

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

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CWP-14719-2023

Date of Decision : 08.01.2024

GURSEWAK SINGH

..... PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Sunny Singla, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 18.03.2023 (Annexure P-4) whereby the appellate authority has dismissed his appeal.
2. The petitioner is working with Punjab Police as Head Constable. An FIR No.214 dated 21.11.2016 came to be registered against the petitioner alleging that he has committed theft of pistol of ASI Balvir Singh. The police completed investigation and filed its report under Section 173 of Cr.P.C. before the trial Court. The trial Court after examining the evidence led by prosecution came to a conclusion that prosecution has failed to prove its case. The relevant extracts of the judgment dated 08.07.2022 passed by JMIC, Khanna read as :

“17. This court has further observed that Investigating officer SI Gurmail Singh not examined by the

prosecution. Investigating officer was the material witness in the present case. This court has further observed that no khakha of recovery weapon is placed on record. Investigating officer was best witness who can disclose the same in actual.

18. This court has further observed that no independent witness is joined by the Investigating officer at the time of alleged recovery. Although the testimony of official witness cannot be denied only on the ground that they are official but in the present case it was essential to join or independent witness at the time of recovery as both the accused and complainant are police officials and witnesses are also police official. There may be chances of favouritism at the instance of witnesses of recovery who are police officials. As per the prosecution story on the disclosure of accused weapon is recovered from Abaad Colony Near Main Gate of Farm House Village Rorian of weapon. The place of recovery of weapon in the present case is accessible to everyone. So, no reliance can be placed on to convict the accused.

19. This court has further observed that as per the prosecution story complainant was incharge of police post Kot in the year 2015 and accused got transferred from Police Post Kot by the SSP on the asking of Complainant. The prosecution has failed to prove that the accused was transferred accordingly. No transfer order has been placed on record by the prosecution. Meaning thereby the motive of accused not proved by the prosecution. The prosecution has failed to prove the motive of accused in the present case. When there is no motive, then the link in the chain is missing. The prosecution has failed to prove the case beyond the shadow of reasonable doubt against the accused persons.

20. The evidence produced on record by the prosecution is neither sufficient nor material to prove the guilt of the accused. So, giving the benefit of doubt, accused namely Gursewak Singh, is hereby acquitted of the charge framed against him. His bail bonds and surety bonds furnished earlier, stands discharged. Case property be disposed of, as per rules, after the expiry of period of appeal/revision, if any. File be consigned to the record room Khanna after due compliance.”

3. On the one hand, the petitioner was subjected to criminal trial and on the other hand, respondent initiated departmental proceedings. The petitioner in the departmental proceedings was subjected to punishment of stoppage of three annual increments. The petitioner preferred appeal against the order of punishment which came up for consideration before the appellate authority i.e. Inspector General of Police, Ludhiana Range, Ludhiana. The appellate authority vide order dated 18.03.2023 has dismissed appeal of the petitioner.

4. Learned counsel for the petitioner submits that the appellate authority was duty bound to consider applicability of Rule 16.3 of Punjab Police Rules, 1934 while adjudicating the appeal, however, appellate authority without noticing scope and ambit of Rule 16.3 of Punjab Police Rules, 1934 has dismissed appeal of the petitioner.

5. Learned State counsel does not dispute the factual position that appellate authority has not adverted with Rule 16.3 of Punjab Police Rules, 1934 while passing the impugned appellate order.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. 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. The Rule 16.3 of Punjab Police Rules, 1934 reads as :

“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.”

8. 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.

9. From the perusal of impugned order, it is evident that appellate authority has not adverted with Rule 16.3 of Punjab Police Rules, 1934 while passing impugned order. Rule 16.3 of Punjab Police Rules, 1934 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 Punjab Police Rules, 1934 in the departmental proceedings. As the appellate authority has failed to advert with Rule 16.3 of Punjab Police Rules, 1934 while passing impugned order, the impugned order deserves to be set aside and accordingly set aside. The appellate authority is directed to pass afresh order within three months from today.

08.01.2024
anju

(JAGMOHAN BANSAL)
JUDGE

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