

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

LPA-1152-2017 (O&M)

State of Haryana and others

....Appellant(s)

Versus

Vijay Pal and others

.... Respondent(s)

(2)

LPA-1127-2017 (O&M)

State of Haryana and others

....Appellant(s)

Versus

Ishwar Singh

.... Respondent(s)

(3)

CWP-7512-2019 (O&M)

Raj Kapoor and another

....Petitioner(s)

Versus

State of Haryana and others

.... Respondent(s)

Reserved on: 23.02.2023

Pronounced on: 15.03.2023

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. R.D. Sharma, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana for the appellants in
LPA-1127 & 1152 of 2017 and
for the respondents in CWP-7512-2019.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Kuldeep Sheoran, Advocate for the petitioners
in CWP-7512-2019 and
for the respondents in LPA-1127 & 1152-2019.

G.S. Sandhawalia, J.

The present judgment shall dispose off LPA-1152 & 1127 of
2017 and CWP-7512-2019. The question of misconduct is arising out of a
common FIR and the police party which was allegedly involved in the
criminal offences and tried is also the same and, therefore, these cases

have been heard together of the seven police personnel, who have been dismissed from service.

2. In LPA-1152-2017, the State is challenging the order passed by the learned Single Judge dated 17.01.2017, whereby the writ petition bearing **CWP No.15207 of 2013 ‘Vijay Pal and others Vs. State of Haryana and others’** was allowed, which filed by Vijay Pal and three other police personnel. LPA-1127-2017 arises out of **CWP No.15047 of 2013 ‘Ishwar Singh Vs. State of Haryana and others’** which was allowed by another learned Single Judge on 30.01.2017 merely on the strength of the fact that earlier in the case of **Vijay Pal (supra)** the benefit was granted.

3. CWP-7512-2019 apparently was filed by the two left out employees Raj Kapoor and Jagbir Singh challenging the departmental inquiry 21.01.2013 (Annexure P-7), consequent show cause notice dated 17.04.2013 (Annexure P-8) and the impugned order of dismissal dated 20.06.2013 (Annexure P-9) passed by the Superintendent of Police, Rohtak and the order passed in appeal on 24.06.2014 (Annexure P-11), whereby their appeal was dismissed by the Inspector General of Police Rohtak Range, Rohtak. Challenge has also been raised to the order dated 30.04.2015 (Annexure P-13), whereby the revision petition was dismissed by the Director General of Police, Haryana by coming to the conclusion that acquittal granted in a criminal case could not be *ipso facto* absolvment in the departmental proceedings and involvement of a member of disciplined force in such nefarious activities is quite serious and intolerable. Thus, they were found unfit for police service. Delay as such has been justified by these two writ petitioners on the ground that their mercy petition was pending before the competent authority and since

the writ petition had been allowed of the similarly situated persons, they then preferred to approach this Court in an effort to overcome the objection raised by the State.

4. The learned Single Judge had allowed the first writ petition in the case of **Vijay Pal (supra)** on the premise that criminal trial and the departmental proceedings are based on the same set of allegations and the trial Court acquitted the accused on the same evidence which was produced before the Inquiry Officer and the same evidence was produced in the departmental proceedings. Primacy was, thus, given to the judgment of the Criminal Court. Accordingly, reference was made to the charge-sheet to observe that the allegations in the departmental proceedings and the charge-sheet are pertaining to the same incident and are on the same set of allegations. The learned Additional Sessions Judge in its acquittal order dated 06.11.2012 had dealt with in great detail with the prosecution witnesses. The show cause notice dated 18.09.2012 on the departmental side had been issued just prior to the date of acquittal and it has to be noticed that in the case of Raj Kapoor and Jagbir Singh on 17.04.2013 after acquittal. It was noticed that as many as 22 prosecution witnesses were examined in the departmental inquiry and all of them had already deposed in the trial Court. Resultantly, it was held that the Inquiry Officer could not arrive at a different conclusion than was arrived at by a judicial mind and the Inquiry Officer could not be seen as overwriting the depositions already recorded.

