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

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Date of decision: 23.01.2025

AMAR SINGH

....PETITIONER

Vs.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ishan Gupta, Advocate with
petitioner-in person.

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 22.10.2022 passed by respondent No. 4 whereby he was dismissed from service;
- (ii) Order dated 17.03.2023 (Annexure P-3) and order dated 29.12.2023 (Annexure P-5) passed by Additional Director General of Police, State Armed Police, Jalandhar-respondent No. 3 whereby his appeals against the order dated 22.10.2022 (Annexure P-1) were dismissed.

2. The petitioner joined Punjab Police on 22.09.1990. In 1994, he was promoted to the rank of Head Constable. In 2012, he was adorned with rank of Assistant Sub-Inspector (Local Rank). An FIR No. 129 dated 15.10.2022 under Sections 365, 392, 120-B IPC and Section 25 Arms Act, 1959 at Police Station Division No. 8, Ludhiana was registered against him along with four other persons. He was arrested in the said FIR. The Disciplinary Authority invoking

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Clause (b) of second proviso to Article 311(2) of the Constitution of India dismissed him from service without conducting inquiry. He unsuccessfully preferred an appeal before Appellate Authority. He faced trial and came to be acquitted vide judgment dated 07.07.2022 (Annexure P-2) by Judicial Magistrate, 1st Class, Ludhiana. After his acquittal, he approached Authorities to reinstate him. By impugned order dated 29.12.2023 (Annexure P-5) which was served upon him on 18.12.2024, the Competent Authority has rejected his claim. Hence this petition.

3. Mr. Ishan Gupta, Advocate submits that case of the petitioner is squarely covered by Rule 16.3 of Punjab Police Rules, 1934 (for short '1934 Rules'). The respondents have wrongly rejected his claim. He has not been acquitted by trial Court on technical ground or on the ground that witnesses have turned hostile.

4. Notice of motion.

5. Mr. Aman Dhir, DAG, Punjab who on advance notice is present in Court, accepts notice on behalf of respondent-State and waives service.

6. With the consent of both sides, the matter is taken up for final disposal.

7. Mr. Aman Dhir, DAG, Punjab submits that FIR No. 129 dated 15.10.2012 under Sections 365, 392 and 120-B IPC and Section 25 Arms Act, 1959 was registered against the petitioner and his acquittal in criminal case does not entail his reinstatement.

8. Mr. Dhir, on being pointed out findings of trial Court, expressed his inability to controvert the fact that petitioner was honourably acquitted and was not accorded benefit of technicalities. However, he submits that standard of



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proof in the departmental proceedings is different from criminal proceedings, thus, impugned orders are justified.

9. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

10. 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. 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



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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.”

11. From the perusal of above 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.

12. 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.

13. The petitioner was implicated alleging that he along with 4 persons forcibly snatched gold articles from the complainant. As per police report, filed under Section 173 Cr.P.C. gold articles were recovered from accused including petitioner. The Trial Court examined evidence led by both sides and statement of witnesses. The trial Court came to a conclusion that prosecution has failed to connect recovered articles with the complainant. The prosecution has even failed to prove that the alleged recovered articles had actually been recovered from the accused persons. The relevant extracts of the judgment of trial Court are reproduced as below:-



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25) *Now in the light of antecedent discussion this court has failed to understand as to how the prosecution has connected the recovered articles with the complainant. Moreover when such articles has never been identified by the complainant himself, under what circumstances the prosecution has come to the conclusion that same has been extorted by the accused persons from the complainant. Even the prosecution has failed to prove on record that the alleged recovered articles has been actually recovered from the accused persons. Now PW 10 Rajesh Dudhrajia is the complainant in the present case has also never subjected himself to cross-examination in the present case and in such circumstances there is nothing on record to show that the alleged articles were actually extorted by the accused persons by using a weapon, from the complainant and the articles have not been duly identified by the complainant and even though he has stated in his chief that he identify the accused persons but this Court cannot blindly rely upon his evidence when he has not subjected himself to cross examination which was the real test for establishing the identity of the accused persons.*

