

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

LPA Nos. 452 and 564 of 2020 (O & M)

Date of decision: 25.11.2021

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Union of India and others

....Appellant(s)

Versus

Naresh Kumar

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Arun Gosain, Sr. Govt. Counsel,
for the appellants.

Mr. Sushil Jain, Advocate,
for the respondent (in LPA No. 452 of 2020).

Mr. Bhritgu Dutt, Advocate,
for the respondent (in LPA No. 564 of 2020).

(The proceedings are being conducted through video
conferencing, as per instructions)

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 1155-LPA of 2020

Application for condonation of delay of 230 days in filing the appeal
is allowed, in view of the averments made in the application duly supported by
affidavit.

Delay condoned.

C.M. stands disposed of.

Main Cases

The Union of India (in short 'UOI') is in appeal against the decision of
the learned Single Judge whereby, two writ petitions i.e. CWP Nos. 1554 of 2016,
Naresh Kumar vs. UOI and others and CWP No. 5361 of 2016, Gurmail Singh vs.
UOI and others have been decided on 16.10.2019. The facts are being taken from
LPA No. 452 of 2020, UOI and others vs. Naresh Kumar arising out of CWP No.

1554 of 2016 for the purposes of reference.

The learned Single Judge, vide the impugned order has set aside the dismissal orders of the writ petitioners dated 29.08.2014 (Annexure P-5), which had been upheld on 17.11.2014 (Annexure P-7) by the Appellate Authority and thereafter, the order dated 22.10.2015 (Annexure P-10) had been passed whereby, the Additional Director General-respondent no. 2 had rejected the revision petition.

The premise on which the relief had been granted is on two accounts that Rule 27 (ccc) of The Central Reserve Police Force Rules, 1955 (in short 'the 1955 Rules') provides that the Member of the Force is not to be punished departmentally under the Rules on the same charge or on similar charge upon the evidence cited in the criminal case, once he had been acquitted by the criminal Court except with the prior sanction of the Inspector General. The other ground, as such, is on account of the fact that for the acquittal earned by the writ petitioners on 01.10.2014 (Annexure P-6) by the Special Court at Panchkula, in FIR No. 193 dated 03.09.2013 lodged under Section 18 of the NDPS Act, 1985, they were entitled for reinstatement with all consequential benefits.

Counsel for UOI has relied primarily on the judgment of the Apex Court in ***UOI and others vs. Sitaram Mishra and another, 2019 (3) SCT 608*** to propound the proposition that the disciplinary inquiry is to be governed by different standards of proof than that which applies to a criminal case since in criminal proceedings, the burden lies upon the prosecution to establish the charge beyond reasonable doubt. It is, thus, submitted that merely on the basis of acquittal, the learned Single Judge erred in setting aside the orders of dismissal. Once serious charge as such of misconduct which had been alleged on the departmental side had been proved and even the inquiry report as such had not been challenged in the writ petition and neither it had been placed before the

learned Single Judge, the learned Single Judge was not correct in setting aside the orders of dismissal which have duly been upheld in appeal and in revision.

Mr. Jain and Mr. Sharma, on the other hand, appearing for the writ petitioners, have justified the order of the learned Single Judge by placing reliance upon the judgments of the Apex Court in ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. 1999 (3) SCC 679*** and ***G.M. Tank vs. State of Gujarat and another, 2006 (5) SCC 446***.

A perusal of the paper book would go on to show that the FIR as such was registered against the writ petitioners who are working as Sub Inspector and Head Constable, respectively, with the CRPF. It was alleged that they were involved in smuggling of narcotic substances through outsiders who were civilians and were smuggling the same in the campus of the Group Centre and the Battalion where they were posted. The recoveries had been made on two separate dates, one from an open area near drain of Kaushalaya River from the left side of the parade ground and behind the Officers Mess on 03.09.2013 of 1 kg of opium. The second recovery had been effected on 05.09.2013 of another kg of opium. On the basis of the said recoveries, the petitioners had been duly charge sheeted on 01.01.2014 (Annexure P-2) by the DIG, Group Centre, CRPF, Pinjore. The first charge was regarding committing an act of omission and commission and unbecoming of a Member of a disciplined force likely to adversely effect the fine organization and disciplined force, as provided under Central Reserve Police Force Act, 1949, which *per se* was also a punishable crime under Section 11(1) of the said Act. Charge no. 2 was qua their involvement in smuggling of narcotic substances, which they had smuggled in the camp premises for self interest and contacted a civilian for the sale of those substances. The act was also a punishable crime under Section 11(1) of the abovesaid Act.

Resultantly, the Inquiry Officer was appointed being of Commandant rank Officer and was later changed due to administrative reasons by the Deputy Inspector General of Police to the Deputy Commandant vide order dated 08.03.2014. The inquiry report dated 31.07.2014 was submitted by the Inquiry Officer which, neither the petitioner had placed on record nor the UOI had placed. In the opinion of this Court, the said inquiry report was a very relevant document, which had to be duly examined by the learned Single Judge before the principles laid down in the judgments of the Apex Court in *Capt. M. Anthony's* and *G.M. Tank's case (supra)* can be applied. The dismissal order was passed on 29.08.2014 (Annexure P-5) on the basis of the inquiry report.

The acquittal by the Special Judge, Panchkula was on 01.10.2014 (Annexure P-6), which was on various grounds including the fact that the information had not been reduced into writing by the DIG, Group Centre, who was the complainant as such. Similar was the statement of the Investigating Officer that he had not reduced into writing the information received by him from the Deputy Inspector General. Similarly, the police did not obtain the FSL report regarding voice sampling of the accused and the SIMs used and, therefore, the police could not connect the accused with the mobile phones used that were also not registered in their names and which led to the acquittal, as such.

