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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15636-2022 (O&M)
Date of Decision:11.01.2024

NIRMALJIT SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. A.K. Walia, Advocate for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 16.04.2021 (Annexure P-10) and order dated 03.03.2022 (Annexure P-11).

2. The petitioner was appointed as Constable on 03.12.1993 in Punjab Armed Police. An FIR No.133 dated 11.06.2014 under Section 22 of NDPS Act, came to be registered against the petitioner at Police Station, Sarabha Nagar, Ludhiana. On the one hand, the police after completing investigation filed its report under Section 173 of Cr.P.C. before the Trial Court and on the other hand, the departmental proceedings came to be initiated against the petitioner. The Commissioner of Police, Ludhiana vide order dated 11.06.2014 (Annexure P-3) dismissed the petitioner from service. The petitioner unsuccessfully preferred appeal and revision. The petitioner faced criminal trial where he came to be acquitted vide judgment dated

07.08.2018 (Annexure P-7) passed by Judge, Special Court, Ludhiana.

The Trial Court has held that the prosecution has failed to prove effecting of alleged recovery from the accused beyond shadow of doubt, consequently, he was acquitted of the charge for the benefit of doubt.

3. Counsel for the petitioner submits as per Rule 16.2 read with 16.3 of Punjab Police Rules, 1934 (in short “Punjab Police Rules”), the punishment awarded by departmental authorities needs to be reviewed in the light of judgment of acquittal.

4. On being asked, Mr. Inderpreet Singh Kang, AAG, Punjab, expressed his inability to controvert the fact that original as well as appellate order was passed prior to judgment of acquittal and authorities have not reviewed case of the petitioner in the light of proviso to sub-rule (2) of Rule 16.2 of Punjab Police Rules.

5. Proviso to sub-rule 2 of Rule 16.2 of Punjab Police Rules, mandates that in case conviction of a police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by government in this behalf.

Rule 16.3 of Punjab Police Rules, 1934 provides that if a police officer is acquitted by 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. Rules 16.2 and 16.3 of Punjab Police Rules are reproduced as below:

“16.2. Dismissal.- (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the service of the offender and his claim to pension.

(2) *If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed: Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal: Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping view the instructions issued by the Government from time to time in this behalf.*

(3) *When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.*

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.”

6. 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 Punjab Police Rules, 1934. If acquittal is not based upon exceptions carved out in Rule 16.3 of Punjab Police Rules, 1934, a police officer is entitled to immunity from departmental action.

7. From the reading of proviso to sub-rule (2) of Rule 16.2 of

Punjab Police Rules, it is quite evident that in case of setting aside of conviction, the officer empowered to appoint is duty bound to review case of the police officer. The original as well as appellate order was passed prior to judgment of acquittal, thus, neither original nor appellate authority had advantage to look at findings of trial court.

8. In the wake of above quoted rules, the appointing authorities are duty bound to review case of the petitioner. To cut short the litigation, instead of original authority, the matter is remanded back to the appellate authority to review case of the petitioner in the light of proviso to sub-rule (2) of Rule 16.2 read with Rule 16.3 of Punjab Police Rules. The needful shall be done within six months from today.

9. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

11.01.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>