26) *Now, in the final report submitted by the prosecution it has been mentioned that the statement of the the owner of the complainant namely Gabani Nauzi was recorded during investigation but the reason is best known to the prosecution as to why he has not been joined as a witness in the present case to corroborate the case of the prosecution. Further in the final report the name of Prem Kumar as eye witness has also been mentioned but he has also not been joined as eye witness in the present case for the reasons best known to the prosecution. The other prosecution witnesses has also failed to prove the case of the prosecution. PW Mansh Jain has during his cross-examination stated that he do not know whether his statement was recorded by the police or not. Further he has stated that he has not signed any document or any statement. Further he has stated that he do not have any knowledge regarding the present case and he do not know Rajesh personally. Interestingly he has stated that he do not know*



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which samples of gold or diamond was shown to him. Further, PW 6 Sunil Modi has during his cross stated that complainant Rajesh Dudhrajiya did not show him any document to show that he belongs to Ridhi Sidhi Jewellers. Further, he has stated that no dealing was ever taken between them on that day. Further, he has stated that no recovery has been effected in his presence and he do not identify the accused. Further he has stated that he do not have any details or quotation which were allegedly shown by Rajesh Dudhrajiya. He do not have any details or record that the complainant Rajesh Dudrejiya has called him. Further he has stated that the do not know about the specific description of the ornaments. He has not seen any articles in the court nor he has seen same in the police station.

27) It is basic principle of criminal jurisprudence that prosecution has to prove its case in a chain like manner connecting each fact with another fact in this forming a chain of facts. If there is any breach in the chain then that breakage causes a shadow of doubt in the prosecution story and benefit of the doubt must be given to the accused. In the instant case also the link evidence is missing which creates a doubt in the story of the prosecution. The identity of the accused has not been duly established upon record. The case property has never been produced by the prosecution. Moreover, neither the ownership of the stolen articles has been proved, nor it has been shown on the file that said articles belongs to the complainant or his company Ridhi Sidhi Jewellers. Non-joining of independent witness also creates a doubt regarding the prosecution story. Hence all the points for determination is decided in favour of accused and against the prosecution.”

14. Supreme Court in **Ram Lal vs. State of Rajasthan, 2023 SCC Online SC 1618** has held that Courts are supposed to look into the judgment of acquittal while adjudicating departmental proceedings. The relevant extracts of the judgment read as :



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“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.”

15. In the case in hand, the petitioner was acquitted by trial Court. From the perusal of findings recorded by trial Court, it is evident that prosecution failed to prove recovery of alleged articles from the petitioner and further could not connect alleged recovery with the claim of complainant. The necessary witnesses were not examined. All these facts compelled the trial Court to acquit the petitioner. It is difficult to hold that the petitioner has been acquitted on technical grounds or witnesses have turned hostile. The departmental punishment was awarded on the same set of allegations and evidence. There is nothing on record to hold that case of respondents falls in any exception carved out in Rule 16.3 of the 1934 Rules. Thus, there is no ground to sustain departmental punishment.

16. Proviso to sub-rule (2) of Rule 16.2 of Punjab Police Rules, mandates that in case conviction of a 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 government in this behalf. Rule 16.3 of Punjab Police Rules, 1934 provides that if a police officer is acquitted by criminal



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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 16.2 of 1934 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 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 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.”

17. As per sub-rule (2) of Rule 16.2 of 1934 Rules, if the conduct of an officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed. As per first proviso, the punishing authority in an exceptional case may impose any punishment other than that of dismissal from service. As per second proviso to sub-rule (2) of Rule 16.2 of

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1934 Rules, if conviction is set-aside in appeal or revision, the officer shall review his case. As per Rule 16.3, an officer cannot be departmentally punished, if he is acquitted by trial Court.

