

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CWP-20174-2009
Date of Decision: 13.03.2024

Balwinder Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. C.S. Jattana, Advocate for the petitioner
Mr. Pawan Kumar, Deputy Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:-

- i. order dated 20.09.2004 (Annexure P-6) whereby Disciplinary Authority has awarded punishment of dismissal;
- ii. order dated 28.07.2005 (Annexure P-8) whereby Appellate Authority has dismissed appeal of the petitioner; and
- iii. order dated 25.07.2007 (Annexure P-10) whereby revision petition of the petitioner has been dismissed.

2. The petitioner on 06.02.1989 joined respondent-department as Constable. An FIR No.20 of 1991 under Sections 379, 409, 120-B of Indian Penal Code, 1860 read with Sections 3 and 4 of Terrorist and Disruptive

Activity (Prevention) Act was registered against him at Police Station at GRP, Amritsar. On registration of FIR, the Assistant Inspector General of Govt. Railway Police, Punjab dismissed him from service vide order dated 22.01.1991 (Annexure P-1) without holding any regular inquiry. The Trial Court vide judgment dated 17.11.1992 (Annexure P-2) acquitted him in the above-said FIR. Thereafter, he preferred *CWP No.6773 of 1993* before this Court seeking setting aside of dismissal order. By order dated 11.12.2002 (Annexure P-3), this Court set aside dismissal order dated 22.01.1991, however, granted liberty to the respondents to hold regular inquiry against him which was dispensed with under Article 311(2) of Constitution of India while passing the said order.

The petitioner was reinstated vide order dated 26.05.2003 and departmental proceedings was initiated against him. Superintendent-cum-Assistant Inspector General of Police, Railways Punjab, Patiala vide order dated 20.09.2004 (Annexure P-6), dismissed him from service. He unsuccessfully preferred appeal and revision before the departmental authorities.

3. Learned counsel for the petitioner submits that as per Rule 16.3 of Punjab Police Rules, 1934 (for short '**1934 Rules**'), the petitioner could not be departmentally punished because he has been acquitted in the criminal trial. The foundation of departmental proceedings and criminal trial was same. The evidence led by the department in criminal as well as departmental proceedings were same, thus, he could not be punished in view of his acquittal in the criminal trial.

4. *Per contra*, learned State counsel submits that the petitioner was departmentally punished after holding regular inquiry. The petitioner was involved in a heinous offence of conspiracy with militants. The departmental proceedings were adjudicated on different parameters. The petitioner has been acquitted on the ground of benefit of doubt. He concedes that petitioner was departmentally punished on account of registration of FIR and evidence in both the proceedings were common.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The entire dispute revolves around interpretation of Rule 16.3 of 1934 Rules, thus, it would be inevitable to look at aforesaid Rule which is reproduced as below:

“16.3. Action following on a judicial acquittal. –

(1) When a Police Officer has been tried and acquitted by a criminal court he shall be 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.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of Deputy Inspector General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

7. The acquittal from criminal proceedings does not automatically entitle immunity from departmental action. A police officer may be subjected departmental punishment despite acquittal in criminal proceedings as per exceptions carved out in Rule 16.3 of 1934 Rules. If acquittal is not based upon exceptions carved out in Rule 16.3 of 1934 Rules, a police officer is entitled to immunity from departmental action.

8. From the perusal of impugned orders and facts on record, it is evident that appellate authority has not adverted with Rule 16.3 of 1934 Rules while passing the said order. Rule 16.3 of 1934 Rules is directly applicable to every departmental proceedings as soon as criminal proceedings are dropped. The competent authority is duty bound to ascertain applicability of Rule 16.3 of 1934 Rules in the departmental proceedings. As the Appellate Authority has not adverted with Rule 16.3 of 1934 Rules while passing impugned orders, the impugned orders dated 28.07.2005 (Annexure P-8) and 25.07.2007 (Annexure P-10) deserve to be set aside and accordingly set aside. To cut short the litigation, instead of disciplinary authority, the appellate authority is directed to pass a fresh order within three months from today.

9. This Court would hasten to add that if the appellate authority decides to reinstate the petitioner, he shall not be entitled to back wages as conceded by learned counsel for the petitioner.

(JAGMOHAN BANSAL)
JUDGE

13.03.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>