5. While noticing the law on the issue, the learned Single Judge held that though there was no bar in conducting departmental proceedings simultaneously to the criminal trial, but if the employee is honorably acquitted in the criminal trial during pendency of proceedings challenging

the dismissal on the same set of facts, the findings contrary in the departmental proceedings than those concluded by the trial Court would be unjust, unfair and oppressive. Reliance was placed upon the judgment of the Apex Court passed in **Avinash Sadashiv Bhosale (D) Thr. LRs. Vs. Union of India and others, (2012) 13 SCC 142** and the subsequent judgment passed in **G.M. Tank Vs. State of Gujarat and others, (2006) 5 SCC 446**, apart from the judgment of this Court passed in **CWP No.1689 of 2009 'Khurshid Ahmad v. State of Haryana and others'** decided on 16.07.2009.

6. While placing reliance upon Rule 16.3 of the Punjab Police Rules and the exception under sub-Rule 1 (d) of the said rule and whether the case fell in general protection under Rule 16.3, the learned Single Judge examined the case of the writ petitioners and held that it did not fall within the said exception as the acquittal was honorable without giving benefit of doubt. It was also noticed that one of the co-accused and the senior member of the police team namely Ashok Kumar Sheoran, HPS had been reinstated in service from 06.07.2016 and other members of the police team were still fighting for their rights and, accordingly, on the principle of equality the benefit was granted.

7. Mr. Sharma appearing for the State has vehemently submitted that the standard of proof qua inquiry proceedings is different, whereas in criminal proceedings the prosecution has to prove its case beyond a shadow of doubt. Reliance was placed upon the judgment of the Apex Court passed in **Muzaffar Husain Vs. State of Uttar Pradesh and another, AIR 2022 SC 2216** to contend that the Court could not act as an Appellate Court and reassess the evidence led in the domestic inquiry, if it was not suffering from any infirmity. It is submitted that the learned

Single Judge has not recorded that the inquiry proceedings are bad and, therefore, it is not within the ambit of the writ Court to come to a contrary conclusion. Mere acquittal was not a ground to set aside the dismissal order. It was submitted that the presence of the police personnels involved in the dacoity were located at Panipat as per the record of the telephones obtained from the telephonic companies and the inquiry proceedings of the senior official had been concluded in his favour and, therefore, he had been reinstated. Objections were also raised regarding the filing of CWP-7512-2019 after a delay of 5 years to submit that the writ petition was suffering from delay and laches.

8. Learned Senior Counsel Mr. Sanjay Kaushal on the other hand has submitted that the findings recorded by the learned Single Judge were well justified and submitted that the appeal is liable to be dismissed. It is submitted that the complainants on the basis of which the criminal proceedings had been launched, had never identified the delinquent employees in the enquiry proceedings also. The same witnesses had deposed in the FIR case and the acquittal had been recorded and, therefore, contrary view should not be taken in the departmental proceedings in the absence of any clinching material.

9. Reliance by the State on a Division Bench judgment passed in **LPA No.565 of 2020 ‘State of Haryana and others Vs. Satish Kumar’** (authored by one of us i.e. G.S. Sandhawalia, J.), which has been upheld in **SLP No.15243 of 2022** on 10.11.2022, was rightly sought to be distinguished on the ground that in that case the complainant had supported the case in the departmental proceedings, but not in the criminal proceedings and the employee as such had been arrested by the State Vigilance and his hands had turned pink and, thus, had handled the bribe

money. He had also demanded and received the money and, therefore, he was involved in misconduct, which was proved on record. It was in such circumstances, the principle that in departmental proceedings a charge of misconduct has to be established on a preponderance of probabilities had been adhered to.

