

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

CWP-21876-2016

Reserved on 06.09.2022

Pronounced on: *04.11.2022*

RIYAZUDDIN

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vikas Kumar, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR.J

1. Petitioner-Riyazuddin has approached this Court seeking a writ in the nature of certiorari for quashing order dated 11.12.2006, Annexure P-1 whereby he has been dismissed from service, and the subsequent orders dismissing the appeal, revision as well as rejecting his representation.
2. In brief, the facts are that the petitioner joined as Constable in Haryana Police on 28.10.2000. On the basis of alleged disclosure statements of Fajrudeen and Layakat accused persons, while in police custody, he was implicated in three criminal cases i.e. FIR No.124, dated 16.05.2006, under Section 379 IPC, Police Station Sector 31, Faridabad; FIR No.256, dated 02.06.2006, under Section 379 IPC, Police Station Central Faridabad; FIR No.341, dated 02.06.2006, under Sections 379/411 IPC, Police Station City Ballabgarh, District Faridabad. Departmental enquiry was initiated against

the petitioner and on that basis, he was dismissed from service by the punishing authority/respondent No.4 vide order dated 11.12.2006, Annexure P-1. He filed an appeal against the said order before respondent No.3-Inspector General of Police, which appeal was dismissed vide order dated 12.02.2009, Annexure P-2, on the ground of limitation. The revision petition preferred also stood dismissed vide order dated 15.02.2011, Annexure P-3, passed by respondent No.2-Director General of Police, Haryana. However, in the aforesaid three criminal cases, since the prosecution failed to prove its case, the petitioner was acquitted vide judgments dated 08.12.2010 Annexure P-4, 06.03.2012 Annexure P-5 and 21.12.2013 Annexure P-6 respectively. On acquittal, the petitioner submitted a representation dated 05.11.2014 for his reinstatement in service along with all consequential benefits. Since no action was being taken on his representation, he approached this Court by way of CWP No.19841 of 2015, which petition was disposed of vide order dated 11.01.2016 with a direction to respondent No.4 to dispose of his representation dated 05.11.2014 Annexure P-7, by passing a speaking order and after affording him opportunity of hearing, within a period of four months. However, his representation was dismissed vide order dated 25.05.2016 Annexure P-8 observing that the petitioner has been acquitted in criminal cases by granting him *benefit of doubt* and it was not an honorable acquittal. Hence, the present petition.

3. Learned counsel appearing on behalf of the petitioner would argue that since the petitioner has been exonerated of the charges levelled against him vide judgments Annexures P-4 to P-6, he was entitled to reinstatement in service with all the consequential benefits. It is unfair to

allow the findings recorded in departmental proceedings to stand. In support of his arguments, he has relied upon the judgment as rendered in ***Capt. M. Paul Anthony Versus Bharat Gold Mines Limited and another Versus 1999(3) Supreme Court Cases 679***, wherein it has been held that when the Court had acquitted the appellant rejecting the prosecution story, the findings recorded in an ex-parte disciplinary enquiry could not be sustained. It is also submitted that the Inquiry Officer in fact has erred in holding him guilty, while discarding the statement of the defence witnesses. As per the statement of the defence witnesses, they have categorically stated that the petitioner was not involved in theft of motorcycle or any other items. It is submitted that these very witnesses were accused in another FIR and it is in their disclosure statement that they had named the petitioner. The statement could not have been ignored by the Inquiry Officer. On the basis of their disclosure statement, the FIRs were registered and departmental proceedings initiated. It is also argued that the Appellate Authority has not passed a speaking order while rejecting his appeal. While passing the impugned orders, provisions of Rule 16.2 of Punjab Police Rules, 1934 which provide for consideration of length of service and the claim for pension of the police personnel who is sought to be dismissed, have been ignored.

4. On the other hand, learned State counsel would argue that in compliance of order dated 11.01.2016 passed in CWP No.19841 of 2015, in order to give the petitioner an opportunity of personal hearing, he was directed to come present through Superintendent of Police, Mewat as well as through Special Messenger, but he did not turn up and instead of personal attendance, he sent an email requesting reinstatement in service. Further, the

order passed in departmental enquiry can be challenged only on the ground that a correct procedure has not been adopted. Court cannot sit as an appellate authority over the decision taken by the competent authority in departmental enquiry. Moreover, against the dismissal order, the petitioner filed appeal after a period of 23 months which period was beyond limitation.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the pleadings of the case.

