

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

108+214

CWP-23349-2015 (O&M)

Date of Decision : 12.02.2024

Amrik Singh

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Rajeev Anand, Advocate
for the petitioner.

Mr. Parvesh K. Saini, Sr.Panel Counsel
for the respondents-UOI.

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 17.06.2015 (Annexure P-7) whereby his representation seeking reinstatement has been rejected.
2. The petitioner joined CRPF on 02.09.1994 as Safai Karmachari and he was appointed as Constable (GD) in Group Centre (GC), Jalandhar w.e.f. 01.01.1997. On 30.06.2010, while he was posted in Group Centre, Jalandhar, he obtained permission from Guard Commissioner to leave his place of duty to pick up his son from Station Hospital, Jalandhar. He went to Kartarpur (Dhilwan) without prior permission of competent authority. He, while on his way, was arrested by Punjab Police alleging commission of offence punishable under NDPS Act. The police after completing investigation filed its report alleging commission of offence punishable under NDPS Act. During the pendency of criminal proceedings, the

respondent initiated departmental proceedings. An enquiry officer was appointed to conduct enquiry. The charges levelled against the petitioner were proved and disciplinary authority vide order dated 04.06.2011 awarded him punishment of dismissal from service. The petitioner preferred an appeal before DIGP, GC, CRPF, Jalandhar who vide order dated 28.07.2011 dismissed the same. The petitioner came to be acquitted vide judgment dated 19.02.2015 passed by Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar. After acquittal, the petitioner preferred representation before respondent seeking his reinstatement on the ground of acquittal. The respondent by impugned order dated 17.06.2015 rejected representation of the petitioner.

3. Learned counsel for the petitioner submits that the petitioner has been acquitted by trial Court and on the date of dismissal, he was having in his credit 17 years service, thus, his matter needs to be considered sympathetically and commiserately. The respondent has rejected claim of the petitioner on the ground that yardstick for criminal and departmental proceedings is different. The standard of proof in both the proceedings is different. The respondent has not considered judgment of acquittal in totality and by reading last paragraph of judgment has rejected claim of the petitioner. The respondent was bound to consider findings of trial Court.

In support of his contention, he relied upon judgment of Supreme Court in **Ram Lal vs. State of Rajasthan, 2023 SCC Online SC 1618.**

4. Per contra, learned counsel for the respondents submits that the petitioner has not been honorably acquitted and he has been extended benefit of doubt. The competent authority has thoroughly examined judgment of trial Court and thereafter impugned order has been passed.

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

6. The conceded position emerging from record is that on 30.06.2010 petitioner was apprehended by Punjab Police alleging commission of offence under NDPS Act. Thereafter, on the same day, an FIR No.125 dated 30.06.2010 under Section 18/61 of NDPS Act, 1985 came to be registered against the petitioner. Pursuant to registration of FIR, departmental proceedings were initiated against the petitioner. After considering the reply and contentions raised by the petitioner, the disciplinary authority vide order dated 04.06.2011 imposed penalty of 'dismissal from service'. Against the order of dismissal, petitioner unsuccessfully preferred appeal before DIGP, GC, CRPF, Jalandhar.

7. The petitioner in the afore-mentioned FIR came to be acquitted by trial Court vide judgment dated 19.02.2015. On acquittal, the petitioner filed a representation before the respondent-department seeking reinstatement, however, his representation was dismissed vide order dated 17.06.2015. The relevant extracts of the judgment dated 19.02.2015 and order dated 17.06.2015 are reproduced as below :

