

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 16.10.2019
CWP-1554-2016 (O&M)

Naresh Kumar

... Petitioner

vs.

Union of India & Anr

.. Respondents

CWP-5361-2016

Gurmail Singh

... Petitioner

vs.

Union of India & Anr

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sushil Jain, Advocate
for the petitioner in CWP-1554-2016.

Mr. B.D.Sharma, Advocate
for the petitioner in CWP-5361-2016.

Mr. Arun Gosain, Advocate
for the respondent-UI in CWP-1554-2016.

Mr. Parveen Chander Goyal, Advocate
for respondents in CWP-5361-2016.

ARUN MONGA, J.(ORAL)

Vide this order, the above mentioned two writ petitions are being disposed of as common issues are involved therein.

2. Concededly, the petitioners were dismissed from service due to registration of an FIR No. 193 dated 03.09.2013 which led to issuance of charge-sheet wherein similar charges were framed against the petitioners as in the criminal case.

3. Departmental proceedings were carried out and based on the statements of the witnesses, who were common in the criminal case being tried simultaneously, the petitioners were indicted.

4. Inquiry report was accepted by the Disciplinary Authority which led to the passing of punishment order of dismissal, impugned herein.

5. However, criminal proceedings resulted in acquittal of the petitioners and acquittal order has since attained finality as no appeal was filed against the same.

6. Learned counsels for the petitioners contend that once it is established that the petitioners were acquitted by a competent court of criminal jurisdiction, there is no plausible reason available with the respondents for not giving the benefit of the said acquittal by revoking their suspension and reinstating them in service.

7. After having heard rival contentions of learned counsels and having gone through the pleadings alongwith relevant record, I am convinced that the case of the petitioner is squarely covered by Rule 27 (CCC) of Central Reserve Police Force. For ready reference, the same is reproduced hereinbelow:-

“When a member of the Force has been tried and acquitted by a criminal Court, he shall not be punished departmentally under this rule on the same charge or on a similar charge upon the evidence cited in the criminal case, whether actually led or not except with the prior sanction of the Inspector General. (Inserted vide SO 3117 dated 15.7.71)”

A perusal of the above leaves no manner of doubt that the petitioners are entitled to be reinstated.

8. Even otherwise, every acquittal is honourable acquittal. There is nothing in the Criminal Procedure Code nor is there any rule of criminal jurisprudence for treating the effects and consequences of an acquittal on failure to prove charges from an acquittal on failure of the prosecution to

prove the case beyond reasonable doubt.

9. A Division Bench of this Court in a case titled as ***Shashi Kumar Vs. Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) SCT 576*** relying in turn on another Division Bench of Madras High Court has held that the terms honourable acquittal or fully exonerated are unknown in the Criminal Jurisprudence. His Lordship S.S.Nijjar, J. (as he then was of this Court) speaking for the Division Bench observed as below:-

7. In any event, the terms “honourable acquittal” or “fully exonerated” are unknown in the Code of Criminal Procedure or in Criminal Jurisprudence. These terms came up for consideration before a Division Bench of the Madras High Court in the case of Union of India Vs. Jayaram, AIR 1960 Madras 325. Rajammannar, C.J. Delivering the judgment of the Division Bench observed as under:-

There is no conception like “honourable acquittal” in Criminal Procedure Code. The onus of establishing the guilt of accused is on the prosecution, and if it fails to establish the guilt beyond reasonable doubt, the accused is entitled to be acquitted.

Clause (b) of Article 193 of the Civil Service Regulations which says that when a Government servant who was under suspension is honourably acquitted, he may be given the full salary to which he would have been entitled if he had not been suspended applies only to the case of departmental Inquiry.

Where the servant was suspended because there was a criminal prosecution against him, and he was acquitted therein, and reinstated he is entitled under the general law, to the full pay during the period of his suspension. To such a case Article 193(b) does not apply.”

8. The aforesaid judgment of the Madras High Court was considered and followed by this Court in the case of Jagmohan Lal Vs. State of Punjab through Secy. To Punjab Govt. Irrigation and others, AIR 1967 (54) Punjab and Haryana 422 (punjab). In that case, on acquittal, the petitioner was reinstated in service, but his period of suspension was not treated as the period spent on duty. He had, therefore, filed writ petition under

Articles 226/227 of the Constitution of India claiming that he was entitled to full pay and allowances for the period of his suspension. Considering the impact of Rules 7.3, 7.5 and 7.6 of the Punjab Civil Services Rules Vol.I Part-I, it was observed as follows:-

(2) XXX XXX XXX

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has succeeded in bringing home the guilt to the accused. The moment the Court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for that reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are 'discharged' or 'acquitted'. The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted.

I am, therefore, quite clear in my mind that the intention underlying Rule 7.5 can be no other except this” the moment the criminal charge on account of which an officer was suspended fails in a court of law, he should be deemed to be acquitted of the blame. Any other interpretation would defeat the very purpose of the rule. It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused.”

10. In the premise, writ petition is allowed. Impugned orders are set aside with all consequential benefits to the petitioners.
11. Miscellaneous application, if any, also stands disposed of.
12. Photocopy of this order be placed on the connected file.

16.10.2019
smriti

(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No