

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

118

CWP-21415-2023
Date of Decision: 14.02.2024

Raj Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

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

- (i) order dated 09.12.2022 (Annexure P-7) passed by Additional Director General of Police, Jalandhar whereby his mercy petition against order dated 24.05.2016 (Annexure P-1) passed by respondent No.5 has been dismissed;
- (ii) order dated 23.06.2022 (Annexure P-3) whereby appeal filed by him against order of Commandant has been dismissed; and
- (iii) order dated 30.09.2022 (Annexure P-5) whereby Inspector General of Police has dismissed revision filed by the petitioner.

2. The petitioner on 27.04.1999 joined Punjab Police as Constable. An FIR No.105 dated 12.11.2015, under Sections 186, 353, 427 of IPC at Police Station Lambra, District Jalandhar came to be registered against him. The petitioner was placed under suspension and vide order dated 18.11.2015, departmental enquiry came to be initiated. During the pendency of enquiry, the petitioner was reinstated. The respondent issued show cause notice dated 16.05.2016 calling upon the petitioner to show cause as to why his one year approved service should not be forfeited. The disciplinary authority i.e. Commandant 80th Battalion, PAP Jalandhar Cantt. vide order dated 24.05.2016 (Annexure P-1) ordered to forfeit one year approved service.

3. The petitioner came to be acquitted vide judgment dated 02.03.2022 passed by JMIC, Jalandhar. The petitioner unsuccessfully preferred an appeal against the order of punishment. The petitioner further preferred mercy petition which came up for consideration before Additional Director General of Police, State Armed Police, Jalandhar who vide order dated 09.12.2022 dismissed the same.

4. The petitioner has submitted that he was implicated in FIR No.105 dated 12.11.2015 registered at Police Station Lambra, District Jalandhar, under Sections 186, 353 and 427 of IPC. He has been acquitted vide judgment dated 02.03.2022. Despite acquittal, he has been awarded punishment by departmental authorities. His one year approved service has been forfeited with permanent effect. The order of punishment in view of Rule 16.2 read with 16.3 of Punjab Police Rules needs to be recalled.

5. 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 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.

6. Per contra, learned State counsel submits that the petitioner was departmentally punished prior to judgment of acquittal, thus, he cannot claim benefit of Rule 16.3 of 1934 Rules. He concedes that petitioner was departmentally punished on account of registration of FIR and evidence in both the proceedings were common.

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

8. 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.”

9. 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.

10. The contention of the respondent that the petitioner was acquitted after adjudication of departmental proceedings cannot be countenanced because there would be discrimination if contention of the respondent is accepted. On the same set of allegations, two employees in different districts may be subjected to departmental and criminal proceedings or there may be a case where on the identical set of allegations two employees in the same district are subjected to department and criminal

proceedings. In case, both the employees are acquitted from the criminal trial and in case of one employee departmental proceedings are still pending he would be entitled to benefit of Rule 16.3 of 1934 Rules whereas an employee against whom departmental proceedings have already concluded would not be entitled to benefit of Rule 16.3 of 1934 Rules. It would be violative of fundamental right of equality guaranteed by Article 14 of the Constitution. The State cannot make hostile discrimination.

11. From the perusal of impugned orders, it is evident that authorities have not adverted with Rule 16.3 of 1934 Rules while passing said orders. 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 failed to advert with Rule 16.3 of 1934 Rules while passing impugned orders, the impugned orders dated 09.12.2022 (Annexure P-7), 23.06.2022 (Annexure P-3) and 30.09.2022 (Annexure P-5) deserve to be set aside and accordingly set aside. The appellate authority is directed to pass afresh order within three months from today.

12. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

14.02.2024
anju

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