

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

**CWP No. 13223 of 2021 (O&M)
Date of Judgment: 6.7.2022**

Ram Chander

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.S. Sahu, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks quashing of the impugned order dated 16.2.2017, vide which the petitioner has been compulsorily retired from service and orders dated 3.4.2020 and 17.2.2021, vide which the appeal and the revision respectively filed by the petitioner against the order dated 16.2.2017 have been rejected.

2. The facts in brief are that the petitioner joined as a Constable in the Haryana Police Department on 10.7.1992, stood promoted as Head Constable in the year 2012 and thereafter as EASI in December, 2014. It is claimed that the petitioner performed his duty with devotion and sincerity and there has been no adverse entries whatsoever in his ACRs. It is averred that while he was performing his duties as Assistant Sub-Inspector at Police Station Ratia, an FIR No. 391 dated 9.7.2016 was registered under Sections 325, 148, 149, 34 IPC against one Chhinder Pal, on the statement of

Bhupinder Singh. The said Chhinder Pal, who was granted pre-arrest bail by the Additional District Judge, Fatehabad, made a complaint to Inspector Bhupinder Singh, State Vigilance Burea Unit, Fatehabad, alleging that the petitioner demanded ₹5,000/- for declaring some of his colleagues innocent in the case and for showing no recovery of sticks/danda in his hand. On the said complaint, Inspector Bhupinder Singh constituted a team and registered FIR No. 40 dated 2.9.2016 under Sections 7 and 13 of the Prevention of Corruption Act, 1988 against the petitioner. It is further averred that a raid was conducted and recovery of ₹5,000/- was shown to have been effected from the petitioner. As a result, the petitioner was placed under suspension on 2.9.2016 and thereafter re-instated w.e.f. 16.2.2017.

On the basis of the allegations made in FIR No. 40, departmental inquiry was initiated against the petitioner. The petitioner submitted that since the matter is pending before the Criminal Court, therefore, till the decision by the Court, the departmental inquiry be kept pending, but his request was not acceded. Thereafter, on the basis inquiry report dated 31.1.2017, a show cause notice was issued to the petitioner, to which a detailed reply was submitted by the petitioner. However, the Superintendent of Police, Fatehabad—respondent No.4, without considering the facts and length of service rendered by the petitioner, ordered his compulsory retirement vide order dated 16.2.2017. The appeal as well as the revision filed against the order dated 16.2.2017 was rejected by the respondents, giving rise to the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner herein would submit that the appellate as well as revisional authorities, while

rejecting his case, failed to take into consideration the impact of Rule 16.3 of the Punjab Civil Service Rules, as applicable to Haryana. It is submitted that as per Rule 16.3, a Police Officer, who has been tried and acquitted by a criminal court, then 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 let or not, subject to the exceptions carved out in the Rule itself. It is further submitted that during the departmental inquiry, same witnesses were examined whose testimony had already been examined in the criminal court and the prosecution had miserably failed to prove the allegations levelled against the petitioner and consequently vide order dated 26.7.2019, he had been acquitted of charge by the trial court, however, the punishing authority has failed to consider the effect of acquittal as well as Rule 16.3 of the Rules. In support of his contentions, learned counsel relies upon the judgment of this Court in **CWP No. 17934 of 2015 titled Ex-Head Constable Dalbir Singh Versus State of Haryana and others decided on 17.5.2017.**

4. Per contra, learned counsel for the respondents—State would submit that it is settled law that departmental proceedings and the proceedings in a criminal case can proceed simultaneously and due process of law was followed in the instant case. It is further submitted that departmental inquiry and judicial proceedings are entirely different. They operate in different field and have different objectives. The allegations levelled against the petitioner were proved in the departmental inquiry and therefore, on receipt of the inquiry report, the Superintendent of Police, Fatehabad had issued show cause notice to the petitioner proposing

dismissal from service but after considering the reply so submitted by the petitioner and keeping in view his length of service, while taking lenient view, punishment of compulsorily retirement was imposed. It is also submitted that both appellate as well as revisional authorities, while rejecting the case of the petitioner, took into consideration all the relevant and material facts on the record. Hence no interference is called for in the instant writ petition.

5. I have heard learned counsel for the parties and have gone through the record of the case.

6. The entire case of the petitioner hinges on Rule 16.3 of the Punjab Rules, which reads 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.”

A bare perusal of the afore-quoted rule would clearly indicate that when a police officer who has been tried and acquitted by a criminal court, then 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 let or not, subject to the exceptions carved out in the Rule itself. This Court in ***Baljit Singh Vs. State of Haryana and others, 2014 (11) RCR (Civil) 407***, while dealing with a case of similar circumstances, held as follows :-

“7. In my opinion, the argument of learned counsel for the petitioner carries weight. Once the rule envisages that on acquittal no further action can be taken against the police officer saved for certain exceptions, those exceptions must be recorded and must be put to the delinquent in the show cause notice so that he should respond thereto. For instance, a delinquent may be able to show that he has not won over any witness or that the criminal charge against him has not failed on technical grounds. Thus, a failure to mention any of the exceptions would in my considered opinion be illegal. In the circumstances, the order of dismissal has to be set aside.”

Following the judgment in Baljit Singh's case (Supra), this Court in Dalbir Singh's case (Supra), held as under:-

“Learned Assistant Advocate General, however, argues that Rule 16.3 is applicable only where an acquittal has come before the initiation of a departmental inquiry. As per her once a departmental inquiry has been initiated there would be no impact of acquittal.

I regret my inability to agree with this contention. It may be noticed that the words used in Rule 16.3 are 'he shall not be punished departmentally'. If what is being said by the learned Assistant Advocate General was correct then it would have

been mentioned 'no disciplinary inquiry shall be initiated against him.' The expression used clearly indicates that if the acquittal occurs at any time before punishment the same has to be considered.

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*In my opinion, the more reasonable interpretation would be that whatever be the stage of the disciplinary proceedings, once a police officer is acquitted, the competent authority would have to consider the impact of Rule 16.3 at that point of time. If at that stage, whether it is the original inquiry or the appeal or the revision, the competent authority comes to the conclusion that none of the exceptions mentioned in Rule 16.3 (1) are available it would have to drop the disciplinary proceedings. If on the other hand the competent authority comes to the conclusion that any or more than one of the exceptions to Rule 16.3 (1) are applicable and records so, then it would be justified for him to proceed further with the departmental proceedings. In this view of the matter in all these cases the order which has been passed after the acquittal of the petitioner concerned is set aside and that very competent authority is directed to proceed in accordance with the judgment in **Baljit Singh's case (supra)** which has been quoted above. If there is a case where the disciplinary proceedings were pending at the original stage then the effect of setting aside the punishment order would remain in abeyance till such time as the competent authority has re-determined the issue.”*

7. In view of the judgment in Dalbir Singh's case (supra), the issue involved in the instant case is no more re-integra and is fully applicable to the facts and circumstances of the instant case.

8. Consequently, this petition is allowed and the competent authority is directed to re-consider the case along with the judgment of

acquittal and then proceed further. For this purpose the petitioner would file the necessary representation to the authority concerned who will decide the same by passing a speaking order thereon within three months of the receipt thereof.

06.7.2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No