10. Senior Counsel for the employees has further submitted that though allegations were of a huge demand of cash looted which had been to the tune of Rs.6 lakhs from one party and Rs.10 lakhs from other, but there was only a recovery of Rs.15,000/- from a private person and not from the employees. The prosecution had, thus, failed to prove the guilt in the criminal proceedings and, therefore, on the departmental side there was no question to take a contrary view. The Inquiry Officer had exonerated the Deputy Superintendent of Police and the argument was raised that the Special Task Force jurisdiction was not limited to a particular district and it had come in the inquiry proceedings that the DSP had been dragged into the case and, therefore, the whole team has been implicated in a criminal case and the incident had never occurred. He also pointed out that no categorical finding of guilt as such was recorded by the Inquiry Officer on the basis of which the punishment order would be held to be justified.

11. The factual matrix for deciding the present cases would go on to show that FIR No.261 dated 11.03.2010 under Sections 395, 397, 398, 120-B IPC and under Section 27 of the Arms Act, 1959 was registered at Police Station City Panipat, District Panipat. The case of the prosecution was that the police party headed by ESI Wazir Singh alongwith ASI Siri Krishan and HC Krishan Kumar was present on patrol duty near S.D. School Chowk, Panipat when a complaint had been lodged by one Rajat Aggarwal that a day earlier he was present in his office situated at Shri

Ram Chowk. At about 3:35/4 PM, seven persons who had revolvers on their persons had entered into his office. Five of them sat in his office and told him that they were from crime branch and the Superintendent of Police was standing down stairs and asked him to arrange Rs.10 lakhs. Accordingly, under threat he arranged money from his uncle, wife and brother-in-law. Resultantly, Rs.6 lakhs had been taken away by them and he stated that the said persons had come on a white Bolero Jeep, which was parked near Shri Ram Chowk. It is to be noticed that same incident had also taken place in the shop of Shri V.K. Malhotra, owner of Malhotra Jewellers and a demand of Rs.10 lakhs had been made and the photograph of one person was captured by CCTV Camera and which was identified as that of HC Jagbir Singh.

12. Resultantly, details of his postings of special staff in Special Cell CIA were called from the Superintendent of Police of all the districts and he was found posted in Special Task Force (STF) Hisar and Rohtak. The details of the mobile phone calls of STF employee were also obtained and the said unit was disbanded. The house of STF employees were raided, but they all went underground. From the details of the phone calls they were found to be present in Panipat on the day and at the time when the incident took place. All the 7 accused were arrested on 15.03.2010. Eventually, the service revolvers alongwith live cartridges were recovered from the possession of the accused namely Dharabmir, Raj Kapoor, Jagbir Singh, Vinod Kumar, Mahinder and Vijay Pal and they were produced before the Court for their test identification parade, but they had refused to undertake the test identification parade. Only Rs.15,000/- had been recovered from the possession of one Raj Kumar @ Kalu from his residential house at Dadri. Apparently, the suspension was ordered on

16.03.2010 after their arrest but departmental proceedings were not launched for as long as two and half years as charge-sheet dated 18.09.2012 (Annexure P-5) was then drawn up. In the meantime, the order of acquittal came to be passed in the criminal Court by the Additional Sessions Judge on 06.11.2012.

13. The trial Court noticed that both Rajat Aggarwal and Narender Goel were also present in their office and who had appeared as PW-3 and PW-4, but failed to identify them and stated that accused persons present in the Court were not involved in the occurrence. They were declared hostile by the prosecution as they had stated that the police obtained their signatures on some blank papers. It was noticed that PW-9 Rajiv Gupta was an employee of Mukesh Kumar, uncle of the complainant and PW-8 Rajat Gupta brother in law of the complainant had also come present. They had also failed to identify any of the persons who had taken Rs.6 lakhs from the complainant and also denied that persons present in the Court were involved in the occurrence. The shops of PW-12 Gopal and PW-13 Satish were also situated in the same building, where the office of the complainant was situated, but they had no information that any such incident had taken place in the building and did not notice any person entering the office of the complainant. They were also declared hostile. They denied having seen any vehicle make Tata SUMO or Bolero parked near the building on that day.

