

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

**CWP No. 7814 of 2018 (O&M)
Reserved on: August 16, 2022
Date of Judgment: August 26, 2022**

Jitender

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate,
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks quashing of the impugned order dated 8.4.2015 (Annexure P/1), vide which the services of the petitioner has been dismissed without holding regular inquiry, while invoking the provisions of Article 311 (2) (b) of the Constitution of India and orders dated 8.6.2016 (Annexure P/3), 15.11.2016 (Annexure P/5) and 27.2.2018 (Annexure P/8), vide which the appeal, revision and the mercy petition, respectively filed by the petitioner against the order dated 8.4.2015 have been rejected.

2. The facts in brief are that the petitioner joined as a Constable in the Haryana Police Department on 26.10.2000. It is claimed that the petitioner performed his duty with devotion and sincerity. On 21.3.2015, FIR No. 110 came to be registered against the petitioner under Sections 384, 389, 120-B and

506 IPC. The allegations as set out in the FIR were that the petitioner in connivance with others have cheated the complainant out of ₹16,000/- on the pretext of registering a false case under Section 376 IPC. After registration of the FIR, a preliminary inquiry was conducted against the petitioner without associating him and the punishing authority without holding regular departmental inquiry dismissed the services of the petitioner vide order dated 8.4.2015. The appeal, revision as well as the mercy petition filed against the order dated 8.4.2015 stood rejected by the respondents, giving rise to the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner herein would submit, that once a preliminary inquiry could be held against the petitioner which became the basis of dismissing him from service, there is no cogent reason forthcoming for dispensing with the regular departmental inquiry while dismissing the petitioner under Article 311(2) (b) of the Constitution of India. It is submitted that the petitioner was implicated in a false FIR as would be evident from the fact that the petitioner stands acquitted. It is also argued that that the appellate as well as revisional authorities, while rejecting his case, failed to take into consideration the impact of Rule 16.3 of the Punjab Civil Service Rules, as applicable to Haryana. It is submitted that as per Rule 16.3, 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. It is further submitted that during the preliminary inquiry, same witnesses were examined whose testimony had already been examined in

the criminal court and the prosecution had miserably failed to prove the allegations levelled against the petitioner and consequently vide order dated 4.1.2017, he had been acquitted of charge by the trial court, however, the punishing authority has failed to consider the effect of acquittal as well as Rule 16.3 of the Rules. In support of his contentions, learned counsel relies upon the judgments of this Court in **Punjab State through its Collector and another Versus Ex. Constable Gulzar Singh 2012 (4) RSJ 20, State of Punjab and others Versus Dalbir Singh 2013 (2) RSJ 82, Baljit Singh Versus State of Haryana and others 2014 (11) R.C.R. (Civil) 407 and CWP No. 17934 of 2015 titled Ex-Head Constable Dalbir Singh Versus State of Haryana and others decided on 17.5.2017.**

4. Per contra, learned counsel for the respondents—State would submit that it is settled law that departmental proceedings and the proceedings in a criminal case can proceed simultaneously and due process of law was followed in the instant case. It is further submitted that departmental inquiry and judicial proceedings are entirely different and that the standard of proof required would be different. The allegations levelled against the petitioner were proved in the preliminary inquiry and therefore, on receipt of the inquiry report, the Superintendent of Police, Rohtak, dismissed the petitioner from service. It is submitted that the past record of the petitioner would show that he was a criminal minded and undisciplined person. Earlier he was dismissed from service vide order No. 250/ST dated 24.3.2008 in a regular departmental inquiry, but the punishment of dismissal was reduced to that of stoppage of two annual increments with permanent effect by the Director General of Police, Haryana. Further, the petitioner was also suspended on the allegations of

participating in political activities during Haryana Vidhan Sabha Election in 2009. In another departmental inquiry, the petitioner was awarded punishment of stoppage of three annual increments with permanent effect on the allegation of taking illegal house rent on the fake address. Thus, the punishing authority, appellate authority as well as the revisional authority, while rejecting the case of the petitioner, took into consideration all the relevant and material facts on the record. Hence no interference is called for in the instant writ petition.

5. I have heard learned counsel for the parties and have gone through the record of the case.

6. The case of the petitioner as set out is, that once a preliminary inquiry could be held against the petitioner which became the basis of dismissing him from service, there is no cogent reason forthcoming for dispensing with the regular departmental inquiry, while dismissing the petitioner under Article 311(2) (b) of the Constitution of India. Article 311 (2)(b) in The Constitution of India 1949 reads as:

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply
(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.”

7. A bare reading of the Article itself would show that the authority who is empowered to dismiss or remove a person or to reduce, his rank without holding a departmental inquiry, has to record reasons in writing as to why it is not reasonably practical to hold such inquiry. In the present case the had been nominated as an accused in FIR on the ground that he along with others had cheated the complainant of ₹16,000/- on the threat of getting a false case registered against him. The preliminary inquiry was held however the regular departmental inquiry was dispensed with, while invoking Article 311 (2) (B) of the Constitution of India. The reason for dispensing the inquiry is as under:-

“And whereas, the undersigned is fully satisfied that it is not reasonably practicable to hold a regular enquiry for the reasons that:

(a) it would be highly prejudicial to the general interest and discipline of the police force.

(b) it is apprehended that the delinquent official would browbeat the witnesses and create various impediments in holding of the enquiry as well as the trial of the criminal case, even to the extent of jeopardizing the life of the complainant and other witnesses.

(c) the defaulter would not co-operative or associate himself with the enquiry and,

(d) it would general further unrest among the public at large.”

One of the reasons given is, that the petitioner would browbeat the witnesses and create an impediment in holding the inquiry. In the case of **Union of India Vs. Tulsi Ram Patel, 1985 (Suppl) 2 SCR 131**, the Hon'ble Supreme Court observed that clause (b) of the second provision to Article 311 (2) of the Constitution can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. Relevant observations in this regard are as under: -

"A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail."

However, the subjective satisfaction for dispensing with the regular departmental inquiry cannot be dispensed with at the whim of the concerned authority and must be supported by cogent reason and material and the same is lacking in the instant case. A bald statement to the effect that the petitioner would browbeat the witnesses or hold up the inquiry would not satisfy the stringent condition imposed of giving a reasonable explanation as to why an inquiry cannot be held before dismissing an employee.

8. It is also argued that since the petitioner was acquitted, he would also be entitled to reinstatement by virtue of 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.”

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 let or not, subject to the exceptions carved out in the Rule itself. However, what has to be borne in mind is that acquittal in a criminal case by itself would not mean that the employee would be entitled to automatic reinstatement. The standard of proof in departmental proceedings is based on preponderance of probability and is lower than the standard of proof in criminal proceedings where the case has to be proved beyond reasonable doubt . In **State of Karnataka and another versus Umesh 2022 SCC online SC 345**, 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.

9. In view of the judgments rendered in **Gurcharan Singh Versus State of Punjab and others 2013 (2) SCT 133** and **Major Singh vs State of Punjab and others 2017 (4) SCT 32**, **State of Punjab vs Dalbir Singh 2012(4) PLR 424**, **Kabal Singh vs. State of Punjab 2017(1)RSJ 237** **Jaswant Singh vs State of Punjab 1991(1) RSJ 452**, it is held that the order of dismissal and subsequent order in appeal is unsustainable and is hereby set aside.

10. Consequently, this petition is allowed. The impugned order dated 8.4.2015 is set aside and the competent authority is directed to reconsider 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.

August 26, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No