

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19009 of 2017 (O&M)

Date of Decision: 10.02.2020

HC Mohd. Hussain

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Manish Soni, Advocate for the petitioner

Ms. Palika Monga, DAG Haryana

GIRISH AGNIHOTRI, J. (Oral)

(1) The prayer in this writ petition is *inter alia* to quash the order dated 16.05.2016 whereby the punishment of stoppage of 5 future annual increments with permanent effect has been awarded in spite the fact that the petitioner stands honourably acquitted in the FIR/criminal case vide judgment dated 29.04.2015 (P3).

(2) This Court for the reasons mentioned hereinunder is inclined to accept the prayer made by the petitioner and allow the writ petition.

(3) Learned counsel for the petitioner by making reference to the pleadings in the writ petition submits that the petitioner had joined as Constable on 15.12.1991. He was thereafter promoted as Head Constable in the year 2010 and had unblemished service record of 22 years till 2013.

(4) Learned counsel further submits that an FIR No.25 dated 25.10.2013 was registered under Section 7&13 of the Prevention of Corruption Act, 1988. From 2013 till 29.04.2015, the trial continued in the case FIR as aforementioned. It is the case of the petitioner that vide judgment dated 29.04.2015, the trial Court has acquitted the petitioner.

(5) The pleaded case of the petitioner as submitted by his learned counsel is that on one hand, on 01.07.2015 (P4), the department took a decision accepting the judgment of the learned trial court by opining that it is not a fit case for filing of appeal yet vide memo dated 07.10.2015 (P5), the DSP issued a charge-sheet to the petitioner. Learned counsel for the petitioner contends that it is evident that it was after the judgment of acquittal dated 29.04.2015 that by serving a charge-sheet in the departmental enquiry dated 07.10.2015, departmental proceedings were initiated against the petitioner. He then submits that the enquiry officer vide its report dated 31.10.2015 (P6) held that the allegation leveled against the petitioner are proved but the reliance primarily was to the effect of re-appreciation of evidence which was examined by the trial court. The operative part of the enquiry report is reproduced as under:-

“Therefore, from the statements of Prosecution witnesses/Facts and from the documents it has been found that the allegations leveled against HC Mohd. Hussain No.47/Mewat who has been arrested Red handed while taking Rs.2000/- as bribe in FIR No.25 dated 25.10.2013 under Section 7-13-49 of PC Act 1988 at SVB Gurgaon by Mosam son of Mormal resident of Rojka Meo regarding allowing of his dumpers carrying stones/roli to pass through area of PS Rojka meo, stands proved as during inquiry except the complainant of case Mosam son of Mormal resident of Rojka Meo, all the prosecution witnesses has confirmed the FIR & Police proceedings and it has been stated that the recovery of Rs.2000/- taken as bribe has been effected HC Mohd. Hussain No.47/Mewat in the presence of Duty Magistrate & Witnesses. Therefore, the allegation leveled against the HC Mohd. Hussain No.47/Mewat stands proved. Report is being presented.”

(6) On 23.11.2015, a show cause notice was issued to the petitioner proposing the punishment of dismissal *inter alia* by observing as under:-

“I, B.Satheesh Balr, IPS Superintendent of Police, Mewat am to say that a regular departmental enquiry was conducted against you HC Mohd. Hussain NO.47/MWT for having been arrested in case FIR No.25 dated 25.10.2013 u/s 7/13/49 Act PS SVB Gurgaon. The departmental enquiry was initiated vide this office order No.17942-50 dated 30.10.2013 and entrusted to DSP Firojpur Jhirka. The enquiry officer submitted his finding report holding you guilty of charge. A copy of the finding report of enquiry report is enclosed herewith.”

(7) Thereafter vide order dated 08.12.2015 (P8), the competent authority proceeded to impose the punishment of dismissal upon the petitioner. The operative part of the punishment order reads as under:-

“....During the course of person hearing the delinquent told all the facts and circumstances of the allegations leveled against him. He also told that he is innocent in this case. He also told that complainant has turn hostile during the trial of above said case. It I not a plea that the complainant has turned hostile during his evidence. As the complainant is a private person whom the delinquent could have pressurized for turning hostile during his evidence in this criminal case police employees as well as the Duty Magistrate were also witness who stated by their statement during enquiry. This also proves his moral turpitude. Keeping in view of the above discussions and reply submitted by the delinquent there is no any reason for taking lenient view against the defaulter. So, this departmental enquiry is hereby finalized with the orders of the dismissal and the delinquent with immediate effect.

The suspension period in respect of the delinquent for the period from 25.10.2013 to 10.11.2015 is hereby treated as period not spent on duty for all intents and purposes.”

(8) It is further the case of the petitioner that the punishment order was challenged in appeal before the Inspector General of Police, but the same was dismissed on 18.01.2016 (P9). Learned counsel further submits that on 16.05.2016 (P1), however, the Director General of Police accepted the revision petition of the petitioner but imposed the punishment of stoppage of 5 future annual increments with permanent effect. The operative part of the order dated 16.05.2016 (P10) reads as under:-

“The revisionist is present before the undersigned. He was acquitted in case FIR No.25 dated 25.10.2013 u/s 7/13/49 PC Act, Police Station, SVB Gurgaon by giving him benefit of doubt. He admits his guilty and pleads for mercy. Keeping in view the fact of acquittal in criminal case I intend to take a lenient view and reduce the punishment of dismissal from service to that to stoppage of five future annual increments with permanent effect. He shall not be paid anything for the period he remained out of service on the principle of ‘no work no pay’.