Thus, it is apparent that the dismissal, as such, was never based on conviction at any point of time. It was a separate set of proceedings and the judgment which has been relied upon by the learned Single Judge which view was appealed against before the Division Bench of this Court in ***Shashi Kumar vs. UHBVN and another, 2005 (1) SCT 576***, is not applicable in as much as in the said judgment, on account of the conviction by the Special Judge, the petitioner had been removed from service. The conviction had been set aside in appeal and it

was on that account, the Division Bench held that once there was an acquittal, the basis of conviction itself did not stand. Thus, the learned Single Judge wrongly applied the principles laid down in *Shashi Kumar's case (supra)*. As noticed, the dismissal was not based on any conviction at any point of time and rather the petitioners had been acquitted subsequently. The relevant portion of the Division Bench judgment reads as under:-

“5. We have heard the learned counsel for the parties and perused the record.

6. A perusal of the order passed by the respondents removing the petitioner from service shows that the respondents had passed the same basing it purely on the conviction of the petitioner. The order states that in view of the conviction, the petitioner is removed from service on account of conduct which led to his conviction. Excepting for the aforesaid sentence, the order does not elude to any circumstances which could be related to the conduct of the petitioner leading to the conviction. Therefore, in our opinion, the impugned order is liable to be quashed on this short ground as it has been passed, without taking into consideration the relevant material. In any event, the petitioner having been acquitted in appeal, the justification of the order of removal no longer existed.....”

Another reason which this Court feels that the matter is to be remanded to the learned Single Judge for proper consideration, is on account of the fact that the Apex Court in *G.M. Tank's case (supra)* on which the counsel for the petitioners have relied, has held that the nature of charge in the departmental proceedings and the criminal proceedings has to be seen, whether they are similar in nature. The nature of the evidence collected during inquiry and investigation and the witnesses, which have been examined in both the criminal case and departmental cases have to be examined, whether the charge as such was

identical and whether the benefit of acquittal would thus flow. The relevant portion reads as under:-

“The judgments relied on by the learned counsel appearing for the respondents are not 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 his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed 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.”

Reliance can be also placed upon the judgment in **Deputy Inspector**

General of Police and another vs. S. Samuthiram, (2013) 1 SCC 598 wherein, the Apex Court, while placing reliance upon *Southern Railway Officers' Association vs. UOI, (2009) 9 SCC 24* held that acquittal in criminal case itself cannot be a ground for interfering with the order of punishment imposed by the Disciplinary Authority. The said case was also a case of security personnel and it was held that the onus of establishing the guilt of the accused is on the prosecution in criminal cases and the strict burden of proof required to establish guilt in a criminal court is not required in disciplinary proceedings and the preponderance of probabilities are sufficient. Resultantly, the order of the High Court setting aside the punishment imposed in departmental proceedings under Article 226 of the Constitution of India was set aside.

In *Kendriya Vidyalaya Sangathan and others vs. T. Srinivas, 2004 (7) SCC 442*, the Apex Court set aside the order of the Tribunal which had been upheld by the High Court wherein, disciplinary proceedings had been ordered to be stayed till the criminal trial is over. It was accordingly held that both the said proceedings were altogether distinct and different while placing reliance upon the judgment in *State of Rajasthan vs. B.K. Meena, 1996 (6) SCC 417*. The relevant portion in *Kendriya Vidyalaya's case (supra)* reads thus:-

“In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification

and the desirability of continuing the appellant in service inspite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings.”

In ***Chairman-cum-M.D., T.N.C.S. Corporation Ltd. vs. K. Meerabai, 2006 (2) SCC 255***, similar observations had flowed from the Apex Court that the scope of criminal proceedings and disciplinary proceedings are quite distinct and are exclusive and independent.

In ***Stanzen Toyotetsu India P. Ltd. vs. Girish V., 2014 (3) SCC 636***, while placing reliance upon the earlier judgment in ***Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan, (1997) 2 SCC 699***, it was held that departmental inquiry is aimed at maintaining discipline and efficiency in service while criminal prosecution is an offence for violation of a duty the offender owes to the society and both operate in separate and different spheres and intending to serve totally different purposes.

In such circumstances, we are of the opinion that in the absence of

inquiry report before the learned Single Judge, it was not appropriate, as such, to have allowed the writ petitions thereby setting aside the dismissal orders. The issue as to whether Rule 27(ccc) of the 1955 Rules would come into play would also have to be considered keeping in view the observations made, since a plain reading of the Rule, as urged, would mean that a person who has been acquitted on one side is not liable to be tried departmentally after the acquittal and which would be more in the form of a protection offered to an employee. In the present case, the departmental proceedings had already concluded prior to the acquittal. This aspect has also not been gone into by the learned Single Judge. In such circumstances, we are of the opinion that the order of the learned Single Judge dated 16.10.2019 is not sustainable.

Accordingly, the present appeals are allowed and the order dated 16.10.2019 is set aside. The learned Single Judge shall decide the issue afresh keeping in mind the above observations. The appellant will ensure that the inquiry report is placed on record by filing an appropriate application. It is open to the writ petitioners to raise all other arguments which had been pleaded in the writ petition, since we have not gone into those issues and have remanded the matter primarily on the account of the absence of the inquiry report, being a material document that ought to be before the writ court and the writ petition being allowed wrongly on the premise of the judgment of the Division Bench in *Shashi Kumar's case (supra)*.

(G.S. SANDHAWALIA)
JUDGE

25.11.2021
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No