

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

CWP No. 14437 of 2017 (O&M)

Reserved on :August 8, 2022

Date of Pronouncement : August 26, 2022

Jai Bhagwan

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil Kumar Nehra, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks quashing of the impugned order dated 27.6.2013 (Annexure P/6), vide which the petitioner has been dismissed and orders dated 31.5.2014 (Annexure P/9), 5.3.2015 (Annexure P/13) and 13.1.2017 (Annexure P/15), vide which the appeal, revision and the mercy petition, respectively filed by the petitioner against the order dated 27.6.2013 stood rejected.

2. The facts in brief are that the petitioner joined as a Constable in the Haryana Police on 6.3.1979 and thereafter promoted to the post of Head Constable. It is claimed that the petitioner had unblemished record of 36 years service and during his entire service there were no adverse entries against him. However, on 3.12.2011, FIR No. 1105 came to be registered against the petitioner under Sections 7/13 (1) (d) of the Prevention of Corruption Act,

1988. The allegations as levelled by the complainant, namely Gulshan Balecha, were that he was an accused in a case that had been registered against him by his paternal uncle and the petitioner had taken a sum of ₹5700/- from him and even after his having been released on bail, the petitioner was demanding a sum of ₹4,000/-. After investigation in the FIR, the petitioner was charge-sheeted. In the meantime, departmental proceedings were also initiated against the petitioner and during the course of the regular inquiry, the department examined as many as seven witnesses. Witnesses No. 2, 3 and 4, in their cross-examination, denied any recovery from the petitioner. Insofar as, the complainant of the FIR, namely, Gulshan Kumar Balecha, was concerned, he also refused to make any statement and denied having given any money to the petitioner. On the basis of the inquiry report, the punishing authority i.e. Superintendent of Police, Hisar, issued a show cause notice for dismissing the petitioner from service. A detailed reply to the show cause notice dated 24.6.2013 was given, however, by an order dated 27.6.2013, the petitioner was dismissed from service. The appeal filed before the Appellate Authority i.e. Inspector General of Police, Hisar Range, Hisar and the revision filed before the Director General of Police, Haryana, were also dismissed. In the meantime, the petitioner was acquitted by the trial court in FIR No. 1105 dated 3.12.2011 by the Additional Sessions Judge, Hisar on 29.1.2015. After acquittal of the charges, the petitioner submitted a revision petition before the Director General of Police, Haryana, but the same was also dismissed without taking into account the fact that the petitioner was acquitted in the FIR registered against him. Moreover, the mercy appeal also stood rejected. Hence the present writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner was falsely implicated in the said FIR and now stands acquitted by the Additional Sessions Judge, Hisar on 29.01.2015 and, therefore, the authorities concerned should have taken note of this fact while deciding the revision petition and the mercy appeal. It is also submitted that Rule 16.3 of the Punjab Police Rules, as applicable to Haryana, specifies 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 and, therefore, once the petitioner stands acquitted he is to be reinstated. It is also argued that the complainant of the FIR, namely, Gulshan Balecha, had refused to record his statement during the departmental inquiry and also denied giving any money to the petitioner. It is also submitted that during the trial of the criminal case, the prosecution could not prove the demand, acceptance or recovery of the alleged currency notes and the petitioner stood acquitted on merits. Apart from that, even during the departmental inquiry, witnesses No. 2, 3 and 4, in their cross-examination, denied any recovery from the petitioner. Therefore, it is argued that the statement made by the witnesses could not have been ignored by the authorities, while passing the order on the revision petition and mercy petition filed by the petitioner and as such, the impugned order of dismissal is illegal and deserves to be set aside and consequent relief of reinstatement is to be allowed.

