

CWP-30528-2024

1

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

126

CWP-30528-2024

Date of Decision: 12.11.2024

CHARAN SINGH

.... PETITIONER

V/S

STATE OF PUN AND OTHERS

.... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Karambir Singh Kharbanda, 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) order dated 01.03.2008 (Annexure P-3) whereby he was dismissed from service;
- (ii) order dated 14.09.2010 (Annexure P-4) whereby appellate authority dismissed his appeal; and
- (iii) order dated 11.07.2024 (Annexure P-9) whereby Director General of Police has dismissed his petition.

2. The petitioner joined Punjab Police as Constable on 11.09.1979. An FIR No.146 dated 31.07.2000 under Sections 307, 326, 323, 324, 148 and 149 of Indian Penal Code, 1860 (for short 'IPC') came to be registered against him at Police Station Payal, District Ludhiana. He faced trial and came to be convicted by learned Additional Sessions Judge, Fast Track Court, Ludhiana



vide judgment dated 17.07.2004. He was awarded sentence of 03 years rigorous imprisonment under Section 326, 323, 148 and 149 of IPC. He preferred an appeal before this Court wherein his sentence was enhanced from 03 years to 04 years. He has already suffered aforesaid sentence.

3. Mr. Karambir Singh Kharbanda, Advocate submits that the petitioner was mechanically dismissed from service. Mere conviction in criminal case does not entail termination from service. The authorities were bound to examine judgment of conviction and thereafter pass order of punishment in departmental proceedings. No employee can be dismissed automatically. The authorities are bound to apply their mind whereas in the instant case, the petitioner was dismissed from service on account of his conviction. The respondent did not conduct any enquiry and straightway dismissed him from service. The respondent has reinstated or compulsorily retired many police officers who were convicted in criminal proceedings.

4. Concededly, the petitioner was dismissed from service on 01.03.2008. He was convicted by trial Court on 17.07.2004 meaning thereby the respondent taking a lenient view did not dismiss him from service as soon as he was convicted by trial Court.

5. The petitioner was governed by Punjab Police Rules, 1934 (for short '1934 Rules'). Rule 16.2 of 1934 Rules provides for dismissal from service. The said Rule is 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 length of 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 in 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.”

6. The case of the petitioner is not covered by sub-rule (1) whereas it falls within four corners of sub-rule (2) of said Rule. sub-rule (1) is a general rule which permits authorities to dismiss an officer on the occurrence of an event as contemplated therein. The said Rule is an open ended rule. It is a discretionary provision and discretion is always subject to judicial review. An officer may or may not be guilty of gravest misconduct. It is always subject to judicial review to ascertain whether the officer is guilty of gravest misconduct or not. The question whether an officer is guilty of cumulative



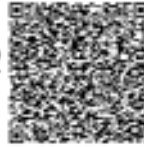
effect of misconduct proving incorrigibility and complete unfitness is also a question of fact and has always remained subject matter of judicial review. sub-rule (2) carves out an exception to sub-rule (1) and in a way it is a proviso to sub-rule (1) which leaves no discretion with authorities and enjoins that an officer shall be liable to be dismissed if he has been convicted and sentenced to imprisonment on a criminal charge.

7. The expression used in sub-rule (2) needs to be noticed. The legislature has used expression '*shall*' which indicates that there is no discretion with authorities in case of conviction. Expression '*criminal charge*' is preceded by expression '*on a*' which means that nature of charge is irrelevant. The officer may be guilty of an offence either committed in the discharge of duty or having no bearing with his official duties. In every case, where an officer is convicted and sentenced to imprisonment on a criminal charge, he is liable to be dismissed. The proviso to said sub-rule is also important to be noticed. The proviso provides that if conviction is set aside in appeal or revision, the appointing authority shall review the case keeping in view the instructions issued by the Government.

8. It would also be relevant to notice Rule 16.3 of 1934 Rules. It 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 16.3 of 1934 Rules 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 to 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. The natural corollary is that if

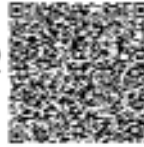


an officer is punished in criminal proceedings, he should be departmentally punished.

