate order dated 07.01.2015 (Annexure P-5) and revisional order dated 08.06.2016 (Annexure P-7), respectively, which are also impugned herein.

2. Petitioner had served as Head Constable with CRPF for a period of 26 years with unblemished service record. Throughout his service, not a single penalty, major or minor, was ever awarded to him. While he was posted at Kishtwar (Jammu and Kashmir), his colleague Head Constable/GD Bani Singh died on 09.05.2009 due to firing at 74th Battalion CRPF. It was alleged that said Bani Singh died due to gun shot injuries from the service revolver of the petitioner. An FIR No.64 was registered under Section 302

CWP No.7794 of 2018

IPC which led to arrest of the petitioner resulting in his suspension from service.

3. Apart from the criminal proceedings, departmental proceedings were also initiated and the petitioner was charge-sheeted on the charge of having used criminal force on his associate and misuse of his service revolver and ammunition. The petitioner was also charged with misconduct of having acted against orders and causing indiscipline in the Force. The departmental proceedings led to passing of punishment order dated 02.12.2009, assailed herein, whereby he was dismissed from service.

4. On the other hand, the petitioner was acquitted in the criminal case vide Sessions Court judgment dated 14.05.2013 (Annexure P-3) for want of evidence as no witness supported the prosecution case. An appeal filed by the prosecution was also dismissed by the High Court of Jammu and Kashmir vide its judgment dated 11.12.2013. Despite the acquittal of the petitioner, the Appellate Authority upheld the departmental punishment vide impugned order dated 07.01.2015 (Annexure P-5) observing that (a) in criminal trial strict proof of charge is required to convict a person, whereas in the departmental inquiry, the charges are proved on the basis of preponderance of probabilities; (b) there is no place in police service for those who have faced criminal charges even if they are acquitted/discharged subsequently as held by the Hon'ble Supreme Court in case titled as ***State of Madhya Pradesh and others vs. Parvez Khan, reported as 2015 (2) SCC, 591***. The revisional authority affirmed the appellate order and hence the writ petition.

5. In the return filed by the respondents dismissal of the writ petition has been sought on the ground that there is no infirmity in the impugned orders. It is further stated that as on the date of awarding the punishment to

CWP No.7794 of 2018

the petitioner, there was no acquittal order in the criminal proceedings, which is now being relied upon by the petitioner. The dismissal order is dated 02.12.2009 (Annexure P-2) and the acquittal judgment is dated 14.05.2013 (Annexure P-3).

6. Writ is further resisted on the ground that mere acquittal of the petitioner would not entitle him to seek benefit of reinstatement into service particularly when he has been acquitted by giving benefit of doubt since the material prosecution witnesses turned hostile.

7. I have heard the rival contentions of the learned counsel appearing for the respective parties and perused the pleadings along with relevant record.

8. Before advertng on the merits of the case, it would be apposite to reproduce the relevant Rule 27(6) (ccc) of Central Reserve Police Force Rules, 1955:

“(ccc) When a member of the Force has been tried and acquitted by a criminal court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not except with the prior sanction of the Inspector General.”

9. A perusal of the above leaves no manner of doubt that when a member of Force has been tried and acquitted by a criminal Court, he shall not be punished departmentally on the same charge or on a similar charge based on the evidence cited in the criminal case except with the prior sanction of the Inspector General.

10. Concededly in the present case, prior sanction of Inspector

CWP No.7794 of 2018

General has not been sought. What is required to be seen foremost is, whether prior sanction of Inspector General was at all required. For that, one would have to necessarily see if the petitioner has been punished departmentally on the same charge or similar relying on the evidence cited in the criminal case.

11. A joint perusal of charge-sheet dated 25.07.2009 and dismissal order dated 02.12.2009 reveals that charge sheet was served on 24.07.2009 as stated in para 4 of the dismissal order, even though it is dated 25.07.2009. The same though may not be very relevant, but it is definitely a reflection of hasty manner in which departmental proceedings have been conducted. Further, as per the dismissal order, statements of 08 persons were recorded in the departmental proceedings wherein, prosecution witness No.4 Sub-Inspector Sudarshan Kumar, an eye-witness of the alleged incident of firing, appeared. He was also prosecution witness No.9 in the criminal case. The said witness in the criminal case deposed that he is not the eye-witness and had not seen as to who had fired at the deceased.

