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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A NO. 060/00328/2014

Date of decision : 12.1.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

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Kuldeep Singh (No.180/CHG) presently working as Inspector under Senior Superintendent of Police, U.T., Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. Jagdeep Jaswal.

VERSUS

1. Chandigarh Administration through its Home Secretary, U.T. Chandigarh.
2. Inspector General of Police, Police Headquarters, Chandigarh Administration, Chandigarh.
3. Senior Superintendent of Police, U.T., Chandigarh.

...RESPONDENTS

BY ADVOCATE: Shri Rakesh Verma.

ORDER

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HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present OA is directed against an order dated 24.02.2014 (Annexure A-1) (purported to have been received by the applicant on 8/9.4.2014) vide which respondent no.3 has ordered conduct of a de-novo enquiry against the applicant in terms of Rule 16.28 of the Punjab Police Rules, 1934.

2. The facts, which led to the filing of the present Original Application are that an FIR no.482 dated 14.11.2011 under Sections 147/148/149/342/382/506 of Indian Penal Code was registered against the applicant, while working as an Inspector at the relevant time with the Chandigarh Police. For the same very incident a departmental enquiry was also initiated against him under Rule 16.24 of the Punjab Police Rules, 1934 (for brevity, "1934 Rules") on 17.03.2011. After considering his reply, one Shri R.C. Meena was appointed as an enquiry officer, who while submitting report on 13.12.2013 exonerated the applicant from the charges. The competent authority served upon him an order dated 24.02.2014 ordering de-novo enquiry. It is this action of the respondents which has led to filing of the present O.A claiming that action of respondents is not sustainable in the eyes of law on the grounds taken in the OA.

3. In support of the above contention Shri Jaswal, learned counsel for the applicant submitted that the impugned order, ordering de novo enquiry in terms of Rule 16.28 of the 1934 Rules, is bad in law inasmuch as the competent authority cannot order de novo enquiry in terms of Rule 16.28 (supra) as the impugned order does not indicate any reason for disagreeing with the earlier enquiry report. He further submitted that the impugned order also shows non-application of mind as the applicant has already been acquitted

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by the criminal court on the same set of charges and in terms of Rule 16.23 of the 1934 Rules, once he has already been honorably acquitted from the criminal charges, the respondents cannot proceed against him provided in exceptional circumstances as mentioned in clauses (a) to (e) of Rule 16.3 of the 1934 Rules and in this case no such exceptional circumstance has been pointed out by the authority to proceed against the applicant which action is bad in law. To buttress his submission, he placed reliance upon an order passed by a coordinate Bench of this Tribunal in OA No.703-Ch-2010 in the case of **Kuldeep Singh v. Chandigarh Administration & Ors.**, decided on 07.03.2011 and the judgment in C.W.P. No.9412 of 2013 in the case of **Ajaib Singh v. State of Punjab and Others**, decided on 29.07.2013.

4. The respondents have contested the claim of the applicant by filing a detailed written statement wherein they admit that the departmental proceedings were initiated against the applicant vide order dated 17.03.2011 under Rule 16.24 of the 1934 Rules. He was acquitted by the criminal court vide its judgment dated 17.04.2013. However, since the earlier enquiry officer had not conducted the enquiry in right perspective, therefore, after recording dissatisfactory note with the finding recorded by the earlier I.O., respondent no.3 ordered a fresh de novo enquiry vide order dated 24.02.2014 which is permissible as per rules. They

have also placed reliance upon the judgment in the case of **Union of India and others v. Shashi Bhushan and another**, 2011 (1) RSJ 506, where a coordinate Bench of this Tribunal has considered rule 14, 15 (1) of the Central Civil Services (Classification, Control and Appeal), Rules, 1965 and held that under Rule 15 (1) thereof, if the competent authority, after recording reasons, has held that earlier the enquiry Officer has not held the enquiry in right perspective, he can order de novo enquiry.

5. In support of the above contention raised on behalf of respondent Shri Verma, learned counsel for the respondents vehemently opposed the prayer of the applicant for quashing the impugned order and conduct of de-novo enquiry on the ground that it is not for the respondents to give reasons of disagreement in the impugned order, ordering de novo enquiry. Once it has been recorded in the order that the disciplinary authority differed with the finding recorded by the enquiry officer, it is sufficient for ordering de novo enquiry. In this behalf he also placed reliance on an order passed by this Tribunal in OA-1128/PB/2012 in the case of **K.C. Singla v. Union of India & Ors.**, decided on 15.09.2014.

6. We have given our thoughtful consideration to the entire matter. Two questions raised at the hands of the applicant for our consideration are as under :-

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i) Whether the respondents can proceed against the applicant in departmental proceedings, once he has been acquitted by the criminal court on the same set of charges in terms of Rule 16.3 of the 1934 Rules?

ii) Whether the competent authority can order de novo enquiry in terms of rule 16.24 of the 1934 Rules?