4. Per contra, learned counsel appearing on behalf of the State submits that the allegations against the petitioner were of accepting a bribe. It is submitted that FIR No. 1105 dated 3.12.2011 was registered against the

petitioner. It is further submitted that the complainant—Gulshan Balecha, had made a complaint that on registration of a FIR against him by his uncle, the petitioner had arrested him and taken ₹5700/- and even after being released on bail, the petitioner was continuously demanding ₹4,000/- from him. On receipt of the complaint, a team was constituted headed by DSP Dinesh Yadav. The complainant was given 8 currency notes of the denomination of ₹500/- each, which were duly initialed by DSP Dinesh Yadav. Phenolphthalein power was applied on the said currency notes and thereafter the same were handed over to the complainant—Gulshan Balecha with the instructions to deliver the same to the petitioner on his demand. Thereafter, the raiding party proceeded to Police Station, where the petitioner was posted, and the petitioner was caught red handed with the currency notes. After following the due procedure provided under the law, the currency notes were put into a sealed parcel. It is submitted that as the act of the petitioner eroded the image of the police department, therefore, he could not be retained to hold the post of Head Constable and hence stood dismissed. Learned counsel would also rely upon a judgment rendered by the Supreme Court in **State of Karnataka and another versus Umesh 2022 SCC online SC 345**, wherein it has clearly been held that proceedings in the departmental inquiry and the proceedings in the FIR are separate and can carry on. Moreover, an acquittal would have no bearing on any decision taken by the Department.

5. I have heard both the counsels for the parties and with their assistance have gone through the pleadings of the case and the case law as cited.

6. The main thrust of argument of the counsel for the petitioner is,

that the petitioner faced criminal as well as departmental proceedings on the same cause of action. He stood acquitted by the trial court, however, has been dismissed from service on account of the same set of allegations, which were not proved in the criminal trial. It is also submitted that even in the departmental proceedings, the material witnesses No. 2, 3 and 4, in their cross-examination, denied any recovery from the petitioner during the alleged raid and as such the department could not conclusively establish the allegations levelled against the petitioner and thus his dismissal was absolutely unwarranted. It is also argued that none of the witnesses were able to establish the fact that the petitioner demanded illegal gratification or recovery of currency notes from him. He would also rely upon Rule 16.3 of the Punjab Police Rules, 1934 (as applicable to the State of Haryana) to submit that once the trial court has acquitted the petitioner of the same set of allegation any dismissal by the Department is unwarranted.

7. On the basis of the pleadings and the arguments advanced by the learned counsel for the parties, the sole question of law which arise for consideration before this Court is, whether acquittal, absolutely on merits amounting to clear exoneration of the petitioner by the trial court under the provisions of the Prevention of Corruption Act, *ipso facto* absolve the petitioner from the liability under disciplinary jurisdiction when the charges levelled against the appellant in the departmental proceedings and the criminal proceedings are based on the same set of facts, charges, circumstances and the evidence?

8. At the outset, it would be relevant to reproduce 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 led or not, subject to the exceptions carved out in the Rule itself. One of the exceptions is that if in the opinion of the Court or of the Superintendent of Police, the acquittal is 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.”

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.”*

In the back ground of this legal position, let us examine the inquiry report. In the departmental inquiry, the department examined as many as seven witnesses, out of which witnesses No. 2, 3 and 4, in their cross-examination, clearly stated that no recovery was made in their presence. The complainant, who was examined as PW-7 stated that he had not given any money to the petitioner. The petitioner in his defence examined six witnesses. Defence witnesses No. 2, 3 and 5 clearly stated that they along with the petitioner were present at the gate of the Police Station, when DSP Dinesh Kumar had entered the police station. DW-3 during his cross-examination stated that no search of the petitioner was conducted. So much so even the DSP Dinesh Kumar (PW-5) in his cross examination stated that when the recovery of the alleged money was done from the table, the petitioner was not present there. However, the Inquiry Officer, vide his report dated 23.4.2013 (Annexure P/3) held that the charges stood proved against the petitioner. Thereafter, a show cause notice dated 20.6.2013 (Annexure P/4) was given to the petitioner as to why he should not be dismissed from service, in view of the inquiry report. To the show cause notice, the petitioner submitted his detailed reply dated 24.6.2013 (Annexure P/5). However, the punishing authority, vide impugned order dated

27.6.2013 (Annexure P/6) dismissed the services of the petitioner. The appeal, revision as well as the mercy petition, as already noticed, stood dismissed.

