

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

**CWP-3037-2016 (O&M)
Date of Decision:16.01.2020**

Harjit Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Namit Gautam, Advocate for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

....

TEJINDER SINGH DHINDSA, J. (ORAL)

Petitioner who was serving on the post of Assistant Sub Inspector of Police with the Punjab Police Department was imposed the major penalty of dismissal from service vide order dated 24.01.2014 (Annexure P-7). The penalty of dismissal stands affirmed by the appellate as also revisional authorities vide orders dated 05.01.2015 (Annexure P-9) and 04.08.2015 (Annexure P-11) respectively.

The instant writ petition is directed against the afore noticed orders at Annexures P-7, P-9 and P-11.

It has been averred that the petitioner in the year 2012 was posted as Investigating Officer in Police Station Meharban, Ludhiana. He was conducting investigation of FIR No.11, dated 25.02.2012 under Section 420 IPC, registered at Police Station Meharban. One Baldev Singh filed a complaint dated 21.09.2012 raising allegations that the petitioner had obtained a sum of Rs.35,000/- from Gurjant Singh son of the complainant on

various dates during the course of investigation and was demanding more money. Acting upon such complaint, a trap team was constituted and the petitioner is stated to have been caught with Rs.5000/- received from the complainant in the presence of the witnesses and arrested on the spot. Pursuant thereto, FIR No.103, dated 21.09.2012 under Sections 7, 13(2) of the Prevention of Corruption Act, 1988 was registered at Police Station Meharban, District Ludhiana against the petitioner. Departmental proceedings were also simultaneously initiated against the petitioner vide charge sheet dated 25.05.2013. The charges formulated against the petitioner were of having caused damage to the image of police as also the conduct of the petitioner being negligent/ irresponsible and condemnable. It is upon culmination of such departmental proceedings that the impugned order of dismissal dated 24.01.2014 has been passed. The appeal as also revision preferred by the petitioner stand rejected.

Learned counsel representing the petitioner contends that the respondent/authorities in the facts of the present case ought to have kept the departmental proceedings in abeyance till the conclusion of the criminal proceedings/trial as both the proceedings emanated from the same set of allegations. The action of imposing major penalty of dismissal is stated to be wholly unjust and unfair on the ground that the petitioner has been dismissed from service for a charge which was yet to be proved in the criminal trial. Further argument has been raised that by virtue of the order of dismissal having been passed during the pendency of the criminal trial, the petitioner has been divested of his right to take benefit of Rule 16.3 of the Punjab Police Rules. Counsel has further urged that the Punishing Authority as also

the appellate and revisional authorities have proceeded in the matter in a mechanical fashion and as such the impugned orders suffer from the vice of the non application of mind.

Per contra, learned State counsel submits that the petitioner had faced departmental inquiry and the penalty of dismissal was awarded by the competent authority pursuant to the departmental proceedings having been concluded and after affording to the petitioner a reasonable opportunity of being heard. He prays for dismissal of the writ petition.

Counsel for the parties have been heard.

The first issue that arises for consideration in the present case is whether departmental proceedings and proceedings in a criminal case launched on the basis of same set of allegations proceed simultaneously?

Such issue is no longer *res intergra*. The Hon'ble Supreme Court in **Depot Manager Andhra Pradesh State Road Transport Corporation Vs. Mod. Yousuf Miyan, (1997) 2 SCC 699** had held that there is no bar to proceed simultaneously with the departmental inquiry and trial of a criminal case unless the charge in the criminal case is of a grave nature involving complicated questions of fact and law.

In **Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited, 1999 (2) SCT 660**, the Apex Court while examining the same very issue had drawn the following conclusions:

“The conclusions which are deducible from various decisions of this Court referred to above are :

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are

based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest. ”

Adverting to the facts of the present case, the charge against the petitioner was of having accepted bribe money in the capacity of an Investigating Officer pertaining to a particular FIR. It is neither the pleaded case nor have submissions been advanced by counsel that the charge against the petitioner in the criminal case involved complicated questions of law and fact. As such, no infirmity is found in the action of the respondents in having proceeded against the petitioner in the domestic inquiry along side the

criminal trial. It would also be apposite to take note that the order of dismissal is not based on an *ex parte* inquiry. Rather the petitioner was duly associated and he participated at each and every stage of departmental inquiry.

The reliance placed by counsel upon Rule 16.3 of the Punjab Police Rules is wholly misplaced. Rule 16.3 determines Action following a judicial acquittal. It is envisaged under such Rule 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. In the instant case, however, the authorities have opted to proceed simultaneously against the petitioner by initiating a domestic departmental inquiry along side the criminal trial that the petitioner was facing. For the reasons already recorded, it was open for the respondent/authorities to have adopted such course of action. Rule 16.3 of the Punjab Police Rules, as such, would have no applicability herein.

It is by now well settled that the scope of judicial scrutiny in matters of departmental proceedings leading to imposition of penalty would be confined to the decision making process and not to the decision itself. The departmental inquiry was initiated against the petitioner in terms of issuance of a charge sheet dated 25.05.2013. The articles of charge were spelt clearly therein. Petitioner submitted a reply to the charge sheet and after considering the same, the Additional Deputy Commissioner of Police, Ludihana was appointed as an Inquiry Officer. Petitioner participated in the inquiry proceedings and thereafter inquiry report dated 21.10.2013 was furnished holding the charges to be proved. Based upon the findings

recorded by the Inquiry Officer, a show cause notice dated 23.10.2013 was served upon the petitioner contemplating the imposition of major penalty of dismissal. Petitioner even submitted a reply to such show cause notice. It was thereafter that the Punishing Authority has taken a view to dismiss the petitioner from service vide order dated 24.01.2014. Such major penalty stands affirmed by the appellate and revisional authorities. Counsel has not raised any submission with regard to the procedure adopted during the course of departmental inquiry to be suffering from any irregularity or patent illegality. Under such circumstances, there would be no occasion for this Court to differ with the view taken by the punishing authority in imposing a major penalty on the petitioner.

Counsel has even invited the attention of this Court to the copy of judgment dated 24.03.2017 passed by the learned Additional Sessions Judge, Ludhiana at Annexure P-12, whereby the petitioner has earned acquittal in the trial pursuant to FIR No.103, dated 21.09.2012. Perusal of the judgment would reveal that the petitioner has been acquitted by giving him benefit of doubt. In any case, the judgment of acquittal cannot have the effect of obliterating the departmental proceedings that were conducted against the petitioner as per procedure in accordance with law. It is being held so as in the departmental proceedings the standard of proof is one of preponderance of probabilities whereas in a criminal trial the charge has to be proved by the prosecution beyond any shadow of doubt. The judgment of acquittal at Annexure P-12, as such, would not ipso facto absolve the petitioner from the liability fastened pursuant to the disciplinary jurisdiction vested with the employer.

For the reasons recorded above, no merit is found in the petition.

Petition is dismissed.

16.01.2020

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

- | | | |
|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |