efore Arun Palli, J.

RAJPAL — *Petitioner*

versus

STATE OF PUNJAB AND OTHERS— *Respondents*

CWP No. 17032 of 2014

July 21, 2015

Service Law — Punjab Police Act 1861 — S. 34 — Punjab Police Rules 1934 — Rl. 16.3 — Dismissal from service on account of misconduct as Petitioner was found drunk on duty — Found guilty in departmental inquiry—Appeal and revision against the same dismissed — Also found guilty and convicted by Chief Judicial Magistrate under Section 34 of the Police Act 1861 but acquitted on revision to next higher court — Appeal and revision to police authorities for reinstatement declined—Past record of indiscipline and wilful absence from duty — Medical record proved Petitioner was drunk and created nuisance—Acquittal by criminal court on same charges as before the departmental inquiry not to result in automatic reinstatement — Writ petition dismissed.

Held, that concededly, the petitioner was dismissed from service on account of misconduct. The order of his dismissal from service was preceded by a departmental inquiry. A fair and valid inquiry was held as the petitioner was afforded due opportunity to participate in the proceedings and defend himself. Charges against the petitioner were proved. He was found guilty of being drunk on duty, creating nuisance on the main road outside the District Courts Complex, Ropar. So much so, he disrupted the free flow of the traffic in an inebriated condition. He was medically examined and the report of the doctor proved that he was drunk. Records show that even in the past he was punished on account of indiscipline and willful absence from duty and as a result his five years of approved service was forfeited. In fact, even earlier he was dismissed from service, but in an appeal, since the appellate authority awarded a lesser punishment, he was reinstated. And as observed by the disciplinary authority, the petitioner proved himself to be incorrigible. He was found guilty of a conduct, which could only be construed as a gravest act of misconduct. His subsequent acquittal vide judgment dated 01.10.2011 (Annexure P4) was hardly of any significance in the situation in hand.

(Para 6)

Further held, that apparently, an employee who has been found guilty of a misconduct, in a departmental inquiry and was dismissed from service, his subsequent acquittal, be that on the same charges, would not earn him consequential/automatic reinstatement unless the rules governing his service postulate so.

(Para 7)

Further held, that be that as it may, guilt of the petitioner was duly proved in the departmental proceedings. And Rule 16.34 of the Rules, does not even remotely apply to the matter in hand for the reasons indicated above. The disciplinary authority on a thorough analysis of the matter, concluded that the petitioner had proved himself to be incorrigible. And he has a bad influence on his colleagues and other disciplined policemen and thus, to continue him in service was undesirable. That being so, no interference is warranted under Article 226 of the Constitution of India. The petition being devoid of merit is accordingly dismissed, in limine.

(Para 9&10)

Vikas Arora, Advocate *for the petitioner.*

ARUN PALLI, J. (ORAL)

(1) A writ in the nature of certiorari is prayed for, so as to quash the order dated 08.02.2013 (Annexure P6), vide which the order of dismissal of the petitioner from service passed by respondent No.2 has since been affirmed and consequently the revision preferred by the petitioner was dismissed.

(2) Petitioner was engaged as Constable with the Punjab Police. He was dismissed from service on account of misconduct as he was found drunk on duty, vide order dated 05.06.2007 (Annexure P1). His guilt was established in a departmental inquiry, in which he was afforded due opportunity to participate and defend himself. The appeal preferred against the said order was dismissed by the appellate authority vide order dated 25.07.2007 (Annexure P2). Likewise, the

revision preferred by the petitioner, too, met the same fate and was dismissed vide order dated 12.10.2007 (Annexure P3).The matter was not carried any further by the petitioner. The petitioner was also tried and convicted pursuant to Calendra No.13-A dated 10.03.2007, by Chief Judicial Magistrate, Ropar, under Section 34 of the Police Act, 1861 (for short 'the Act') and fined to the tune of `50/-and in the event of default, he was to undergo simple imprisonment for a period of three days. However, in a revision preferred against the said judgment, petitioner was acquitted of the charge and his conviction was set aside by

Additional Sessions Judge, Ropar, vide judgment dated 01.10.2011 (Annexure P4). And, it was only thereafter, he again, preferred an appeal to the Deputy Inspector General of Police, Roopnagar, and prayed for his reinstatement, citing his acquittal in a criminal case. On a consideration of the matter, the appellate authority dismissed the appeal vide order dated 07.05.2012 (Annexure P5) as the petitioner was merely acquitted viz-a-viz the offences under Section 34 of the Act, whereas he was dismissed from service, for he was found drunk on duty and created nuisance at a public place and disrupted the free flow of traffic. A revision preferred against the order dated 07.05.2012 (Annexure P5), was also dismissed by the Inspector General of Police, Zonal-1, Punjab, Patiala, vide order dated 08.02.2013 (Annexure P6). This is how, as indicated above, petitioner is before this Court.

(3) I have heard learned counsel for the petitioner and perused the paper book.

(4) All what has been urged by counsel for the petitioner is that once the petitioner was acquitted of the same charges in a criminal case vide judgment dated 01.10.2011 (Annexure P4), petitioner was required to be reinstated in service. In reference to Rule 16.3 of the Punjab Police Rules, 1934 (for short 'the Rules'), he submits that once he has been tried and acquitted by a criminal Court, the punishment inflicted upon him, pursuant to a departmental inquiry, is vitiated.

(5) On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant petition is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

(6) Concededly, the petitioner was dismissed from service on account of misconduct. The order of his dismissal from service was preceded by a departmental inquiry. A fair and valid inquiry was held as the petitioner was afforded due opportunity to participate in the proceedings and defend himself. Charges against the petitioner were proved. He was found guilty of being drunk on duty, creating nuisance on the main road outside the District Courts Complex, Ropar. So much so, he disrupted the free flow of the traffic in an inebriated condition. He was medically examined and the report of the doctor proved that he was drunk. Records show that even in the past he was punished on account of indiscipline and willful absence from duty and as a result his five years of approved service was forfeited. In fact, even earlier he was dismissed from service, but in an appeal, since the appellate authority awarded a lesser punishment, he was reinstated. And as observed by the

disciplinary authority, the petitioner proved himself to be incorrigible. He was found guilty of a conduct, which could only be construed as a gravest act of misconduct. His subsequent acquittal vide judgment dated 01.10.2011 (Annexure P4) was hardly of any significance in the situation in hand. And would not advance his cause a bit, as is being demonstrated hereinafter. As observed by the Hon'ble Supreme Court in ***Deputy Inspector General*** *versus* ***S.Samuthiram***[I]

> "26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not
> entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."
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> "27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be

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reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules."

(7) Apparently, an employee who has been found guilty of a misconduct, in a departmental inquiry and was dismissed from service, his subsequent acquittal, be that on the same charges, would not earn him consequential/automatic reinstatement unless the rules governing his service postulate so.

(8) Reliance placed upon Rule 16.3 of the Rules by the learned counsel for the petitioner, in this regard, is equally misplaced and misconceived. It would be apposite to refer to the said rule which reads as thus:

> 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.
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> (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 who, 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) Ex facie, the afore-reproduced rule is clear, concise and

incapable of any misconstruction. A bare reading thereof reveals that what it takes within its sweep is a situation when disciplinary proceedings/action is contemplated by the department post judicial acquittal. And not before he was acquitted by the criminal Court. Meaning thereby, if no departmental action is initiated against a police officer on account of alleged misconduct and after he has been tried and acquitted by a criminal Court on the identical charges, he shall not be punished departmentally on the same charge, subject, however, to certain exceptions as enumerated under the rule. However, in the matter in hand, the petitioner was dismissed from service on 05.06.2007 (Annexure P1) preceded by a departmental inquiry. Meaning thereby, it was not that post acquittal by the criminal court any disciplinary action was being initiated against the petitioner. An appeal preferred by the petitioner as even his revision to the revisional authority were dismissed on 25.07.2007 (Annexure P2) and 12.10.2007 (Annexure P3), respectively. And as the matter was not carried any further, it had virtually attained finality. Thus, the subsequent acquittal of the petitioner, vide judgment dated 01.10.2011 (Annexure P4), by a criminal court would not vitiate the departmental proceedings and the consequent order of his dismissal from service. Besides that, learned counsel could not point out any other rule or provision that envisage automatic reinstatement, despite having been punished departmentally, on a subsequent acquittal by a criminal court on the same charges. Even otherwise, petitioner was acquitted by the criminal court as regards charges under Section 34 of the Act, whereas he was dismissed from service for he was found drunk on duty and being in uniform he created

nuisance at a public place i.e. on the main road outside the District Courts Complex, Ropar and disrupted the free flow of traffic. Therefore, it could not be maintained either that he was acquitted by the criminal court of the identical charges. An analysis of the judgment dated 01.10.2011 (Annexure P4), shows that even the learned Additional Sessions Judge, Ropar, observed, in no uncertain terms, that all the police officials deposed that the petitioner was found drunk at a public place. Further, despite opportunities granted, prosecution failed to conclude its evidence and the evidence of the prosecution was closed by order. As a result, the crucial witness i.e. doctor who conducted medical examination of the petitioner and made a report was never examined. Be that as it may, guilt of the petitioner was duly proved in the departmental proceedings. And Rule 16.34 of the Rules, does not even remotely apply to the matter in hand for the reasons indicated above. The disciplinary authority on a thorough analysis of the matter, concluded that the petitioner had proved himself to be incorrigible. And he has a bad

influence on his colleagues and other disciplined policemen and thus, to continue him in service was undesirable.

(10) That being so, no interference is warranted under Article 226 of the Constitution of India. The petition being devoid of merit is accordingly dismissed, in limine.

S.Gupta

Before Rajesh Bindal, J.

AMARJIT SINGH—*Petitioner*

versus

SARABJIT KAUR AND ANOTHER—*Respondents*

CR No.6332 of 2013

July 23, 2015

Code of Civil Procedure, 1908—O.6 Rl.17—O.39 Rl. 1 & 2—Rules of procedure are intended to be handmade of justice—Relief of amendment of pleadings should be granted unless the Court is satisfied that the party applying was acting mala fide—Amendment necessary for purpose of determining real controversy between the parties should be allowed—Changes in nature of relief claimed shall not be considered as the change in nature of suit—Power of amendment should be used in larger interest.

Held that the relief of amendment of pleadings should be