9. In the trial, the prosecution, apart from formal witnesses, examined ASI Mohinder Singh (PW-1), Inspector Bimla Devi (PW-3), DSP Dinesh Kumar (PW4) and the complainant Gulshan Kumar Balecha (PW-7), who were also examined in the departmental proceedings. After full-fledged trial, the trial court observed as under:-

“36. Though, the bribe money has not been proved to be demanded or accepted by the accused or recovered from the possession of accused, by the prosecution witnesses, but how the hands of accused were tainted with the Phenolphthalein power, which was applied on the currency notes, has not been explained by the prosecution. PW9 has deposed that accused Jai Bhagwan was summoned by the IO after recovery of bribe money from the case file. As per PW9 and PW10, complainant did not give signal to them just after the acceptance of currency notes by the accused. As per PW1, he was Senior Duty Officer in Police Station, City Hisar and Jai Bhagwan was performing duty of Junior Duty Officer and both of them were performing their duty on the main gate of police station and he remained on the main gate of police station. But nothing incriminating statement was made by PW1 ASI Mahinder Singh against the accused. As the demand, acceptance and recovery of currency notes has not been proved by either of the prosecution witnesses, therefore, presence of Phenolphthalein power on the hands of accused has become doubtful. It is also surprising that the police party was waiting for the signal from the complainant, when accused received amount at the main gate of the police station. As deposed, the accused took the same in the investigation room and returned to the main gate and thereafter complainant gave signal to the raiding party. PW10 has stated that the hands of accused when mixed with

solution of sodium carbonate, remained white. The property was taken to FSL twice and explanation of the same has not been given by the prosecution. All these make the story of prosecution doubtful.”

After making the above observations, the trial court held as under:-

“40. In this case, shadow witness was not appointed, nor Duty Officer was associated with the raiding party. The complainant has changed his version. PW9 and PW10 have not witnessed the demand and acceptance made by accused, while he was sitting on the front gate of the police station. Call detail record Ex. P2 has been produced in evidence, but the same is not relevant, when it has not been proved that phone No. 92155-47501 was belonging to the accused. Further, Inspector Vipin Kumar was not made witness in the present case, who as per Ex. P1/A was present in the office of DSP Dinesh Kumar Yadav along with Inspector Bimla Devi. He from the beginning to end witnessed the occurrence, but for the reasons best known to prosecution, he was not cited as witness. Ex. P10 recovery memo of handing over currency notes and Ex. P11 recovery memo of currency do not bear signature of Inspector Vipin Kumar. No officials from the police station City Hisar was joined in the investigation of this case. In view of this, a doubt is created in the veracity of prosecution story.

41. As a sequel to above discussion, I am of the considered opinion that the prosecution has failed to prove its case against the accused beyond reasonable doubt and accused is accordingly acquitted of the charge.....”

From the facts narrated above, it is clear that 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 petitioner 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 are similar and

the standard of proof is based on preponderance of possibility in the civil proceedings and with standard of proof would be more stringent in the criminal trial. In the present case, the nature of the case launched against the petitioner was 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 as in the criminal proceedings. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings are on the same set of facts namely, raid conducted at the police station, where the petitioner was posted and recovery of tainted currency notes from the petitioner. The Investigating Officer and other departmental witnesses were the only witnesses examined by the Inquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the petitioner. 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 petitioner beyond any reasonable doubt and acquitted the petitioner 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 a contested one. The trial court came to the conclusion that there was no proof of demand, no proof of acceptance and no shadow witness who would have testified that the money was received by the petitioner. The very statement regarding a colour wash of the hands of the petitioner was found to be doubtful. The petitioner had approached the Director General of Police immediately after he was acquitted by the trial court in a revision petition seeking reinstatement on the ground that he stood acquitted by the trial

court, however the impugned order of the DGP and the order passed in the mercy petition do not deal with and satisfy the conditions of Rule 16.3 PPR 1934 as held in the case of ***Baljit Singh Vs. State of Haryana and others (supra) and Dalbir Singh's case***. The impugned orders of the DGP and on the mercy petition are non-speaking to that effect, and are hereby set aside.

11. Consequently, this petition is allowed. The impugned orders are set aside and the Director General of Police, Haryana, is directed to reconsider the case along with the judgment of acquittal and then proceed further. The authority concerned will decide the same by passing a speaking order thereon within three months of the receipt thereof.

August 26, 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No