



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

CWP No. 16579 of 1998 (O&M)

Date of Decision: 14.01.2025

Satbir Singh and another

....Petitioners

VS.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Monika Khatri , Advocate for
Mr. Vivek Khatri, Advocate
for the petitioners
Ms. Rajni Gupta, Addl.A.G, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of:

(i) Order dated 30.05.1997 (Annexure P-5) whereby their five annual increments with permanent effect were ordered to be stopped and:

(ii) Orders dated 11.12.1997 (Annexure P-9) and 26.05.1998 (Annexure P-11) whereby the Appellate and Revisionary Authorities have dismissed their appeal and revision respectively.

2. The petitioners during the period in question were part of Haryana Police. At present, they on attaining the age of superannuation have retired. In 1993, Satbir Singh-petitioner No. 1 and Jagdish Kumar-petitioner No. 2 were holding the rank of Head Constable and Constable



respectively. They were deployed on patrolling duty on 22.12.1993 in the area of Jamitgarh. An FIR No. 287 dated 22.12.1993 under Sections 170, 392, 420, 120-B of IPC and Section 7/8(13), 49/88 of the Prevention of Corruption Act, 1988 came to be registered against them at Police Station, Ambala City. It was alleged in the FIR that they impersonated themselves as Sales Tax Officers and stopped a four wheeler bearing Registration No. HR-02-9285 and demanded a sum of Rs. 1500/- from its driver namely Sudesh Kumar. He was compelled to pay at least Rs. 1000/-. On his complaint, aforesaid FIR was registered. They were put under suspension with effect from 24.12.1993 and thereafter reinstated with effect from 24.05.1995. They came to be acquitted vide judgment dated 23.05.1996 passed by Chief Judicial Magistrate, Ambala. The acquittal took place because complainant turned hostile though he deposed that he was driver of the aforesaid vehicle and driving the said vehicle on 22.12.1993. He twisted his statement in such a manner that petitioners came to be acquitted.

3. The respondent after petitioners' acquittal started regular departmental enquiry. The Enquiry Officer did not find them guilty, however, Disciplinary Authority issued a show cause notice calling upon them to show cause as to why they should not be dismissed from service. The Disciplinary Authority vide impugned order dated 30.05.1997 ordered to stop five annual increments with permanent effect. Feeling aggrieved from the order passed by Disciplinary Authority, they unsuccessfully preferred appeal and thereafter revision.

4. Ms. Monika Khatri, Advocate submits that petitioners were acquitted by trial Court and Enquiry Officer did not find them guilty, thus,



departmental proceedings were bound to be withdrawn. The respondents have wrongly imposed penalty of forfeiture of five annual increments with permanent effect. In view of Rule 16.3 of Punjab Police Rules, 1934 as made applicable to the State of Haryana (in short “1934 Rules”) and judgment of acquittal passed by Chief Judicial Magistrate, Ambala the punishment awarded is bad in the eye of law. The punishment awarded is not proportionate to alleged offence.

5. *Per contra*, Ms. Rajni Gupta, Addl. A.G., Haryana submits that departmental proceedings are independent from criminal proceedings. Exoneration in criminal proceedings does not mean that departmental proceedings should be dropped. The complainant turned hostile, resultantly, petitioners were acquitted by trial Court. The Disciplinary Authority initiated proceedings after their acquittal and passed impugned order considering the allegations and their role. It is a settled proposition of law that Courts should not re-examine evidence led during the course of proceedings and interfere in the departmental proceedings.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. From the perusal of record and arguments of counsel for both sides, it is evident that there was allegation of demand of bribe against the petitioners. They are not disputing their posting at the alleged place and on the alleged date of incident. They are claiming benefit on the ground that they have been exonerated in the criminal proceedings and Enquiry Officer has not found them guilty. It is trite law that Disciplinary Authority is not bound to accept report of Enquiry Officer. The Disciplinary Authority may



or may not agree with the report of Enquiry Officer. The Disciplinary Authority is not supposed to act as per report of Enquiry Officer. In the case in hand, the Disciplinary Authority considering allegations made in the FIR and statements of all the concerned persons, found that petitioners cannot be exonerated in departmental proceedings. The Disciplinary Authority issued show cause notice and thereafter passed order imposing forfeiture of five annual increments with permanent effect.

