

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

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CWP-16656-2017
Date of Decision: 05.02.2024

Ashwani Kumar ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Rishu Mahajan, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, 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) show cause notice dated 03.08.2010 (Annexure P-2);
- (ii) order dated 28.12.2010 (Annexure P-3) whereby
Disciplinary Authority has awarded punishment of
forfeiture of three increments from his permanent
service;
- (iii) order dated 29.09.2015 (Annexure P-5) and 02.05.2017
(Annexure P-6) whereby Appellate Authorities have
dismissed appeals of the petitioner.

2. The petitioner in 1990 joined Punjab Police as Constable. He was promoted to the post of Head Constable. An FIR No.51 dated 07.10.2008, under Sections 323/324/452/427/148/149 of IPC at Police Station Purana Shala, District Gurdaspur was registered against the petitioner. The respondent-department initiated departmental enquiry against the petitioner and vide order dated 13.01.2009, he was placed under suspension. The respondent vide order dated 27.03.2009 revoked suspension order. The petitioner filed reply to departmental charge-sheet and respondent, vide order dated 28.12.2010, ordered to forfeit three increments from his permanent service. The petitioner preferred an appeal before appellate authority which came to be dismissed vide order dated 29.09.2015. The trial Court vide order dated 25.07.2014 acquitted the petitioner from all charges levelled in the FIR. The petitioner preferred revision against the departmental punishment which also came to be dismissed vide order dated 02.05.2017.

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 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 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.

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

6. The entire dispute is revolved 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. 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.

9. From the perusal of impugned order, it is evident that appellate authority has not adverted with Rule 16.3 of 1934 Rules while passing 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 failed to advert with Rule 16.3 of 1934 Rules while passing impugned orders, the impugned orders dated 29.09.2015 (Annexure P-5) and 02.05.2017 (Annexure P-6) deserve to be set aside and accordingly set aside. The appellate authority is directed to pass afresh order within three months from today.

05.02.2024
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(JAGMOHAN BANSAL)
JUDGE

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