

Sr. No.234

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP-30442-2018

Date of decision: 07.04.2022

Rambir Singh

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Aditya Yadav, Advocate,
for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, seeks issuance of a writ in the nature of certiorari to quash the impugned order dated 03.04.2017 (Annexure P-8) vide which the appeal filed by the petitioner was rejected and he has been dismissed from service.

2. Petitioner was posted as Jail Warden in District Jail, Rohtak. On 17.04.2016 while he was on his duty at Main Gate of District Jail, Rohtak, *Charas* weighing 50 gram was recovered from his trousers, allegedly meant for supply to a prisoner. FIR No.130 dated 17.04.2016 under Section 20 of NDPS Act and Section 42 of Prison Act was registered against the petitioner at Police Station Sivaji Colony, Rohtak. Basis thereof, he was issued a charge-sheet vide order dated 22.07.2016. A regular departmental inquiry was initiated. Inquiry officer proceeded *ex parte* in the departmental inquiry as the petitioner chose not to appear. Later, petitioner was eventually held guilty. Thereafter, Superintendent Jail, Panchkula issued show cause notice dated 11.11.2016 (Annexure P-4) to him, to which he filed reply dated 15.12.2016 (Annexure P-5). Petitioner was then dismissed from service vide impugned order dated 30.12.2016 (Annexure P-6).

Aggrieved therefrom, petitioner filed appeal dated 16.01.2017 (Annexure P-7)

before Respondent No.2 i.e. Director General of Prison, Panchkula, who dismissed the appeal of the petitioner vide impugned order dated 03.04.2017 (Annexure P-8).

3. Learned counsel for the petitioner submits that in the *ex parte* departmental inquiry, petitioner neither cross examined the witnesses nor proper opportunity was given to him. Yet the Inquiry officer submitted his report that the charges against the petitioner are proved.

4. He further points out that petitioner was acquitted on merits in the above said criminal case. Thereafter, petitioner sent a representation dated 20.06.2018 (Annexure P-12) but to no avail. Hence, the instant petition.

5. On the other hand, learned State counsel submits that acquittal in criminal proceedings shall not be a bar to award punishment in departmental proceedings in respect of the same cause or matter. To buttress his argument, he relies on Apex Court judgment rendered in **State of West Bengal and others Vs. Sankar Ghosh**, reported in **2014(1) Recent Apex Judgments (R.A.J.) 356**.

6. Having heard rival contentions, I am of view that in all fairness, competent authority ought to have reconsidered the plea of the petitioner to be taken back in service after he was acquitted by the criminal Court, since the very basis to his earlier punishment order seems to be a certain presumption qua his delinquency which led to the initiation of departmental proceedings as well as criminal proceedings involving the same charges.

7. Be that as it may, without commenting on the merits thereof and/or without meaning to suggest that the petitioner *per se* is entitled to be taken back merely because he has been acquitted in the criminal trial, the service appeal filed by the petitioner which was dismissed vide impugned order dated 03.04.2017 (Annexure P-8) is remanded back for reconsideration by the appellate authority with independent application of mind. Let the needful be done within a period of 06 months from today.

8. In the premise, the appellate order dated 03.04.2017 (Annexure P-8) is set aside while the punishment order dated 30.12.2016 (Annexure P-6) remains as is, subject to the final outcome of the service appeal to be heard again, as aforesaid.

9. Disposed of accordingly.

07.04.2022
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No