his case and it is after the evidence of the plaintiff was over and the case was adjourned to a subsequent date that the defendant came forward with an application to the effect that security had not been furnished by the plaintiff within the time stipulated by the Court in its order. This delayed raising of objection on the part of the defendant preceded by acquienscence into insignificant lapse on the part of the plaintiff to furnish security shows that the defendant also did not attach much importance to the delay of three days, which had occurred on the part of the plaintiff in furnishing the security. The Court itself after recording the statement of Sohan Singh surety and the statement of Basant Singh Sarpanch, identifying the surety and vouchsafing to the correctness of the facts alleged by Sohan Singh in the bond and in the statement made by him about the furnishing of security, attested the security to be in order. In other words, the Court, apart from accepting the security being in order has by necessary implication condoned the delay of three days which had occurred in filing security on behalf of the plaintiff.

(7) Considering that the lower appellate Court has exercised discretion in condoning delay of three days in the furnishing of security by the plaintiff on justifiable grounds, I do not think it a fit case to interfere with the discretion exercised by that Court. It is within the scope of power of the lower appellate Court as much as it is within the power of the trial Court to condone delay and the delay having been condoned in its discretion, the order sought to be appealed from could not be set aside in this appeal.

(8) For the reasons recorded above, I dismiss the appeal and confirm the order of the lower appellate Court. There will, however, be no order as to costs.

N.K.S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

AMRIK SINGH,—*Petitioner.*

versus

INSPECTOR GENERAL OF POLICE, ETC.,—*Respondents.*

Civil Writ No. 80 of 1969.

July 20, 1971.

Punjab Police Rules (1934)—*Volume II, rule* 16.3(1)—*Police official acquitted of criminal charge on a technical ground of the prosecution witnesses having been won over—Whether can be punished departmentally*

on the same charge and evidence—Opinion regarding the failure of the criminal charge on the technical ground—Whether to be formed by the punishing authority—Winning over of the prosecution witnesses—Court or punishing authority—Whether has to give a finding thereto on some material—Enquiry against an official—Enquiry Officer—Whether to supply copies of relevant documents to the accused official suo-motu—*Non-supply of copies not asked for—Principles of natural justice—Whether violated.*

Held, that the language of rule 16.3 of Punjab Police Rules, 1934, leaves no doubt that the prohibition contained therein against departmental punishment being awarded to a person who has been acquitted by a criminal Court on the same charge or on a different charge is subject to the only exception contained in clauses (a) to (e) of sub-rule (1) of rule 16.3, and to no other exception. A police official who has been acquitted of a criminal charge on some technical ground or on the ground of the prosecution witness having been won over can be departmentally punished on the same charge and on the evidence cited in the criminal case though not led there, because this falls under exception (a) and (b) to Rule 16.3(1). It is, however, not for the High Court to find out for the first time in order to uphold the departmental punishment awarded to the police officer who has been acquitted by the Criminal Court whether the criminal charge had or had not failed on a technical ground. It is for the competent punishing authority to consider the matter at the appropriate stage and to allow departmental proceedings being initiated or to punish the police officer departmentally despite his acquittal by a criminal Court if the competent punishing authority is of the opinion that the criminal charge had failed on technical grounds under exception (a). Similarly exception (b) to Rule 16.3(1) consists of two distinct parts. A departmental punishment would be upheld if it is shown that the Court which acquitted the police officer was of the opinion that the prosecution witnesses had been won over. But it is for the criminal Court or the punishing authority on some material before them to form the opinion that the witnesses for the prosecution have been won over to attract the provisions of exception (b). The requirements of rule 16.3 are mandatory. Where no such opinion is formed either by the Court or by the punishing authority, the police official who has been acquitted of the criminal charge cannot be departmentally punished on the same charge and on the same evidence. (Paras 7 and 8)

Held, that where an enquiry is being held against an official, the Enquiry Officer is not required in all conveivable cases to *suo motu* supply copies of all relevant documents to the accused official. A proper complaint of the copies not having been supplied can be made only in respect of the documents of which copies were asked for but not given. The requirement of supplying is only for satisfying the principles of natural justice, and is not a statutory or technical requirement. Hence non-supply of copies of documents to an accused official not asked for by him does not violate the principles of natural justice. (Para 4.)

EDITOR'S NOTE.

This judgment was reversed in L.P.A. No. 10 of 1972, decided on 24th July, 1972. On the only ground that the disciplinary action taken against

the constable could be sustained under clause (a) of Rule 16.3(1) of Punjab Police Rules, although the action was originally initiated under clause (b). The error was held not to be fatal to merit the quashing of the impugned order of dismissal.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari or any other appropriate writ, order or direction be issued quashing the order of the respondents dismissing the petitioner from service as a constable.

C. L. LAKHANPAL, I. S. VIMAL, ADVOCATES, for the petitioner.

GURBACHAN SINGH, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the respondents.

JUDGMENT

NARULA, J.—(1) Certain questions relating to the scope and interpretation of rule 16.3. (1) of the Punjab Police Rules, 1934, Volume II (hereinafter referred to as the Police Rules) have been raised in this writ petition in the following circumstances :—

(2) Amrik Singh petitioner, who was a permanent Constable, was alleged to have been found carrying 4,500 Millilitres of illicit liquor contained in a bladder in a cloth pack on the carrier of his cycle in the area of village Athauli. It was further alleged that the liquor was recovered from his possession by Assistant Sub-Inspector Malkiat Singh in the presence of Excise Inspector Kesho Dass, and one Rattan Singh who was a member of the public. The petitioner was acquitted in the criminal case that was brought against him under section 61 of the Punjab Excise Act (1 of 1914) by the order of the Judicial Magistrate, First Class, Phagwara, dated June 17, 1967 (Annexure 'A'). Thereafter departmental proceedings were started against him. The Enquiry Officer found in his report, dated November 28, 1967, that guilt had been brought home to the petitioner. On December 23, 1967, the Superintendent of Police, Kapurthala (respondent No. 3), passed the impugned order (Annexure 'F') holding him guilty of grave misconduct and dismissing him from service with effect from the date of the said order. Petitioner's appeal against that order was dismissed by the Deputy Inspector General of Police, Jullundur Range, on March 29, 1968. The appellate authority upheld the order of the punishing authority and did not consider the punishment to be excessive.

(3) The validity and legality of the orders for petitioner's dismissal from service have been questioned by Mr. C. L. Lakhanpal, learned counsel for the petitioner, on two main grounds, viz., (i) that the punishment has been awarded in violation of the principles of natural justice inasmuch as copies of the statements of

Assistant Sub-Inspector Malkiat Singh and Excise Inspector Kesho Dass recorded during the investigation of the criminal case against the petitioner were not supplied to him at the departmental enquiry despite having been asked for; and (ii) the petitioner having been acquitted by a competent Court, he could not be punished departmentally on the same charge or even on a different charge on the evidence cited in the criminal case (though that evidence was not led in the criminal case) as such departmental proceedings are expressly barred by the mandatory provisions of rule 16.3(1) of the Police Rules.

(4) So far as the first ground of attack is concerned, it is not disputed that copies of the statements of the two witnesses in question had actually been supplied to the petitioner during his trial in the criminal Court. This has been so stated in the affidavit of the Deputy Inspector General of Police as well as that of the Superintendent of Police filed in reply to the writ petition. There is no doubt that the statements of the two witnesses in question were recorded in the departmental proceedings and were actually relied upon by the punishing authority as evidence of the alleged recovery. The only point on which the parties are not agreed is whether the petitioner in fact asked for fresh copies of the statements of the witnesses being given to him during departmental proceedings or not. The petitioner has stated (Paragraph 7 of the writ petition) that the Enquiry Officer proceeded to record the statements of the said two witnesses without giving to the petitioner copies of even their statements recorded under section 161 of the Code of Criminal Procedure. He specifically alleged that the copies of the said two statements were not furnished to the petitioner "in spite of the request of the petitioner to that effect." In the corresponding paragraph of the return of the Deputy Inspector General of Police it has been deposed that copies of the documents were never demanded by the petitioner. To the same effect is the affidavit of the Superintendent of Police. I have no reason to doubt the veracity of the statements of the Superintendent of Police and the Deputy Inspector General of Police in that respect. Mr. Lakhanpal has, however, submitted that asking for the copies is not relevant as it was the imperative duty of the Enquiry Officer to deliver the copies of the two statements in question to the petitioner even if those had not been asked for and that was necessary in

order to satisfy the principles of natural justice. He has relied in this respect on the judgments of the Supreme Court in the *State of Madhya Pradesh* v. *Chintaman Sadashiva Waishampayan*, (1) and *Tirlok Nath* v. *Union of India and others*, (2). In the earlier case it was held that if it appears that the effective exercise of the right to cross-examine the witnesses who give evidence against the delinquent officials has been prevented by the Enquiry Officer by not giving the relevant documents to which the official is entitled, it would inevitably mean that the enquiry had not been held in accordance with the rules of natural justice. In the later case, their Lordships observed (paragraph 10 of the report) that "if the public servant so requires for his defence", he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Enquiry Officer or required by the public servant for his defence. The above quoted observations of the Supreme Court indicate that the Enquiry Officer is not required in all conceivable cases to *suo motu* supply copies of all relevant documents to the accused official, and that a proper complaint of the copies not having been supplied can be made only in respect of the documents of which copies were asked for but not given. In any event, the requirement of supplying copies is only for satisfying the principles of natural justice, and is not a statutory or technical requirement. In the present case the copies of the statements of the two witnesses recorded under section 161 of the Code of Criminal Procedure having in fact and admittedly been given to the petitioner long before the commencement of the departmental proceedings and no allegation having been made by the petitioner about those copies not having been available to the petitioner at the time of the departmental enquiry, it cannot be held that principles of natural justice were violated by the non-supply of copies in question by the Enquiry Officer *suo motu*. The first contention of Mr. Lakhanpal, therefore, fails.

(5) In order to appreciate the second contention of the learned counsel for the petitioner, it is necessary to set out the relevant portion of rule 16.3 of the Police Rules. It reads :—

> "(1) When a Police Officer has been tried and acquitted by a criminal Court he shall not be punished departmentally

(1) A.I.R. 1961 S.C. 1623.

(2) 1967 S.L.R. 759.

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) * * * * * * *

(d) * * * * * * *

(e) * * * * * * *

(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."

On the analogy of the judgements of this Court in *Amin Lal* v. *The State of Punjab and others,* (3) and *S. Avtar Singh Uppal* v. *The Inspector-General of Police, Chandigarh, and others,* (4) it was argued that the prohibition contained in rule 16.3 (subject to the exceptions contained therein) is absolute. In other words it was contended that just as rule 16.38 has been held to be mandatory in the *cases of Amin Lal* (1) and *Avtar Singh Uppal,* (2) the requirements of rule 16.3 are also mandatory and not merely directory. The language of rule 16.3 leaves no doubt in my mind that the prohibition contained therein against departmental punishment being awarded to a person who has been acquitted by a criminal Court on the same charge or on a different charge is subject to the only exceptions contained in clauses (a) to (e) of sub-rule (1) of rule 16.3, and to no other exception. It is beyond doubt that the petitioner had been prosecuted in a criminal Court on the same charge. It is also not in dispute that he was acquitted by the Criminal Court. It is common

(3) 1965 Curr. L.J. (Pb.) 509.

(4) 1966 Curr. L.J. (Pb.) 318.

ground between the parties that the evidence on which the petitioner has been punished departmentally was the evidence cited in the criminal case though it was not actually led there. The present case, therefore, squarely falls within the purview of sub-rule (1) of rule 16.3. The only question on the various aspects of which arguments have been advanced by learned counsel for both sides is whether the departmental punishment awarded to the petitioner does or does not fall within exception (a) or (b), i.e., whether (a) the criminal charge against the petitioner had failed on technical grounds or (b) whether in the opinion of either the criminal Court or of the Superintendent of Police, the independent prosecution witness Rattan Singh had been won over or not.

(6) The failure of the criminal charge on a technical ground can be inferred only from a reading of the judgment of the criminal Court. In order to appreciate the rival contentions of the parties in this connection as well as in connection with exception (b) to sub-rule (1 of rule 16.3. it appears to be necessary to quote *verbatim* the relevant part of the judgment of the criminal Court. After referring to the allegations against the petitioner, the learned Magistrate disposed of the criminal case with the following observations:—

> "The prosecution gave up Ratna, the only public witness joined in the raid as having been won over by the accused and the fact is that he is not available to the prosecution in support of their case of recovery of liquor from the accused."