14. The test identification parade which was allegedly conducted in the police station in the presence of the complainants was denied by Rajat Gupta and Rajiv Gupta. The fact that accused had refused to undertake the test identification parade had been noted by the Chief Judicial Magistrate, Panipat and fact that neither permission was sought

nor any Magistrate was called to conduct the test identification parade in the police station. The same was held to be not as per the procedure prescribed under the law and the photograph of one of the accused had already been published in the newspaper and even the accused were not mixed with other persons in civil dress. It was also noticed that no dummy was made available, which were should be of similar appearance of the accused and, therefore, the refusal to participate in the test identification parade would not make any difference. The extra-judicial confession alleged to have been made by accused Satish Verma whereas PW-15 Karam Singh denied the fact that any such extra-judicial confession was ever made by the said person. The lack of recovery of the looted money was also a factor and the fact that only Rs.15,000/- were recovered from another person, which prevailed with the trial Court to acquit the accused on the ground that even the said recovery was not in the presence of any independent person and the money could not be identified by the ones who had been looted. The glass tumbler on which the finger prints were there of Dharambir Singh was also discarded as the same had not been done in the precise manner and there were discrepancies when the recovery of glass tumbler was effected. There was nothing to show that the same had also been used by the accused persons to drink water or that complainant was present when the recovery was being done of the said glass tumbler.

15. It was held that the Lie-Detection test report did not prove their involvement conclusively and it shows that the accused appeared to be truthful deceptive and inconclusive while giving answers to the different questions. The factum that the test was violative of the right of the accused as held by the Apex Court in **Smt. Selvi and others Vs. State of Karnataka, 2010 (2) RCR (Crl.) 896** was also kept in mind while

acquitting the accused. It was observed that merely because the STF Team was present in the Panipat would not connect the accused with the commission of offence. It was also noticed that there was no evidence to show that 10 persons had gone to the shop of V.K. Malhotra, the owner of Malhotra Jewellers armed with deadly weapons and attempted to commit dacoity. The prosecution had failed to establish the identity of those five persons who allegedly gone to the shop of V.K. Malhotra and he had not identified HC Jagbir Singh and even one Ghanshyam who developed the downloaded photograph had not been examined.

16. It is not disputed that on 22.04.2013, the application filed by the State seeking leave to appeal under Section 378 (3) Cr.P.C bearing **CRM-A-90-MA-2013** (Annexure P-14) against the judgment of acquittal was dismissed by the Coordinate Bench while noticing that the trial Court had examined the entire evidence available on the record in the correct manner and details of telephonic calls to connect the accused with the crime were not produced on record. Recovery was only of Rs.15,000/- and in such circumstances it was held that there is no scope for interference in the judgment of acquittal.

17. However, the Inquiry Officer vide report dated 21.01.2013 (Annexure P-7) discarded the defence of acquittal qua 7 employees and came to the conclusion that standard of proof required in the departmental proceedings was not the same as required to prove a criminal charge and, therefore, held that the allegations available on the file levelled against the officials are fully proved during the course of departmental inquiry. It is pertinent to notice that he discussed the statements of various prosecution witnesses produced by the authorities which were as many as 22 in number. However, a perusal of the conclusion aspect would go on to show

that apart from discussing the place of posting and the official weapons which had been assigned to them and the recovery aspect, no conclusive finding was recorded. Apart from mentioning that due to pressure the witnesses had failed to identify the delinquents and, therefore, he disagreed with their statements and relied upon the initial version of the prosecution witnesses that he recognized the delinquents at an earlier point of time at the time of identification parade. It has not been even specifically mentioned that the mobile locations were at the place of occurrence and at which places of Panipat and at what point of time. Merely by saying that their mobile locations were traced at Panipat and, thus, they were found to be at the place of occurrence, the Inquiry Officer held that the charge stood proved. Thus, in effect it overruled the judgment of acquittal which has been subsequently upheld by the Division Bench of this Court as noticed above. It has also come in evidence of the prosecution witness No.14 HC Shiv Kumar that the Addl. SP was at Karnal to give evidence and thereafter had come to Panipat, where he had been for 3-4 days as he was in search of Surinder @ Kala, Anil Babal and Vijender Siva and had left at 7:00 PM for Hisar. Thus, the argument of the State counsel that the presence was confirmed at Panipat is of no use, as apparently the STF team was also busy at Panipat unearthing the illicit oil trade which had caused annoyance to the local mafia and could be the reason to falsely implicate them in a dacoity which never took place.

