

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

LPA No.280 of 2016 (O&M)
Decided on : 26.03.2019

Raj Pal

..... Appellant

Versus

State of Punjab and ors.

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Amit Shukla, Advocate
for the appellant.

Mr. Pankaj Gupta, Addl. AG, Punjab.

Manjari Nehru Kaul, J.

CM-594-LPA-2016

This is an application under Section 5 of Limitation Act for condoning the delay of 212 days in filing the appeal.

After hearing learned counsel for the parties and perusing the application, which is duly supported by an affidavit of the appellant, delay of 212 days in filing the appeal is condoned.

CM stands disposed of.

Main case

In this intra court appeal filed under Clause X of Letters Patent, the appellant has assailed the order dated 21.07.2015 passed by learned Single Judge vide which the writ petition filed by him was dismissed.

2. The factual matrix of the case is that the appellant joined the

services of Punjab Police as Constable on 28.11.1991 and was dismissed from service on account of misconduct, being found under the influence of liquor, vide order dated 05.06.2007 (Annexure P-1), in the departmental inquiry conducted by the Deputy Superintendent of Police, Rupnagar. The appellant preferred an appeal against the said dismissal order before the Deputy Inspector General of Police, Ludhiana and a revision before the Inspector General of Police, Ludhiana respectively, which too met with the same fate and were dismissed. The appellant was also tried under Section 34 of Police Act, 1861 (in short 'the Act') by the learned Chief Judicial Magistrate, Ropar and was convicted and sentenced to pay a fine of ₹ 50/- vide order dated 07.07.2011. Thereafter, the appellant preferred a revision petition against the impugned judgment dated 07.07.2011 before Addl. Sessions Judge, Ad hoc (FTC) Ropar. The appellant was acquitted by the learned Addl. Sessions Judge, Ropar vide judgment dated 01.10.2011 and his conviction was set aside. Subsequently, the appellant preferred an appeal before the Deputy Inspector General of Police, Rupnagar for his reinstatement in the light of his acquittal in the criminal case. However, vide order dated 07.05.2012 (Annexure P-5), the appeal was dismissed by the Appellate Authority. Thereafter, the appellant preferred a revision petition before the Inspector General of Police, Zonal-1, Punjab, Patiala against the order of the Appellate Authority but the same was also dismissed vide order dated 08.02.2013 (Annexure P-6). Aggrieved by the said order, the appellant approached this Court by way of filing CWP No.17032 of 2014. Learned Single Judge vide order dated 21.07.2015 while dismissing

the writ petition observed that even though the appellant had earned an acquittal in the criminal trial but his guilt stood duly proved in the departmental proceedings and the appellant had proved himself to be incorrigible. Learned Single Judge further observed that he was a bad influence on his colleagues and his continuance in service was undesirable. Feeling aggrieved, the present appeal has been filed.

3. Learned counsel for the appellant submitted that the learned Single Judge dismissed the writ petition in limine without appreciating that he had been tried and acquitted by the Criminal Court and hence, he could not be punished departmentally. He further submitted that the impugned order of his dismissal was passed by the authorities concerned without appreciating the fact that the doctor in his cross-examination admitted that the mandatory blood test was not performed on him to ascertain the alcoholic contents in his blood. Hence, in the absence of any such blood test, there was no evidence to prove that he had been found to be under the influence of liquor.

4. Learned State counsel, on the other hand, contended that the appellant is a disobedient and indisciplined police constable. During his service period from 28.11.1991 to 05.06.2007, he had been handed down 10 punishments i.e. 7 minor punishments and 3 major punishments by the Punishing Authority, which clearly reflected on his chequered service record. Hence, he prayed for dismissal of the appeal.

5. We have heard learned counsel for the parties and perused the material available on record with their assistance.

6. It would be apposite to refer to Rule 16.3 of Punjab Police

Rules, 1934 (for short 'the Rules'), which are reproduced as follows:

16.3 Action following on a judicial acquittal - (1)
When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless-

(a) the criminal charge has failed on technical grounds; or

(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned ; or

(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; or

(e) additional evidence admissible under rule 16.25 (1) in departmental proceedings is available.

*(2) * * * **

7. The Apex Court in ***Baljinder Pal Kaur vs. State of Punjab and ors. (2016) 1 SCC 671*** while dealing with a similar issue had observed that the departmental proceedings are quite different from the proceedings in a Criminal Court and an employee acquitted by a Criminal Court cannot claim reinstatement on the basis of acquittal. The relevant findings read as under:

“10. In Commr. Of Police vs. Mehar Singh (2013) 7 SCC 685, this Court in para 24, has observed as under: (SCC

p.699)

“24. ... 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.”

*11. In **Inspector General of Police vs. S.Samuthiram**, (2013) 1 SCC 598, this Court in para 26, has held as under: (SCC pp. 609-610)*

“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand, the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant

case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

8. Coming to the case in hand, it is a matter of record that the services of the appellant were dismissed much prior to his acquittal by the Criminal Court after a departmental inquiry had been held in which the appellant had been afforded due opportunity of hearing and defending himself. It would be relevant to notice that in the judgment of learned Addl. Sessions judge while acquitting the appellant the Court observed that the police officials, who stepped into the witness box deposed in unequivocal terms that the appellant had been found in an inebriated condition. Further, it would be pertinent to mention that the evidence of the prosecution was closed by order as the prosecution failed to conclude its evidence including the evidence of the doctor, who had medico-legally examined the appellant despite being granted various opportunities. Hence, one fact which clearly emerges is that the appellant did not earn his acquittal on merit but due to the fact that the prosecution had failed to conclude its evidence. In this background, the acquittal of the appellant by a Criminal Court would not vitiate the departmental proceedings.

9. We find substance in the submissions of the learned counsel for the State that the appellant is incorrigible and despite having been handed down punishments both minor and major before his eventual dismissal from service he had failed to reform himself. A member of the disciplined force like the police must keep both their private as well as public life

scrupulously clean so that the public may regard him as an exemplary citizen. A public servant specially a member of a disciplined force like police is expected to be not only disciplined and well mannered but also must maintain dignity so as to cultivate character and trust of the people. The appellant, on the contrary was found involved in an act of misconduct creating nuisance at a public place under the influence of liquor. The conduct of the appellant is abhorrible to say the least, for which he does not deserve to continue in service as a member of a disciplined force like police.

10. In view of the discussion made above, we find no perversity or illegality in the order dated 21.07.2015 passed by learned Single Judge and affirm the same.

11. Accordingly, the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

26.03.2019

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Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No