The learned Magistrate held following *Kartar Singh* v. *The State*, (5) that no conviction can safely be recorded on the evidence of police officials when the public witness joined in the search has not supported the prosecution case.

(7) Mr. Gurbachan Singh has invited my attention to the judgment of this Court in *Gurdev Singh* v. *State of Punjab and others*, (6), wherein a criminal case against a police official had been dismissed in default of appearance of the complainant and the official had consequently been acquitted. The attack against the subsequent departmental punishment awarded to Gurdev Singh was repelled by B. R. Tuli, J. as it was held that the criminal charge had failed on a technical ground, inasmuch as the charge had not been enquired into, and had not been substantiated. In view of the abovementioned judgment of this Court, with which I am bound.

(5) 1966 P.L.R. Short Note 5.
(6) 1970 S.L.R. 885.

it may indeed be possible to hold on the facts of the present case that the criminal charge against the petitioner had failed on a technical ground. But the difficulty in the way of the State in this respect appears to me to be insurmountable. It is not for this Court to find out for the first time, in order to uphold the departmental punishment awarded to the police officer who has been acquitted by the criminal Court whether the criminal charge had or had not failed on a technical ground. It is for the competent punishing authority to consider the matter at the appropriate stage and to allow departmental proceedings being initiated or to punish the police officer departmentally despite his acquittal by a criminal Court if the competent punishing authority is of the opinion that the criminal charge had failed on technical grounds. Mr. Gurbachan Singh has referred me to the order of the Superintendent of Police, wherein he held that there was absolutely no bar in taking departmental action aginst the petitioner in view of the provisions of the Police Rule 16.3. (1) and (b)" (Annexure 'F'). The learned State counsel argued that the figure (1) had been typed in the order Annexure 'F' due to an error for the letter (a). Significance was sought to be attached to the word '&' by which the figure (1) and letter (b) have been separated in the abovequoted sentence. If rule 16.3 did not have sub-rules (1) and (2), this argument would have been almost conclusive. It, however, appears that exceptions (a) and (b) are to sub-rule (1) of rule 16.3. The error in the abovequoted sentence, therefore, lies in inserting the word '&' between (1) and (b) and not in figure (1) having been typed for clause (a). Even otherwise, the tenor of the whole order clearly shows that the only finding which was sought to be given by the Superintentendent of Police, consistent with his earlier decision at the time of initiation of the departmental proceedngs against the petitioner, was the one referred to in clause (b) of sub-rule (1) of rule 16.3. Mr. Lakhanpal also tried to counteract this submission on the additional ground that the decision as to the bar of rule 16.3(1) not being applicable to a particular case has to be arrived at and recorded by the competent authority at the time of initiation of the departmental proceedings and cannot for the first time be dealt with and recorded in the order impossing punishment. Though rule 16.3(1) prohibits any police officer being "punished departmentally" and does not appear *prima facie* to create a bar against mere initiation of departmental proceedings, it is unnecessary to dwell on this point in the view I have taken about clause (a) having at all been invoked or not by the Superintendent of Police. Nothing

stated by the Superintendent of Police at the initial stage admittedly indicates the invoking of exception (a). Even in the written statement filed by the respondents, exception (a) has not been invoked. In these circumstances I have no hesitation in holding that the departmental authorities never sought to bring the petitioner's case within exception (a).

(8) Exception (b) consists of two distinct parts. A departmental punishment would be upheld if it is shown that the Court which acquitted the police officer was of the opinion that the prosecution witnesses had been won over. I have already quoted above the relevant part of the judgment of the criminal Court. I am firmly of the opinion that the learned Magistrate was merely referring to the stand taken by the prosecution in giving up Rattan Singh when he referred to the said witness having been won over by the accused. The finding recorded by the Magistrate himself was confined to the fact that the witness was not available to the prosecution in support of the alleged recovery of liquor from the petitioner. At no other place did the Magistrate refer to Rattan Singh having been won over. A careful reading of the entire judgment of the criminal Court discloses that the learned Magistrate who acquitted the petitioner never expressed any opinion of his own regarding any prosecution witness having been won over. Even the Deputy Inspector General of Police accepted this contention of the petitioner in the course of his appellate order. The appellate authority after quoting the relevant portion of the judgment of the criminal Court held as below:—

> "These observations (observations of the criminal Court) do not show anything beyond the fact that the witness was given up as won over by the prosecution and do not tantamount to the expression of the opinion of the Court that the witness was actually won over."