(9) Learned State counsel by making reference to the written statement filed by Naazneen Bhasin IPS on behalf of respondents No.1 to 5 submits that the order has been passed by the Director General of Police after proper application of mind which is after conducting fair, proper and impartial inquiry. She further submits that acquittal of the petitioner was given by extending the benefit of doubt. The opinion rendered by the District Attorney, Nuh in the criminal case is matter of record.

(10) This Court, as is evident from the documents referred to above, clearly comes to the conclusion that none of the authorities, namely, the authority issuing the charge-sheet; the enquiry officer; the punishing authority; or the appellate authority has recorded any specific ground to make distinction between the allegations before the trial Court in the FIR or

observing that “...all the prosecution witnesses has confirmed the FIR & Police proceedings and it has been stated that the recovery of Rs.2000/- taken as bribe has been effected HC Mohd. Hussain No.47/Mewat in the presence of Duty Magistrate & Witnesses. Therefore, the allegation leveled against the HC Mohd. Hussain No.47/Mewat stands proved. Report is being presented.” has therefore clearly fallen to error and actually shows the intention of the authorities not to initiate the departmental enquiry against the petitioner for any other allegation except the allegations which were subject matter of FIR.

(11) This Court is of the view that after the evidence has been examined by the trial court and it has recorded its findings acquitting the petitioner, the above observations in the enquiry report clearly amounts to re-appreciation of evidence.

(12) Leaned counsel for the petitioner relies upon the judgment of the Hon’ble Supreme Court in **GM Tank vs. State of Gujarat & Anr. (2006) 5 SCC 446**. The relevant extracts of the judgment is reproduced as under:-

“In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8.2.1979 and got subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension . For the foregoing reasons, we set aside the judgment and order dated 28.1.2002 passed by the learned single Judge in Special Civil appln. No. 948 of 1983 as affirmed by the Division Bench in L.P.A. No. 1085 of 2002 and allow this appeal. However, there shall be no order as to costs.”

(13) Learned counsel has further relied upon the judgment of the Coordinate Bench in **Khurshid Ahmad vs. State of Haryana & Ors. 2009(8) SLR 447** wherein while relying upon the judgment of the Hon’ble Supreme Court in **GM Tank’s** case (supra), this Court observed as under:-

*“Reference may also be made to the case of **G.M.Tank Vs. State of Gujarat and others, 2006 (5) SCC 446**, where it is held as under:-*

"The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental

case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr.V.B.Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of

proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

*The sweep of Rule 16.3 of the Rules came up for consideration before a Division Bench of this Court, though not directly in a case titled **Sukhjot Singh Khaira Vs. State of Punjab and others, 2005 (1) SCT 50**. While discussing the ratio of law laid down in another case titled **Balwant Singh, Ex.Constable Vs. Inspector General of Police and others, 1983 (1) SLJ 176**. The Division Bench in the case of **Sukhjot Singh Khaira** (supra) observed as under:-*

"In the case of Balwant Singh (supra), this Court was dealing with a case where no departmental action could have been taken against the petitioner in view of the provisions of Rule 16.3 of the Punjab Police Rules as he had been duly acquitted of the charge by the criminal court. It was admitted in the written statement filed on behalf of the State of Punjab that allegations contained in the charge-sheet and the criminal charge were identical. Subsequently, however, it was sought to be argued that the charge before the departmental authority related only to absence from duty. This plea was rejected by the High Court. It was held that the petitioner was entitled to the benefit of Rule 16.3 of the Police Rules. The prosecution, despite being given 6/7 opportunities to lead evidence had failed to do so. The criminal court, therefore, had no alternative, but to record the findings that the charge against the petitioner had not been substantiated and acquitted him of the charge. It was argued on behalf of the State of Punjab that the petitioner would not be

entitled to the protection of rule 16.3 as the criminal charge had failed on technical ground. In these circumstances, it was held by the High Court as under:- "5.....An acquittal to be an acquittal on technical ground would be one where the evidence had substantiated the charge, but the accused had to be acquitted on account of some legal lacuna. Such is not the position here." Rule 16.3 of the Punjab Police Rules provides that 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....."

(14) On the above principle, learned counsel has further relied upon another judgment of this Court rendered in **State of Haryana vs. Khazan (2005) PLR 464**. Learned counsel has then relied upon a Division Bench judgment of this Court in **Ravinder Singh vs. State of Punjab 1997(1) PLR 555** to submit that in view of the aforementioned judgment, the suspension period of an employee, during the pendency of the criminal case, where employee is acquitted, should be deemed to be on duty for all intents and purposes. This Court therefore disposes of the present writ petition with the following directions:-

- i. The action of the respondent-Department in passing the punishment order dated 08.12.2015, 18.01.2016 and the order dated 16.05.2016 (whereby the stoppage of 5 increments with permanent effect and the also decision not to pay anything for the period during which he remained out of service) are found to be unwarranted and thus quashed.
- ii. The respondents are directed to consequently, re-fix the pay of the petitioner with all consequential benefits.

- iii. Let the above directions be complied with and consequential relief be given to the petitioner within 3 months from the date of receipt of certified copy of this order.

(15) Ordered accordingly.

10.02.2020

Vvishal

(Girish Agnihotri)
Judge

1. *Whether speaking/reasoned?*

Yes/No

2. *Whether reportable?*

Yes/No