Judgment dated 19.02.2015

21. From the judgments referred above, it is clear that the prosecution has to establish its case beyond shadow

of reasonable doubt that the seals put on the sample remained intact till the sample reached the hands of Chemical Examiner. Here in the present case as per PW3 Inspector Joga Singh, the sample parcel was handed over to HC Joga Singh on 08.07.2010 and he deposited the same in the office of the Chemical Examiner. The sample seal impressions are necessary but here in the present case the seal impressions were not affixed on form M-29 and the same were affixed only on separate cloth annexed with form M-29 later on. The sample carrier HC Joga Singh has not been examined as he is stated to have expired. In the report of Chemical Examiner Ex. PW2/H there is no mention that the seals were tallied with sample seal impression and they were found intact at the time of receiving the sample. Therefore, the prosecution has not examined any person who had taken the sealed sample to the office of the Chemical Examiner. In the Chemical Examiner's report there is no mention that packet of the representative sample was received duly sealed and the seals were tallied and intact. Therefore, the important link to establish the fact that from the time of recovery of the opium the seals of representative sample remained intact till they reached the Chemical Examiner is conspicuously missing. Therefore, possibility of tampering with the sample could not be ruled out. The next point which creates suspicion about the prosecution story is that the prosecution has failed to prove that the sample seal was deposited in Malkhana. PW3 Inspector Joga Singh has nowhere stated in his examination in chief that he deposited the sample seal also in the malkhana. The absence of depositing of sample seal also shows that there is violation of section 55 of the Act.

Order dated 17.06.2015

The Hon'ble Addl. Sessions Judge (Adhoc) Fast Track Court, Amritsar vide judgement dated 19/02/2015 in case FIR No. 125 dated 30/06/2010, U/S 18-61-85 Narcotic Drugs & Psychotropic Substances Act, 1985 has acquitted Ex-Ct/GD Amrik Singh by extending benefit of doubt. But, the acquittal in criminal case does not give full right to be re-instated. In criminal trial, strict proof of charge is required to convict a person but in departmental enquiry, the standard of proof required is preponderance of probability,

Further, the object of the DE is to find out the misconduct of the Govt. Servant, if any, whereas the objective of criminal proceedings is to punish the person for commission of an offence. The decision rests with the Disciplinary Authority to order DE simultaneously when criminal case is sub-judice. Considering the gravity of misconduct, the DE proceedings were ordered by the Disciplinary Authority. The charge framed in Article II is that he went outside the campus without permission of the competent authority and an FIR has been registered against him under NDPS Act, which differs from the charge framed by the Civil Police.

Therefore, taking into consideration the above facts, it is obvious that individual has not brought any new facts/evidences in support of his misconduct and therefore, I, the undersigned, by exercising the powers under Rule 29 of CRPF Rules 1955, hereby reject the representation/revision petition dated 20/03/2015 preferred by No. 941443003 ex-Ct/GD Amrik Singh of GC, CRPF, Jalandhar being without merits as well as on

the grounds of being time barred, due to an inordinate delay of about four years.

8. The claim of the petitioner is that while considering the representation filed by the petitioner, the respondents were duty bound to consider the judgment of acquittal in its totality as held by Supreme Court in **Ram Lal's case (supra)**. The relevant extracts of the said judgment read as:

“28. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.”

9. It is settled proposition of law that standard of proof in departmental proceeding and criminal trial is different. A person cannot be re-instated on the sole ground of acquittal in the criminal proceedings.

In **Stanzen Toyotetsu India P. Ltd. vs. Girish V., 2014 (3) SCC 636**, the Apex Court has held that departmental inquiry is aimed at maintaining discipline and efficiency in service while criminal prosecution for an offence is launched for violation of a duty that the offender owes to

the society and both operate in separate and different spheres and intending to serve totally different purposes. The relevant extracts of the judgment read as:-

“9. In A.P. SRTC v. Mohd. Yousuf Miya [(1997) 2 SCC 699 : 1997 SCC (L&S) 548] this Court declared that the purpose underlying departmental proceedings is distinctly different from the purpose behind prosecution of offenders for commission of offences by them. While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the society, departmental enquiry is aimed at maintaining discipline and efficiency in service. The difference in the standard of proof and the application of the rules of evidence to one and inapplicability to the other was also explained and highlighted only to explain that conceptually the two operate in different spheres and are intended to serve distinctly different purposes.”