I am in agreement with the appraisal of the judgment of the criminal Court by the Deputy Inspector General of Police in the abovementioned respect.

(9) The only question that remains to be answered is whether any part of the record of this case does or does not reveal that respondent No. 3 (Superintendent of Police) was himself of the opinion that Rattan Singh P.W. (or any other prosecution witness) had been won over. The Superintendent of Police applied his mind to this aspect of the case at the initial stage. What happened at that stage

is detailed in the order of the appellate authority in the following words :—

> "It is not disputed that the Superintendent of Police could initiate the enquiry in terms of Police Rule 16.3(1) (b) if he had formed an opinion that Ratna P.W. had been won over. In this connection it may be pointed out that after the acquittal of the appellant a copy of the judgment was put up before the Superintendent of Police with office noting specifically mentioning therein that Ratna P.W. was given up as won over and the S.P. finally passed the following order on August 7, 1967 :—
>
> 'The case of Constable Amrik Singh No. 169 is clearly covered by Police Rule 16.3. I, therefore, order that he should be departmentally dealt with by Shri Fauja Singh, DI/Headquarters. He should complete the enquiry without any delay by holding day to day proceedings as the constable is under suspension.'

(10) The above facts which were incorporated in the order of the appellate authority from the original record which was presumably before him clearly show :—

(i) that the only material which was before the Superintendent of Police at the time of his passing his order, dated August 7, 1967, consisted of the judgment of the criminal Court and the office noting based thereon; and

(ii) that when the Superintendent of Police held that the case was clearly covered by Police Rule 16.3(1), he was not trying to form an independent opinion of his own regarding Rattan Singh having or not having been won over, but was merely basing his decision on what had been stated in the copy of the judgment and the quotation from that judgment which appears to have been incorporated in the office noting.

The learned counsel for the respondents tried to argue that in his order imposing the penalty of dismissal on the petitioner, the Superintendent of Police had stated in the following context that obviously the acquittal of the petitioner had resulted from the witness from the public having been won over:—

> "In the instant case it is clear from the judgment of the Magistrate, dated June 17, 1967, that in the opinion of

the Court, Ratna, the witness from the Public had been won over. With that fact in view the Court closed the prosecution evidence without examining the Assistant Sub-Inspector and the Excise Inspector. Obviously the acquittal of the defaulter in the criminal case was simply because the witness from the public had been won over. Under these circumstances, and in view of the provisions of the Police Rule 16.3(1) and (b) there is absolutely no bar in taking departmental action against the defaulter."

At the first sight this argument appeared to be somewhat attractive. On a closer analysis of the entire record of the case, however, I have not been able to persuade myself to construe the abovequoted portion of the order of the punishing authority to convey that the punishing authority had formed his own opinion about the criminal charge having failed on account of the witness from the public having been won over. Moreover, the State has not been able to show or even argue that the Superintendent of Police had before him any material other than the judgment of the criminal Court and the office noting on which he could base his own independent opinion. If I had been convinced that the Superintendent of Police had formed his own opinion about Rattan Singh prosecution witness having in fact been won over at the time of permitting departmental proceedings being taken against him in spite of petitioner's acquittal on the criminal charge, I would have dismissed the writ petition. As, however, I have held that neither the Court had formed such an opinion, nor the Superintendent of Police did so, the case does not fall within the exeption contained in clause (b) of sub-rule (1) of rule 16.3. Having held that the requiremests of rule 16.3 are mandatory, I am constrained to allow this petition as the departmental punishment awarded to the petitioner in violation of the prohibition contained in the abovementioned rule cannot be allowed to stand.

(11) The impugned order of the Superintendent of Police, dated December 23, 1967 (Annexure 'F'), as also the order of the appellate authority, dated March 29, 1968 (Annexure 'H'), and that of the revisional authority, dated October 4, 1968 (Annexure 'J'), are set aside and quashed. As the petitioner has succeeded in this Court on a technical ground, I make no order as to costs incurred by the parties in this Court.

K.S.K.