6. The allegation against the petitioner is that he, being a member of disciplined force, was associated in theft cases with the co-accused and on whose disclosure statement, he was implicated in three criminal cases and ultimately, dismissed from service after holding departmental enquiry. However, vide judgments Annexure P-4 to P-6, he was exonerated of the charges leveled against him.

7. The issue that requires consideration by this Court is whether the petitioner who has been acquitted of the charges levelled against him as the prosecution failed to prove its case but dismissed from service after holding a departmental inquiry, is entitled to reinstatement with all consequential benefits?

8. In ***Suresh Pathrella Versus Oriental Bank of Commerce, (2006) 10 SCC 572***, a two Judges Bench differentiated between the standard of proof in disciplinary proceedings and criminal trials in the following terms:

“ ...the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard

of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.”

9. In a recent case of ***State of Rajasthan and others Versus Phool Singh, 2022 LiveLaw (SC) 735***, the Supreme Court has held that disciplinary proceedings and criminal proceedings, are entirely different and merely because one has been acquitted in a criminal trial that itself will not result in the reinstatement in service when one has been found guilty in the departmental proceeding. When it is not an honorable acquittal, but an acquittal given due to a "benefit of doubt", there cannot be reinstatement. In a criminal trial, the burden lies on the prosecution to establish the charge beyond reasonable doubt whereas in departmental proceedings, the charges have to be proved on the basis of preponderance of probabilities.

10. In the present case, the petitioner was nominated as an accused on the basis of disclosure statements given by three accused, namely, Liyakat, Fazurdeen and Anwar regarding his involvement in the theft of two motorcycles and an Alto car from Faridabad. He was nominated in three different FIRs under Section 379 IPC and was acquitted in FIR No.341 of 02.06.2006 under Section 379/411 on the ground that the recovery of the motor cycle from his room was not proved by independent witnesses. He was convicted in the second FIR, but acquitted by giving him “*benefit of doubt*” in appeal by the Session Judge Faridabad, who held that the case property was not produced in court and the recovery was not corroborated from any independent witness. In the third FIR registered against him, he was again acquitted.

11. In the departmental proceedings, the Inquiry Officer recorded the statement of witnesses as well the investigating officer who proved the recovery memo as well as the disclosure statement of the petitioner on the basis of which a motorcycle was recovered . The statement of the defence witnesses, namely, the accused Liyakat, Fazurdeen, Anwar were discarded holding that they are not independent witnesses. It was also found that the petitioner was absent from duty on the days when the theft took place. Based on the findings, the petitioner was dismissed from service holding that his acts constitute grave misconduct and he does not deserve to be kept in service.

12. In ***State of Andhra Pradesh & others Versus S. Sree Rama Rao, AIR 1963 SC 1725***, a three Judges Bench of the Supreme Court has held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. The High Court is to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. It was held as under:

“7. ...The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is

guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence....”

13. In ***B.C. Chaturvedi v. Union of India & Ors, 1995(6) SCC 749***, the Supreme Court held that the power of judicial review is only to ensure that the rules of natural justice are not violated. The relevant para in this regard is reproduced below:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is 3 (1995) 6 SCC 749 6 entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of

statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

14. The Supreme Court in ***State of Karnataka and another Versus N. Gangaraj, 2020(3) SCC 423***, was seized of the matter regarding scope and interference by the High Court and its power of judicial review over departmental proceedings. The entire gamut of case law has been discussed in the subject matter and it has been reiterated that the power of judicial review conferred on a Constitutional Court or a Tribunal is not that of an Appellate Authority, but is confined only to the decision making process. It was further held that only when a finding recorded by the disciplinary authority is not supported by evidence, can a writ court interfere with the findings.

15. In the present case, the criminal court has exonerated the petitioner by coming to the conclusion that the case property had not been produced in Court as well as the complainant had not put an appearance, whereas the Inquiry Officer in his report took note of the fact that there was a recovery memo signed by the Investigating Officer, that on the basis of disclosure statement there was recovery of a motorcycle, and that the petitioner was absent on the days when the theft took place, and came to the conclusion that the petitioner ought not to be required in the police department and these findings stand affirmed. The High Court cannot/will sit in judgment over the decision that was taken by the competent authority in departmental proceedings especially when rules of natural justice were followed.

16. Consequently, this Court does not find any ground for interference in the instant writ petition and the same is, accordingly, dismissed.

(JAISHREE THAKUR)
JUDGE

04.11.2022

sanjeev	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No