8. Rule 16.3 of 1934 Rules provides that when a Police Officer has been tried and acquitted by a criminal Court, he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in criminal case whether actually led or not. In the said Rule, exceptions are carved out which includes acquittal on technical grounds or where prosecution witnesses have been won over. For the ready reference, Rule 16.3 of 1934 Rules is reproduced as below:-

“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. From the perusal of above quoted Rule, it is quite evident that if a Police Officer as a normal Rule, is acquitted by criminal Court, he shall not be punished departmentally on the same or on a different charge upon the evidence cited in criminal case. There are exceptions carved out in the said Rule. The exceptions include exoneration on technical grounds or where Superintendent of Police finds that prosecution witnesses have been won over. In the case in hand, there was allegation of demand of bribe from the complainant. An FIR was registered and petitioners were acquitted on account of complainant being turned hostile. It is apt to notice that complainant did not dispute the fact that he was driver of the vehicle in question and driving the same on the date of alleged incident. He also did not deny that few persons stopped his vehicle. The statement of complainant before trial Court compelled it to exonerate the delinquent officials, however, it does not mean that Departmental Authorities are bound to exonerate them in the departmental proceedings.

10. Departmental proceedings are independent from criminal proceedings. Law laid down by Supreme Court in multiple judgments is to



the effect that departmental proceedings may continue independent from criminal proceedings and may culminate in punishment despite acquittal in the criminal proceedings. The said principle is a general principle of law, however, police officials are governed by Punjab Police Rules and Rule 16.3 of 1934 Rules specifically advert to the situation.

11. Scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is very limited. The Court has no power to look into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two-judge Bench of Hon'ble Supreme Court in **Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998** while adverting with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has considered its judicial precedents including a two-judge Bench judgment in **Union of**



India and Others v. P. Gunasekaran. The relevant extracts of the judgment read as :

“19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus :

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*



(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

X X X X

22. *To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappraise the*



evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefore.”

12. The sole ground to challenge findings of Departmental Authorities is acquittal in criminal case. This Court is of the considered opinion that if criminal proceedings are initiated besides departmental proceedings, the outcome of departmental proceedings on account of the fact that both proceedings are independent and different yardstick is applied, cannot be ignored or brushed aside on account of dropping of criminal proceedings. In case of departmental proceedings, the department is not bound to prove its case beyond the reasonable doubt because findings depend upon preponderance of evidence.

13. The Supreme Court has time and again reminded that High Court cannot examine factual position and disturb findings recorded by departmental authorities. The Court has further held that High Court cannot re-quantify quantum of punishment, however, if Court finds that punishment awarded is disproportionate to alleged offence, the Court may ask the authorities to re-consider quantum of punishment.



13.1 In **Om Kumar v. Union of India, (2001) 2 SCC 386** a matter came up for hearing on account of an order of Supreme Court dated 04.05.2000 proposing to re-open the quantum of punishments imposed in departmental inquiry on certain officers of the Delhi Development Authority who were connected with the land of the DDA allotted to M/s. Skipper Construction Co. It was proposed to consider imposition of higher degree of punishment in view of the role of these officers in the said matter. The question posed before the court was whether the right punishment was awarded to the officers in accordance with well known principles of law or whether the punishments required any upward revision. Proportionality as a constitutional doctrine has been highlighted therein.

13.2 In **Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442**, the Apex Court held that any penalty which is disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. The relevant extracts of the judgment read as:

“15. ... It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. ...”

14. In the case in hand, the petitioners were acquitted by trial Court and Enquiry Officer has not found them guilty. The Disciplinary Authority has imposed penalty of forfeiture of five annual increments with permanent effect. There is substance in the argument of petitioners that in the light of Rule 16.3 of the 1934 Rules read with judgment of acquittal and report of Enquiry Officer, the punishment awarded is not commensurate to the alleged offence. The quantum of punishment should be commensurate to the alleged



offence as well as mitigating and extenuating circumstances. In the light of Rule 16.3 of 1934 Rules read with judgment of acquittal and report of Enquiry Officer, it appears that punishment awarded is not in commensurate to the alleged offence and it needs to be modified. Ordinarily in such circumstances, matter is remanded back to authorities to reconsider quantum of punishment, however, considering the fact that petitioners had already retired and petition in this Court is pending since 1998, This Court finds it appropriate to modify the quantum of punishment. Accordingly, the punishment of forfeiture of five annual increments with permanent effect is substituted by forfeiture of two annual increments with permanent effect.

15. The arrears arising on account of substitution of quantum of punishment would not carry interest and needful shall be done within three months from today.
16. Petition stands disposed of in above terms.
17. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

14.01.2025
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	