

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

LPA-908-2022(O&M)

Date of decision: 23.02.2023

Davinder Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Jagjot Singh, Advocate, for the appellant.

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 18.08.2022, vide which the writ petition preferred by the appellant has been dismissed.

The facts that are required to be noticed are limited.

The appellant was appointed as Constable in Haryana Police on 08.02.1984 and thereafter promoted as Head Constable, and then E/ASI. Pursuant to registration of FIR No.23, dated 11.07.2011, under Section 7 of Prevention of Corruption Act, 1988, he was suspended and a departmental inquiry was initiated against him. The Inquiry Officer, vide a detailed report (P-4), concluded that he had taken bribe, while he was posted as Traffic Staff at Faridabad, from a scrap-dealer (Rakesh Chand) and was caught red-handed by the Vigilance team. Accordingly, the punishing authority after affording an opportunity of hearing to the appellant dismissed him from service on 04.07.2013 (P-7). The appeal filed by him against the order of

dismissal was rejected by the Commissioner of Police on 22.10.2013 (P-9). And, even the revision petition preferred by him was dismissed by the Director General of Police, vide order dated 25.03.2015 (P-11). However, vide judgment dated 30.08.2016, the appellant was acquitted by the Special Judge, Faridabad in FIR No.23, dated 11.07.2011. Whereupon, he filed a mercy appeal before Director General of Police, Haryana on 14.09.2016 (P-13), seeking reinstatement in service, which was dismissed vide order dated 28.05.2018 (P-15). It was in this backdrop, the appellant approached this Court vide civil writ petition, which, as indicated above, has since been dismissed.

Learned counsel for the appellant has merely reiterated the submissions that were advanced before the learned Single Judge: he submits that on the basis of same set of charges/allegations, the appellant was tried in a criminal case and was also proceeded against in a departmental enquiry. Even, the evidence led in both the proceedings was the same. Thus, it is urged that once the appellant was acquitted by the Special Judge, the authorities were obliged to reinstate him in service. Further, in reference to Rule 16.3 of the Punjab Police Rules, 1934, he asserts that upon acquittal by the Criminal Court, the departmental proceedings as also the order of dismissal from service, paled into insignificance. And, thus, his reinstatement in service was the inevitable consequence. However, the authorities as also the learned Single Judge failed to examine/analyze this aspect in the right perspective.

We have heard learned counsel for the appellant and perused the record.

In brief, the charges/allegations against the appellant were that

he took illegal gratification of Rs.4000/- from Rakesh Chand (complainant) and was caught red-handed by the Vigilance department. On the basis of the evidence and material on record, the Inquiry Officer concluded that recovery of tainted currency notes was caused from the appellant. The shadow witness supported the case of the department, and the hands of the appellant turned pink when they were washed with sodium carbonate solution. Which was a positive affirmation of receipt of bribe by him. Accordingly, he was dismissed from service on 04.07.2013 (P-7). And, as indicated earlier, the appeal as also the revision filed by him against the order of dismissal were rejected by the competent authorities. It would be apposite to point out here that it is not the case of the appellant before this Court that departmental proceedings held against him were either violative of principle of natural justice; or the findings/conclusions arrived at by the Inquiry officer were perverse or contrary to the record; or there was violation of any statutory provision/rule. Rather, apparently post dismissal of his appeal (on 22.10.2013) and revision (on 25.03.2015) against order of his dismissal, he accepted and reconciled with his fate. It was nearly after 1½ year, when he was acquitted by the Special Judge on 30.08.2016 (P-12), the appellant sought to revive the matter by filing a mercy petition on 14.09.2017 (P-13).

Thus, in the given circumstances, the argument that once the appellant was acquitted in a criminal case, he ought to have been reinstated, lacks conviction and cannot be countenanced. Needless to assert that the criminal trial and the departmental proceedings are distinct, independent and are held with a different purpose, intent and objective to achieve. The position of law is settled that object of criminal trial is to inflict appropriate punishment on an offender and the purpose of enquiry/departmental

proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. Therefore, just because post dismissal of the appellant, he was acquitted by the Special Judge, would not *ipso facto* vitiate the departmental proceedings and the order of dismissal passed by the competent authorities under the Rules. The Supreme Court in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another**, (1999) 3 SCC 679 had observed if an employee is honourably acquitted by a criminal court, in the absence of any provision in the service rules for reinstatement, no right is conferred upon him to claim any benefit including reinstatement:

“23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court,

therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

Nothing is indicated if there exists any such rule, governing the service conditions of the appellant, that postulates reinstatement in service upon an employee being acquitted by a court in a criminal case. Not just that, and as shall be crucial to point out at this stage, the appellant was acquitted by the Special Judge for the complainant (Rakesh Chand) had turned hostile (retracted from his statement recorded u/s 164 Cr.P.C.) and the prosecution had failed to prove demand of bribe by the appellant. In fact, upon taking cognizance of the version of the complainant that his statement under Section 164 Cr.P.C. was recorded owing to pressure from the Officer of the Vigilance department, the Special Judge being of the view that *prima facie* an offence of perjury had been committed, a separate notice under Section 340 Cr.P.C. was issued to the complainant.

Likewise, the argument that in terms of Rule 16.3, once the appellant was acquitted his dismissal from service was unsustainable and he was required to be reinstated, is equally erroneous. Albeit, Rule 16.3 is reproduced in the impugned order and judgment, but for facility of reference, and to appreciate its true import and application, we consider it expedient to extract the same:

“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.”

Concededly, the appellant had been dismissed from service on 04.07.2013 (P-7), whereas he was acquitted, much later, by the Special Judge on 30.08.2016 (P-12). Therefore, in the given circumstances, in our view Rule 16.3 would not even be attracted or have any bearing on the matter in issue. Even otherwise, while interpreting Rule 16.3, the Supreme Court in Baljinder Kaur v. State of Punjab and others, 2016(1) SCC 671 held that the requirement of not punishing the officer departmentally is not absolute and hinges on any of the five conditions mentioned in proviso (a) to (e) of the said Rule. And, as observed even by the learned Single Judge, Rule 16.3 would not enure to the advantage of the appellant, as in terms of clause (a) and (b) appended thereto, the prosecution witnesses, in the matter at hands, were won over leading to acquittal of the appellant.

In the wake of the above, we are dissuaded to interfere with the

impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

23.02.2023
Rajan

Whether speaking / reasoned:	YES/NO
Whether Reportable:	YES/NO