12. While on the other hand, punishment order, vide para 6(b) thereof, relies on the testimony of the said Sudarshan Kumar as an eye witness, to uphold the charge of misuse of weapon in course of performing Government duties. Relying on the statement of Sudarshan Kumar, the punishing authority observed that it is clear that petitioner has committed violation of provisions of Central Reserve Police Force Act, 1949. As a whole, what emerges thus is that the punishment order seems to have been based on the same or similar evidence that was led in the criminal case. In such a situation, prior sanction of the Inspector General was indeed required.

13. Even otherwise, I am of the opinion that once the petitioner was acquitted in the criminal proceedings, it was incumbent on the Punishing Authority/Appellate Authority to look into the acquittal judgment passed by the Sessions Court as, upheld by the High Court of Jammu and Kashmir, to ascertain whether the conduct of the petitioner was of such a nature as would amount to moral turpitude impinging on the nature of his duties to be performed by him while in service. There is no such finding given by the Appellate Authority and/or the revisional authority while upholding that the petitioner is not entitled to the benefit of acquittal in criminal proceedings.

14. The Apex Court in ***G.M. Tank vs. State of Gujarat and others, reported as 2006 (5) SCC 446***, held that when in a departmental inquiry, an employee was held guilty and dismissed from service, however, in the criminal proceedings, he was acquitted then as a consequence, his dismissal order is not sustainable. The Hon'ble Supreme Court observed in para 21 thus:

“....Likewise, the criminal proceedings were initiated against the appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.”

15. Every acquittal is honourable acquittal. There is nothing in the Criminal Procedure Code nor is there any rule of criminal jurisprudence for treating the effects and consequences of an honourable acquittal from an

acquittal on failure of the prosecution to prove the case beyond reasonable doubt.

16. A Division Bench of this Court in a case titled as ***Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) SCT 576*** relying in turn on another Division Bench of Madras High Court has held that the terms '*honourable acquittal*' or '*fully exonerated*' are unknown in the Criminal Jurisprudence. His Lordship S.S.Nijjar, J. (as he then was of this Court) speaking for the Division Bench observed as below:-

“7. In any event, the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India Vs. Jayaram, AIR 1960 Madras 325. Rajammannar, C.J. Delivering the judgment of the Division Bench observed as under:-

There is no conception like “honourable acquittal” in Criminal Procedure Code The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental Inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the

period of his suspension. To such a case Article 193 (b) does not apply.”

17. Therefore, in view of above enunciation of law, I am of the view that the Appellate as well as Revisional Authorities have erred in dismissing the appeal as well as revision of the petitioner and the impugned orders are not sustainable in the eye of law.

18. Not only this, awarding of major punishment of dismissal from service is akin to economic death penalty for a delinquent employee and it has to be resorted with extra caution. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury and made to suffer consequences for rest of their lives. Learned Brother Kalyan Jyoti Sengupta, J. of Calcutta High Court in Union of India & Ors. Vs. Sri Sankar Prosad Ghosh & Anr. 2008(5) SLR 170, speaking for the Division Bench, rightly observed as below:-

“13. It would be naive to say as on today, that livelihood is not a part of right to life. By this time, by a large number of decisions, it has been held by the Hon'ble Supreme Court as well as High Courts in this country that livelihood is an integral facet of right to life. In this connection, a decision of the Hon'ble Supreme Court rendered in the case of State of Himachal Pradesh v. Raja Mahendra, reported in AIR 1999 SC 1786. may be remembered.

14. Dismissal from services undoubtedly is taking away the livelihood of a person at an advanced stage because at that stage, it is impossible for a person to get any employment elsewhere as the order of dismissal will be treated as a disqualification. Loosing a job in an establishment amounts to a civil death, as the concerned person will not be in a position to earn livelihood at the advanced stage,

CWP No.7794 of 2018

*when all his energies and endeavours have almost
come to a diminishing stage.”*

19. In view of the aforesaid discussion and the reasons contained therein, the writ petition is allowed and the impugned orders dated 02.12.2009 (Annexure P-2), dated 07.01.2015 (Annexure P-5) and dated 08.06.2016 (Annexure P-7) are set aside with a direction to the respondents to reinstate the petitioner, subject to his being medically fit. It is however, made clear that for the period petitioner remained out of his service, he shall not be entitled to salary on the principle of 'no work no pay' but he shall be given all the other benefits viz. continuity of service etc. as admissible to him.

16.10.2019

Ankur

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No