

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

CWP No.11075 of 2018 (O&M)

Date of decision:12.10.2022

Mahender Singh @ Mohinder Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Malik, Sr. Advocate with
Mr. Sachmeet Singh Randhawa , Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR J. (ORAL)

1. The present writ petition has been filed under article 226/227 of the Constitution of India for the issuance of an appropriate writ, particularly in the nature of certiorari for quashing the enquiry report dated 12.12.2011 (Annexure P-1), order dated 25.4.2016 (Annexure P-3) passed by the Superintendent of Police, Fatehabad and order dated 09.08.2016 (Annexure P-5) passed by the Inspector General of Police and order dated 8.2.2018 (Annexure P-7) passed by respondent No.2, whereby the petitioner stands dismissed from service, with a further prayer for issuance of a writ in the nature of mandamus, directing the respondents to reinstate the petitioner in service.

2. In brief, the facts are that the petitioner was appointed as a Constable in the respondent-Department on 06.11.1991. During his service, he did not face any departmental enquiry nor was any punishment awarded to him. On 20.07.2011 petitioner was placed under suspension as FIR No. 314 dated

20.07.2011 was registered against the petitioner under Section 13 of the Public Gambling Act, 1867 at Police Station Sadar, Bhiwani. A departmental enquiry was initiated against the petitioner and in the said enquiry, the petitioner was held guilty of the charges levelled against him. Based on the enquiry report, the punishing authority awarded punishment of dismissal from service by order dated 03.01.2012. The appeal filed before the Inspector General of Police, Hisar Range, Hisar against the order dated 03.01.2012 was dismissed, as was the revision petition filed by the petitioner. The petitioner filed a civil suit challenging the order of dismissal and the subsequent orders passed on the appeal and the revision, which suit was partly decreed vide judgment and decree dated 19.01.2016 passed by the Civil Judge (Junior Division), Fatehabad. The Civil Judge directed the punishing authority to reconsider the question of punishment, keeping in view the length of service rendered by the petitioner and pass fresh orders. The respondent No.4 i.e. Superintendent of Police, Fatehabad passed a fresh order on 25.04.2016 (Annexure P-3) and dismissed the petitioner from service. The statutory appeal before the Inspector General of Police, Hisar Range, Hisar was also dismissed by order dated 09.08.2016 as well as a revision petition filed before the Director General of Police, Haryana on 8.2.2018. In the meantime, the petitioner faced trial under proceedings held before the criminal court in FIR No. 314 dated 20.07.2011 registered against the petitioner under Section 13 of the Public Gambling Act, 1867 at Police Station Sadar, Bhiwani and was acquitted on 4.5.2015. On account of acquittal, the petitioner sought reinstatement and on denial has filed the writ petition.

3. Mr. R.K. Malik, Senior Advocate assisted by Mr. Sachmeet Singh Randhawa, Advocate appearing for the petitioner laid great stress on Rule 16.3 of the Punjab Police Rules 1934 (PPR 1934 for short) to argue that the authorities are bound to take into consideration the order of acquittal while deciding the case of the petitioner. It is argued that as on 25.04.2016 i.e. the date on which the order of dismissal was passed by the Superintendent of Police, the petitioner was already acquitted by the trial court on 04.05.2015.
4. At the outset, it would be relevant to reproduce Rule 16.3 of the Punjab Police Rules 1934 , 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.”

5. 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 led or not, subject to the exceptions carved out in the Rule itself. One of the exceptions is that in the opinion of the Court or of the Superintendent of Police, the acquittal is not based on the ground that he (delinquent) won over the prosecution witnesses. 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.”

6. Following the judgment in **Baljit Singh's case (Supra)**, this Court in **Ex-Head Constable Dalbir Singh versus State of Haryana and others CWP No.17934 of 2015**, 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.

XX XX XX

*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 the present case, the petitioner was nominated as an accused in an FIR pertaining to Section 13 of the Public Gambling Act, 1967. On the basis of being nominated as an accused and on the same set of allegations, the petitioner faced departmental enquiry. He was dismissed from service by order dated 3.1.2012 and his appeal and revision were dismissed vide orders dated 08.08.2012 and 07.08.2014 respectively. He filed a civil suit challenging the order of dismissal dated 3.1.2012 and the orders so passed in his appeal and revision, dated 8.8.2012 and 7.8.2014 respectively. The Civil Judge vide order dated 19.1.2016 set aside impugned orders and directed the punishing authority to reconsider the question of punishment to be awarded to the plaintiff (petitioner herein), keeping in view the length of service

rendered by the petitioner and pass fresh orders of punishment. This order was passed keeping in view the fact that the petitioner was acquitted in FIR No.314 dated 20.07.2011. It is interesting to note that when fresh orders were passed in terms of the judgement and decree of the civil court, the punishing authority did not consider the acquittal of the petitioner in FIR No.314 dated 20.07.2011, neither was the same considered by the Appellate Authority or by the Director General of Police.

8. The judgment of acquittal was passed after the prosecution failed to establish the guilt of the accused beyond reasonable doubt and the petitioner was acquitted of all charges leveled against him. It is not a case where the witnesses turned hostile, but on account of the fact the prosecution failed to establish its case. The dismissal of the petitioner was on account of the same allegations as set down in the FIR registered against him under Section 13 of the Public Gambling Act, 1967 and once acquitted the authorities were bound to take it into consideration in terms of Rule 16.3 of PPR 1934.

9. Consequently, the impugned orders are set aside 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. The writ petition stands disposed of in above terms.

(JAISHREE THAKUR)
JUDGE

October 12, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No