The Supreme Court in **Noida Entrepreneurs Assn. v. Noida, (2007) 10 SCC 385**, while discussing its catena of judgments has held that criminal proceedings are launched for an offence for violation of a duty, which the offender owes to the society, whereas, the departmental enquiry is to maintain discipline in the service and efficiency of public service. The relevant extracts of judgment read as:

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See Tata

Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] and Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh) [Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh), (2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to Kendriya Vidyalaya Sangathan v. T. Srinivas [Kendriya Vidyalaya Sangathan v. T. Srinivas, (2004) 7 SCC 442 : 2004 SCC (L&S) 1011] , Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry [Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry, (2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and Uttaranchal RTC v. Mansaram Nainwal [Uttaranchal RTC v. Mansaram Nainwal, (2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

‘8. ... The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal

trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Evidence Act, 1872 [in short “the Evidence Act”]. The converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.’ [Ed. : As observed in A.P. SRTC v. Mohd. Yousuf Miya, (1997) 2 SCC 699, pp. 704-05, para 8.] ”

10. Supreme Court in the case of **State of Karnataka and another Vs. Umesh 2022 (6) SCC 563**, has held that punishment awarded in departmental proceeding cannot be quashed on the ground of acquittal in criminal trial. High Court does not act as an Appellate Authority over the findings of Disciplinary Authority. The relevant extracts of the judgment reads as:

“22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate

the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

- (i) the rules of natural justice have been complied with;*
- (ii) the finding of misconduct is based on some evidence;*
- (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and*
- (iv) whether the findings of the disciplinary authority suffer from perversity; and*
- (v) the penalty is disproportionate to the proven misconduct.*

23. However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the enquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry.

The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding

11. Supreme Court while noticing the fact that standard of evidence in departmental and criminal proceedings is different, in **G.M. Tank v. State of Gujarat, (2006) 5 SCC 446** has held that where both proceedings are based upon same set of allegations and evidence, on acquittal in criminal proceedings, the employee cannot be punished in departmental proceedings. The relevant extracts of the judgment read as:

29. The judgment in State of A.P. v. S. Sree Rama Rao [(1964) 3 SCR 25 : AIR 1963 SC 1723] was cited for the purpose that the High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant, it is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated.

30. The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case,

criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony case [(1999) 3 SCC 679 : 1999 SCC

(L&S) 810] will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

12. From the above cited judgments, following guiding principles can be culled out:

i) Standard of evidence and yardstick adopted to adjudicate same matter in departmental and criminal proceedings are different.

ii) Conviction in criminal trial rests upon proving guilt beyond reasonable doubt whereas punishment in departmental proceedings rests upon preponderance of evidence.

iii) High Court, in exercise of power conferred by Article 226 of Constitution of India, while deciding petition against departmental punishment cannot act as an appellate authority.

iv) If the departmental and criminal proceedings are based upon same set of allegations, charges and evidence either oral or documentary and there is acquittal in criminal trial, the departmental proceedings may be set aside.

v) It is duty of the court to examine findings of criminal court and it should not sway by use of expression 'acquittal', 'honourable acquittal' and 'beyond reasonable of doubt' etc.

13. In view of above-cited judgments, an employee cannot be reinstated merely on acquittal from criminal trial. The Court is duty bound to look at nature of allegations made in departmental and criminal proceedings. The Court is further supposed to look into findings of Trial Court where an employee claims reinstatement on the basis of his acquittal in criminal trial. If the foundation of departmental proceedings and criminal trial is same, the Court has to look into judgment of acquittal and if it finds

that acquittal is neither based upon technical grounds nor turning of witnesses hostile, then, question of reinstatement needs to be examined.

14. From the reading of judgment dated 19.12.2015 passed by Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar, it comes out that FIR was registered on account of possession of opium without any legal permit or licence and as per the findings recorded by trial Court and deposition of witnesses, it comes out that petitioner was acquitted on technical grounds and their acquittal cannot be considered as acquittal for the purpose of reinstatement in service.

15. In view of above discussions and findings, this Court is of the considered opinion that the present petition deserves to be dismissed and accordingly dismissed.

16. Pending miscellaneous application, if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

12.02.2024
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>