18. The show cause thereafter was issued for dismissal. The order of dismissal would go on to show that the punishing authority consisted of various Superintendent of Police, Hisar and Sirsa and took into consideration the fact that the vehicle was allotted to Shri Ashok Sheoran, Assistant Superintendent of Police (STF) and the said persons

were attached with him. They came to the conclusion that there was variation in the polygraphic test and they had misused their official power and thus, deserved the punishment of dismissal. The appeals were also dismissed in the cursory manner by the Inspector General of Police at Hisar on the ground that there was gross indiscipline and negligence on the part of the appellants and merely because of acquittal the departmental proceedings could not be dropped, as the standard of proof was different.

19. We have also called for the record of the inquiry report pertaining to Shri Ashok Kumar Sheoran, HPS wherein the inquiry proceedings had been conducted by the Additional Chief Secretary to Government of Haryana. The defence as such of the said person was that on account of the fact that two factories were indulging in illegal manufacturing of kerosene and diesel oil had been unearthed by the Special Task Force he had been falsely implicated by the then Superintendent of Police, Panipat namely Shri Rajender Singh. It was also noticed that even the Jeweller Bishamber Malhotra had committed suicide and was under the pressure of Panipat Police, since they wanted to procure a false affidavit from him. The Inquiry Officer had also noticed that initially there was a delay of 10 hours in lodging of the FIR and the police station was situated at a distance of 300 meters. The defence was that Satbir Singh Kadian, the then ruling party MLA and a powerful politician was hostile to the head of the STF on account of the fact he had unearthed two factories of *Kala Tail* dealing in manufacturing illicit kerosene and diesel oil near the Panipat Refinery as one of his cousin was involved in the said trade. The said enquiry officer also recorded a fact that the then Additional SP, Panipat, Shri Jagat Singh had admitted in his cross-examination that a case regarding illicit oil was registered in the Police

Station Sadar by the then SHO, Panipat. The said superior officer's defence was very clear that he was implicated as his STF had unearthed two factories of '*Kala Tail*' dealing in manufacturing illicit kerosene and diesel oil near the Panipat Refiner, which was a racket running into several crores of rupees. The glass tumbler and pack of cards were also sent to the Forensic Laboratory, Madhuban after a period of 75 days. Resultantly, a clean chit was given to the said officer vide report dated 15.05.2015. It is a matter of record that he was reinstated by the Government on account of the said fact on 06.07.2016 (Annexure R-3).

20. In such circumstances, we are of the considered opinion that once there is an acquittal on merits after a detailed discussion which was not on technical points, the learned Single Judge was well justified while giving the benefit of reinstatement. Since a similarly situated person who was the head of the said team and also prosecuted had already been granted the said benefit of reinstatement, therefore, there would be no reason as to why the lower police officials should be discriminated and to make them a scapegoat in the said controversy. Once the benefit had been given to the Addl. SP on the ground that he had been falsely implicated, the same benefit necessarily has to all the members of the STF team. The reasoning given by the learned Single Judge, thus, is well justified as there was in extensive discussion by the criminal Court and in the peculiar facts and circumstances and fact that the complainants had not supported the case either in departmental proceedings or the criminal trial, the State cannot take different stands. The statement of PW-13 Narender Goel in the departmental proceedings would go on to show that the employees had no concern with the incident and were not even present. Similar was the statement of PW-11 Rajat Aggarwal, the complainant himself.

21. In such circumstances, keeping in view the fact that the FIR was lodged after a considerable delay on the next day of a serious occurrence of two incidents of dacoity, which was also lodged with a police patrol party and not at the Police Station, we are of the considered opinion that the different findings should not be recorded. Accordingly, LPA-1152 & 1127-2017 are dismissed and CWP-7512-2019 is allowed. The employees be reinstated and taken back in service with all consequential benefits of seniority and fixation of pay etc.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

15.03.2023
Naveen

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