From the conjoint reading of Rule 16.3 and Rule 16.2 (2), it is evident that departmental punishment particularly dismissal from service, in case of criminal proceedings depends upon the outcome of trial. If the officer is acquitted in criminal proceedings, departmental authorities should reconsider punishment of dismissal from service. As per sub-rule (2) of Rule 16.2, consequence of conviction and sentence is dismissal from service.

This Court has noticed that police authorities dismiss an officer as soon as FIR is registered whereas mandate of Rule 16.2 and 16.3 is to dismiss from service after conviction. The officer may be suspended or assigned non sensitive posting, however, department should not take harsh action of dismissal from service in every case where an FIR has been registered. In an exceptional case, action of dismissal at the first instance may be taken but it should not be practice.

In the case in hand, the petitioner was dismissed from service as soon as FIR was registered. No departmental inquiry was conducted. He was acquitted in the criminal proceedings. The departmental authorities were bound to reconsider his case whereas respondent has mechanically dismissed his claim. He is out of service since 2012. He is deprived from salary and other benefits arising out of job. He by 2012 had already completed service of 22 years. He was not involved in any other offence. As per Rule 16.2, the authority is bound to consider length of service and entitlement of pension while passing order of punishment. As per sub-rule (1) of Rule 16.2, the punishment of dismissal from



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service should be awarded for gravest acts of misconduct. The respondent neither consider intent of first nor second proviso to sub-rule (2) of Rule 16.2.

This Court, in view of mandate of Rules 16.2 and 16.3 as well as factum that petitioner is out of service since 2012 and has been acquitted by trial Court, finds it appropriate to set-aside impugned orders dated 22.10.2022, 17.03.2023 and 29.12.2023. The petitioner deserves to be reinstated.

18. There is another facet of the matter which needs to be examined. The petitioner was dismissed without conducting inquiry. From the perusal of record, it is evident beyond the pale of doubt that petitioner was dismissed from service without conducting inquiry as contemplated by Rule 16.24 of 1934 Rules read with Article 311 of the Constitution of India. As per Clause (b) of second proviso to Article 311 (2) of the Constitution of India, inquiry may be dispensed with (i) where person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or (ii) where the competent authority finds that it is not reasonably practicable to hold such inquiry; or (iii) where President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. For the ready reference, Article 311(2) of the Constitution of India is reproduced hereinbelow:-

“311 (2)- No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any



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opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”

19. A Constitutional Bench in ***Union of India v. Tulsiram Patel, (1985) 3 SCC 398***, has observed that while invoking the rigor of Clause (b) of second-proviso to Article 311(2), if disciplinary authority failed to record any reason as to why it is not practicable to hold inquiry, such an order is void and unconstitutional. The relevant extracts of the judgment read as:

“133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.”

20. In the case in hand, while dispensing with departmental inquiry, the disciplinary authority vide order dated 22.10.2012 (Annexure P-1) has observed as under:-



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“Whereas, I am fully satisfied from the material before me that it is not reasonably practicable to hold a regular departmental inquiry against ASI/LR Amar Singh No.82/09 as his accomplices are unlikely to depose against him. Being in Police Department he can pressurize the witnesses and nobody will come forward to give evidence against him.”

21. The reason advanced by Commandant, 82nd Battalion, PAP, Chandigarh-respondent No.4 for dispensing with inquiry is not plausible reason because same reason is advanced in every case where there is FIR against serving police officer. The respondent can dispense with inquiry if actually it is not practicable to hold the inquiry. Mere writing one line in the impugned order that it is not practicable to hold inquiry is not compliance of mandate of either Constitution of India or Rule 16.24 of the 1934 Rules. The respondent instead of straight away dismissing the petitioner could put him under suspension and thereafter conduct inquiry.

22. In the wake of above discussion and findings, the impugned orders are hereby set-aside and petitioner is ordered to be reinstated.

23. The petitioner, as conceded, shall not be entitled to back wages, however, shall be entitled to all other notional benefits including continuity of service.

24. Let the needful be done within one month from today.

23.01.2025
manoj

[JAGMOHAN BANSAL]
JUDGE

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