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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10920-2019
Date of decision: 04.04.2022

KULDEEP SINGH

...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R. K. Arora, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JAISHREE THAKUR, J.

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari/mandamus for quashing the impugned order dated 23.09.2014 (Annexure P-5), whereby, five years approved service of the petitioner has been forfeited with cumulative effect for increment purposes, order dated 08.05.2015 (Annexure P-6), whereby, the appeal of the petitioner against the above order has been rejected and order dated 06.09.2018 (Annexure P-8), whereby, mercy appeal of the petitioner has been declined by the Government.

In brief, the facts of the case that need to be noticed are that the petitioner joined service in Punjab Police on 15.03.1989 as Constable and was promoted as Head Constable in the year 2014. The petitioner came to be implicated in FIR No.325 dated 31.07.2002, registered under Section 22 of the NDPS Act at Police Station Sadar, Amritsar, with the allegations that

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there was recovery of 5 grams of smack from him. He was acquitted in the said FIR upon trial vide judgment dated 14.12.2007. He was also implicated in another FIR No.134 dated 26.05.2004, registered under Section 21 of the NDPS Act at Police Station 'C' Division, Amritsar with the allegations that during search, 40 grams of smack was recovered from him. The petitioner was arrested on 26.05.2004 and was released on bail on 24.09.2004. Thereafter, the petitioner joined service on 27.09.2004. The petitioner faced criminal trial in FIR No.134 dated 26.05.2004, and was convicted by the trial Court for rigorous imprisonment for one year with a fine of Rs.2,000/-. The said conviction and sentence was challenged in Criminal Appeal No.1128-SB of 2009 before this Court. The High Court vide its judgment dated 17.11.2011, set aside the judgment of conviction and sentence and the petitioner was acquitted of the charges under Section 21 of the NDPS Act. In the meanwhile, departmental inquiry was initiated against the petitioner for the same charges of keeping smack with him. The said departmental proceedings were kept in abeyance vide order dated 14.12.2006, on account of pendency of criminal trial. Despite being acquitted in the abovesaid FIRs on the same allegations, a show cause notice was served upon the petitioner vide order dated 06.09.2014, as to why the petitioner may not be dismissed from the service. A reply to the show cause notice was filed by the petitioner, wherein, the petitioner submitted that in FIR No.325 dated 31.07.2002 and also in FIR No.134 dated 26.05.2004, he has been acquitted and, therefore, the departmental proceedings are liable to be dropped. However, respondent No.4 – Commissioner of Police, Amritsar City, Amritsar, without considering the reply filed by the petitioner, passed an order dated 23.09.2014 and awarded punishment of forfeiture of five years

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of approved service for the purpose of increments with cumulative effect. The appeal filed by the petitioner against the said order stood dismissed by respondent No.3 vide order dated 08.05.2015, which order was further upheld by the Government of Punjab on 06.09.2018**.** Aggrieved against the said imposition of penalty of forfeiture of five years of approved service for the purpose of increments with cumulative effect, despite the petitioner having been acquitted by the criminal Court in both the FIRs, the instant petition has been filed.

Learned counsel for the petitioner assails the order dated 23.09.2014 (Annexure P-5), whereby, penalty of forfeiture of five years of approved service for the purpose of increments with cumulative effect has been imposed on the ground that Rule 16.3 of the Punjab Police Rules, 1934 have not been taken into account while imposing the said penalty. It is argued that the said Rules clearly specify that when a Police Officer has been tried and acquitted by the criminal Court, he shall not be punished departmentally on the same charges, as has been done in the instant petition. It is further argued that the aforesaid two FIRs came to be registered against the petitioner on the ground that he was in possession of 05 grams and 40 grams of smack, however, in FIR No.325 dated 31.07.2002, the petitioner was acquitted vide judgment dated 14.12.2007 passed by Judge, Special Court, Amritsar and in FIR No.134 dated 26.05.2004, this Court vide judgment dated 17.11.2011 passed in Criminal Appeal No.1128-SB of 2009, set aside the judgment of conviction and sentence and acquitted the petitioner of the charges. It is argued that the show cause notice that was issued to the petitioner after the conduct of the departmental inquiry pertained to the registration of the 02 FIRs as mentioned above and that too

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after the petitioner had been acquitted right up till the High Court. It is argued that the reply was filed by taking a specific stand that departmental inquiry report should not be accepted as the petitioner stands acquitted.

