

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

**CWP No. 18431 of 2018 (O&M)
Date of Decision: 18.8.2022**

Davinder Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kunal Dawar, Advocate and
Mr. Jagjot Singh, Advocate,
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed seeking issuance of a writ in the nature of Certiorari for quashing the departmental inquiry as well as the punishment order dated 04.07.2013 (Annexure P/7) passed by respondent No. 4 by which the petitioner was dismissed from service, as well as for setting aside the order dated 22.10.2013 (Annexure P/9), order dated 25.03.2015 (Annexure P/11) and order dated 28.05.2018 (Annexure P/15), by which the appeal, revision and the mercy petition stood dismissed.

2. In brief, the facts are that the petitioner was appointed as constable in Haryana police on 8.2.1984. He was subsequently promoted as Head Constable and as EASI due to his excellent service record. A FIR No. 23 Dated 11.7.2011 was registered against the petitioner under Section 7 of the Prevention of Corruption Act, 1988. On the basis of the FIR, the petitioner was suspended. A regular departmental inquiry was conducted

against the petitioner and during the course of the regular inquiry, the complainant who was the star witness stated that his signatures had been obtained on a blank paper and that no demand of bribe was made by the petitioner. The remaining witnesses supported the case against the petitioner. On the basis of the inquiry report, the punishing authority i.e. Deputy Commissioner of Police, Headquarters, Faridabad, issued a show cause notice for dismissing the petitioner from service. A detailed reply to the show cause notice dated 25.5.2013 was given, however, by an order dated 04.07.2013 the petitioner was dismissed from service. The appeal filed before the Appellate Authority i.e. Commissioner of Police and the revision filed before the Director General of Police, Haryana, were also dismissed. The petitioner was acquitted by the court in FIR No. 23 dated 11.07.2011 by the Special Judge, Faridabad, District Faridabad, on 30.8.2016. Thereafter, the petitioner submitted a mercy appeal 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 FIR registered against him. 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 Special Judge Faridabad, District Faridabad, on 30.8.2016 and, therefore, the authorities concerned should have taken note of this fact while deciding 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, Rakesh Kumar, who was the star witness, has clearly stated that the Police in the Vigilance Department had obtained his signatures on blank paper and no demand of bribe was ever made. It is argued that the statement made by the witness could not have been ignored by the authorities and, therefore, the 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. 23 dated 11.07.2011 was registered against the petitioner by the Vigilance Department. It is further submitted that the complainant—Rakesh Kumar, had complained to the Vigilance Department about the bribe sought by the petitioner and a vigilance team was constituted. A special powder was applied to eight currency notes of ₹500/- denomination and after putting small signatures, the same were handed over to the complainant Rakesh Kumar. Rakesh Kumar then gave these notes to the petitioner, which incident was noted by a shadow witness ASI Virinder Kumar who was appointed to keep a watch. The petitioner was apprehended by the vigilance team and the eight ₹500/- currency notes were recovered from his pocket. Thereafter, the hands of the petitioner were washed with sodium carbonate solution which turned pink on washing which would be a positive affirmation of receipt of bribe. It is submitted that as the statement

of the shadow witness and recovery of amount from the petitioner stood established, he could not be retained to hold the post of EASI and hence stood dismissed. 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, a subsequent 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 proceedings 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. 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. The petitioner was nominated as an accused in FIR No. 23 dated 11.07.2011 and was acquitted by the trial court on the ground that the complainant had resiled from his version as recorded before the Magistrate and was declared hostile. The recovery of the tainted currency notes was held to be meaningless since the demand of illegal gratification was not

proved. However, it is interesting to note that the Special Judge while holding that the prosecution had failed to prove the case against the petitioner beyond a reasonable doubt, also initiated separate proceedings against the complainant under Section 340 of the Code of Criminal Procedure. The departmental proceedings stood proved by taking into account the statement as given by the shadow witness and the fact that the tainted currency notes were recovered from the possession of the petitioner. The hands of the petitioner were got washed and the water turned pink indicating the presence of chemical matching that of what had been put on the tainted currency notes.

8. Merely because the petitioner stood acquitted by the criminal court, he would not be entitled to reinstatement in service by citing Rule 16.3 of the Punjab Police Rules 1934 as applicable to Haryana. The principle of law is well-settled that the standard of proof as required in departmental proceedings and criminal court are on different footings. In a judgment rendered in **Baljinder Kaur versus State of Punjab and others (2016) 1 SCC 671** the Supreme Court considered Rule 16.3 the Punjab Police Rules, 1934 and held as under :

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"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."

9. (2)"

10. Rule quoted above provides that when a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge subject to certain conditions. In the present case, as is evident from Rule 16.3, requirement of not punishing the officer departmentally is not absolute, and it hinges on either of the five conditions mentioned above [(a) to (e)]. From the copy of the order of acquittal passed by the Judge, Special Court, Ludhiana (Annexure P-6), it is evident that the prosecution witnesses have turned hostile, and they appear to have been won over."

9. In a recent judgment as rendered by this Court in **State of Haryana versus Satish Kumar in LPA No. 565 of 2020 decided on 30.5.2022**, a Division Bench has taken into consideration several judgments as rendered in **Deputy Inspector General of Police And Another vs. S. Samuthiram (2013) 1 SCT 115**, **State of West Bengal vs. Sankar Ghosh, 2014(1) SCT 580**, **Shashi Bhushan Prashad vs. Inspector General Central Industrial Security Force and others (2019) 7 SCC 797**, **State**

of Karnataka and another vs. Umesh 2022 SCC Online SC 345 to hold that acquittal by a criminal court would itself not absolve the employee from liability under the disciplinary jurisdiction. In the case referred to as **Satish Kumar (supra)**, the learned Single Judge had allowed reinstatement of the employee who had been dismissed from service on account of FIR under the Prevention of Corruption Act. The learned Single Judge took into account the fact that the employee stood acquitted by the trial court, as the material witness turned hostile, and then proceeded to set aside the dismissal order, holding that if the charge of misconduct and indiscipline were falling out of FIR registered under the Prevention of Corruption Act, then the order of dismissal would not be sustainable. The said decision was upturned by the Division Bench in intra court appeal.

10. The facts of the present case are similar, where the allegations of accepting illegal gratification were proved in departmental inquiry. The criminal court has exonerated the petitioner only on the ground that the complainant turned hostile. As has been held, acquittal does not automatically give him the right to be reinstated into the service. Rule 16.3 of the Punjab Police Rules, 1934 would not be applicable in view of the proviso as in Rule 16.3 (a) and (b), i.e. witness has been won over. The departmental authorities took into account the fact that there was recovery of tainted currency notes from the petitioner, shadow witness supported the case and the hands of the petitioner when washed with sodium carbonate solution turned pink which would be a positive affirmation of receipt of bribe. Therefore, the ratio of the judgment as rendered by the Division Bench is applicable and binding.

11. Consequently writ petition stands dismissed.

18.8.2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No