7. Dealing with the first poser, it would be appropriate to reproduce rule 16.3 of the 1934 Rules, which reads as follows:

"16.3 Action following on a judicial acquittal (1) 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 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

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the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I."

8. Perusal of the above extraction makes it clear that a police officer, who has been acquitted by a court of law, cannot be proceeded against except in the exceptional circumstances mentioned in clauses (a) to (e) (supra). Once the rule envisages that on acquittal, no further action can be taken against the police officer, provided in exceptional circumstances and those exceptions must be recorded and must be put to the delinquent in the form of a show cause notice so that he can respond thereto, then any action contrary to the Rules is void ab initio. In the case in hand, the applicant was charge-sheeted and was booked under Indian Penal Code on the same set of charges upon which a criminal court has acquitted him vide judgment dated 17.04.2013. In the departmental enquiry, the earlier enquiry officer, while submitting his report on 13.12.2013, after the decision by the criminal court, recorded a finding that he has been acquitted by the criminal court and, therefore, exonerated the applicant. But the same did not find favour with the disciplinary authority and contrary to the rules, as envisaged above, without looking into the provision and mention



of exceptions, the disciplinary authority ordered de novo enquiry. Perusal of the impugned order does not suggest that while passing the impugned order, the Senior Superintendent of Police has considered rule 16.3 of the 1934 Rules which debars for taking action against a police officer, who has been acquitted by the criminal court, on the same set of charges. Thus, the impugned order cannot be sustained on this account. Accordingly the same deserves to be quashed and set aside.

9. We are fortified in this view of ours by the decision of the coordinate Bench of this Tribunal in the case of **Kuldeep Singh** (supra), where this Tribunal has recorded the following finding:

"5. The grievance canvassed on behalf of the applicant herein is that the direction with regard to holding of a de novo inquiry is de hors the rules and, even otherwise, such action is barred by the provisions of Rule 16.3 of the Punjab Police Rules. Rule 16.3, relied upon by the applicant in this behalf, is extracted hereunder:-

"16.3 Action following on a judicial acquittal (1) 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 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

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(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 the Deputy Inspector General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I."

6. The plea was resisted on behalf of the respondents with an averment that the relevant trial is pending consideration at the hands of the learned Court at Patiala. It was further averred that the applicant does not have a clean record and was awarded as many as five orders of punishment at the hands of the competent authority.

7. We called upon the learned counsel for respondents to invite our attention to any rule which would authorize the competent authority to order a de-novo inquiry. We did it because we were inclined to find out the circumstances under which a direction for holding a de novo inquiry could be competent. The idea was to find out the rule-based competence of the competent authority.

8. The learned counsel, appearing on behalf of the respondents, conceded that she was not in a position to invite our attention to any rule in the relevant behalf but

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she asserted the validity of the act by arguing that an authority competent to record a disagreement note cannot be held disentitled to order a de novo inquiry.

9. We find ourselves in agreement with the view advocated on behalf of the applicant. Every action at the hands of the competent administrative authority has to be compulsively rule-based. A departmental action cannot be ordered on the basis of an inference. Our attention has not been invited to any rule which could authorize the competent authority to order holding of a de novo inquiry after the earlier inquiry stands concluded. The authority given by the rules to the competent authority to record a disagreement note too would not authorize the grant of a direction qua the holding of a de novo inquiry.

10. Rule 16.3 of the Punjab Police Rules which stands extracted in an earlier part of this judgment, would also appear to provide that an employee, who stands acquitted by criminal court on the same charge, would not be punished departmentally on the same charge. The rule further provides that the acquitted employee would not be punished even on a different charge on the basis of the evidence cited in the criminal case, unless the riders indicated therein are available. The present case is covered under the former clause of Rule 16.3.

11. In view of the consensual position that the charge sheet proceeds on exactly the same allegations upon which the applicant had been prosecuted and acquitted, the action on the part of respondents is not sustainable in the eyes of law. In that view of things, the applicant would be entitled to the protection of Rule 16.3 of the Punjab Police Rules as well."

10. Even the jurisdictional High Court in C.W.P. No.15230 of 1997 in the case of **Baljit Singh v. State of Haryana and others**, decided on 02.09.2013 had an occasion to deal with Rule 16.3 of the 1934 Rules and have held that in terms of Rule 16.3 once a



police officer has been acquitted by the criminal court then on the same set of allegations departmental proceedings cannot be launched.

11. Therefore we hold that the respondents cannot proceed against the applicant in departmental proceedings, once he has already been acquitted by the criminal court on the same charges in terms of Rule 16.3 of the 1934 Rules. Accordingly, the present OA is allowed. The impugned order shall stand quashed and set aside. Consequential benefits to follow.

12. Since the impugned order has been quashed while answering the first poser, we need not answer the second poser, which will be decided in an appropriate case.

13. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Place: Chandigarh

Dated: 12.1.2015

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