10. It is settled proposition of law that for the same offence two persons cannot be visited with different yardsticks. If, for the same offence, one officer is awarded higher punishment than others, it amounts to violation of Articles 14 and 21 of Constitution of India. The contention of the petitioner to the extent that similarly situated persons cannot be visited with different punishment is sustainable, however, it needs to be noticed that there can be no equality or equity against law. If a person by mistake or against the law has been granted some concession, the Court cannot extend or ask the authorities to extend the same which is not permissible in law. The plea of discrimination is never available in an act of illegality. An illegal order cannot constitute the basis for a legitimate complaint of discrimination. Thus, an illegal or unwarranted order cannot be made the basis of issuing a writ compelling an authority to repeat that illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.

11. In the wake of above discussion and findings, it is hereby held :

- i. A Police Officer who has been convicted on a criminal charge and sentenced to imprisonment cannot be awarded punishment less than dismissal from service. As per sub-rule (2) of Rule 16.2 of 1934 Rules, the Authorities have



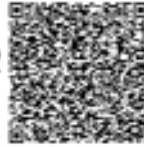
no option except to dismiss an employee who has been convicted and sentenced to imprisonment.

- ii. If an officer has been dismissed on the ground of conviction, he cannot claim parity with similarly situated employees because pre-mature retirement or reinstatement of an officer despite conviction is bad in the eye of law.

12. The Supreme Court in ***State of Madhya Pradesh and others v. Bhupendra Yadav, 2023 SCC Online SC 1181*** while dealing with question of appointment of officers of law enforcing agencies has held that standard of rectitude must be higher than other posts. The Court has held:

“24. The aforesaid aspects were rightly factored in by the appellant - State Government while issuing the communication dated 24th August, 20178 and declaring that the respondent was unfit for appointment to the said post. The yardstick to be applied in cases where the appointment sought relates to a Law Enforcement Agency, ought to be much more stringent than those applied to a routine vacancy. One must be mindful of the fact that once appointed to such a post, a responsibility would be cast on the respondent of maintaining law and order in the society, enforcing the law, dealing with arms and ammunitions, apprehending suspected criminals and protecting the life and property of the public at large. Therefore, the standard of rectitude to be applied to any person seeking appointment in a Law Enforcement Agency must always be higher and more rigorous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that in the police service.”

13. A two-judge Bench of Supreme Court in ***Satish Chandra Yadav v. Union of India and others, 2023 (7) SCC 536*** has adverted with the



question of appointment of a candidate against whom criminal case is pending/or was instituted. The Court has held that despite disclosure and acquittal in a criminal case, the employer may not retain an employee. In case of police force, matter should be thoroughly scrutinized by a designated officer because question of public confidence is involved. The relevant extracts of the judgment read as:

“93. In such circumstances, we undertook some exercise to shortlist the broad principles of law which should be made applicable to the litigations of the present nature. The principles are as follows:

93.1. Each case should be scrutinised thoroughly by the public employer concerned, through its designated officials — more so, in the case of recruitment for the Police Force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security. (See Raj Kumar [State v. Raj Kumar, (2021) 8 SCC 347 : (2021) 2 SCC (L&S) 745])

93.2. Even in a case where the employee has made declaration truthfully and correctly of a concluded criminal case, the employer still has the right to consider the antecedents, and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post.”

14. From the observation of Supreme Court in above cited judgments, it comes out that in case of appointment in Armed Forces, antecedents of candidates play vital role. Authorities cannot ignore criminal trial despite acquittal. If appointment of a candidate having criminal



antecedents cannot be accepted, it would be travesty of justice and against the public law to continue in service a convicted officer.

15. In the case in hand, the petitioner was concededly convicted and finally sentenced to imprisonment of 04 years. The petitioner had undergone the said sentence. If the petitioner, on the ground of parity is reinstated, it would be in violation of mandate of sub-rule (2) of Rule 16.2 of 1934 Rules. This Court, on the ground of parity, cannot ask the respondents to violate the mandate of law. The language of sub-Rule (2) of Rule 16.2 is unambiguous. Its even simple and literal meaning enjoins that as soon as an officer is convicted and awarded sentence, he cannot be retained in the force. There seems object of the said Rule. The police force is meant to maintain law and order. It commands respect. If an officer who has been convicted and sentenced is retained in service, it would tarnish image of the force and shake faith of the public at large.

16. In the wake of mandate of sub-rule (2) of Rule 16.2 of Punjab Police Rules, 1934, this Court does not find any infirmity in the impugned orders, thus, refrain to ask the authorities to reinstate the petitioner.

17. In the wake of aforesaid discussion and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

12.11.2024
anju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No