Learned counsel for the petitioner herein would rely upon the judgments passed by this Court in ***Mehboob Ali versus State of Haryana and Others*** reported as ***2016 (1) S.C.T. 529*** and ***Vijay Pal and Others versus State of Haryana and Others*** reported as ***2017 (2) S.C.T. 479,*** to argue that in terms of Rule 16.3 of the Punjab Police Rules, 1934, the departmental proceedings cannot take place as the said Rule precludes the departmental inquiry after a police officer has been acquitted by a criminal Court except in few situations set out in Clause (a) and Clause (e).

Learned State counsel on the other hand would argue that the petitioner herein is a habitual offender and apart from abovesaid two FIRs that have been mentioned in the show cause notice, there are other FIRs pending against him, in which he has been punished and placed under suspension time and again by the competent authority. She further contends that the petitioner is a habitual absentee as he remained absent from duty for approximately 1720 days on different occasions without any prior permission. It is further submitted that the petitioner has been placed under suspension for 10 times during his total service and till now, he has faced a total of 10 inquiries, so the prayer made by the petitioner in the instant petition is totally unjustified and the petition is liable to be dismissed on the ground that he is a habitual absentee, drug addict and is even found indulging in the smuggling of heroin/smack.

I have heard learned counsel for the parties and have perused the judgments as relied upon.

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Rule 16.3 of the Punjab Police Rules, 1934 reads as under:-

> *"16.3. Action following on a judicial acquittal - (1) When a Police Officer has been tried and acquitted by a criminal Court i.e. 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:-*
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> *(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) Departmental proceedings admissible under sub Rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Vol.1, Part 1."*

There is no doubt that the allegations as set out in the show cause notice and the criminal charges involve the same incident i.e. pertaining to FIR No.325 dated 31.07.2002 and FIR No.134 dated 26.05.2004. It is also not in dispute that the show cause notice served upon the petitioner was in the year 2014, well after the petitioner stood acquitted in FIR No.325 dated 31.07.2002 and FIR No.134 dated 26.05.2004. Rule 16.3(1) of the Punjab Police Rules, 1934 provides for action to be taken following acquittal. The Rule itself precludes a departmental inquiry after

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the police officer has been acquitted by a criminal Court and there is nothing on record to show that the punishing authority or the appellate authority has taken into consideration the fact that the petitioner stood acquitted and even the applicability of Rule 16.3 of the Punjab Police Rules, 1934.

The argument that has been raised by learned State counsel that the petitioner had rightly been imposed punishment of forfeiture of five years of approved service for the purpose of increments with cumulative effect taking into account the pendency of various cases against him, would not be sustainable in the facts and circumstances of the present case since the show cause notice issued to him pertained to only two FIRs, in which he stood acquitted. The ratio of the judgments as relied upon would be fully applicable to the facts of the case. Apart from the two judgments relied upon, there is catena of other judgments available, wherein, in similar circumstances, the matter stands remanded back to the punishing authority to reconsider the issue keeping in view Rule 16.3 of the Punjab Police Rules, 1934.

In ***Civil Writ Petition No.17934 of 2015,*** titled as ***"Ex-Head Constable Dalbir Singh versus State of Haryana and others", decided on 17.05.2017***, it has been held that once a police officer is acquitted, the competent authority would have to consider the impact of Rule 16.3 of the Punjab Police Rules, 1934 at that point of time.

Consequently, in view of the fact that the punishing authority has not taken into consideration Rule 16.3 of the Punjab Police Rules, 1934 while imposing penalty of forfeiture of five years of approved service of the petitioner for the purpose of increments with cumulative effect, the

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impugned orders are liable to be set aside.

Therefore, the instant petition is allowed and the impugned orders dated 23.09.2014 (Annexure P-5), dated 08.05.2015 (Annexure P-6) and dated 06.09.2018 (Annexure P-8), are hereby set aside. The competent authority i.e. the Commissioner of Police, Amritsar City, Amritsar is directed to reconsider the case of the petitioner considering the judgments of acquittal and then proceed further. The petitioner herein shall file a necessary representation to the authority concerned along with the certified copy of this order and the authority concerned shall pass a speaking order thereon within a period of four months on receipt of the same.

(JAISHREE THAKUR)
JUDGE

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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

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