

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.582 of 2019
Reserved on: 20.06.2026
Decided on: 29.07.2026
Uploaded on: 29.07.2026

Dharub Kumar

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner: Mr. Sparsh Bhushan, Advocate.

For the respondents: Mr. Amit Kumar Chaudhary,
Deputy Advocate General.

Jiya Lal Bhardwaj, Judge

The petitioner by way of present petition has
prayed for the following substantive reliefs:-

- "i) That the impugned Annexures:A-1, A-2, A-3, A-4, A-7, A-8, A-9, A-11 and A-12, dated 26.7.99, 26.7.99, 28.7.99, 28.7.99, 1.9.99, 29.9.99, 22.1.2000, nil and 24.1.2001 respectively may be quashed and set aside;
- ii) That the respondents may be directed to permit the applicant to complete his Upper School Course in P.T.C., Daroh without interruption and to consider him for promotion to the post of Sub Inspector of Police;"

2. The facts as emerge from the record are that the petitioner while posted as Assistant Sub-Inspector at District Una, H.P. and Incharge Barrier at Mehatpur, was found busy stopping and checking the vehicles during the intervening night of 25/26.07.1999 by the Additional Superintendent Una, H.P. which was not the duty assigned to him. He was put under suspension at 02.30 AM on 26.07.1999 and his Headquarter was fixed at Police Lines Una and he was asked to attend all fallen and General Parades on every Monday at Police Lines Una. Thereafter, respondent No.3 found his acts very serious and directed to conduct a regular enquiry against him as per order dated 26.07.1999 (Annexure A-1) and Sh. Madhu Sudan, Deputy Superintendent of Police (Law & Order) (in short 'Dy. SP(L&R)') Una was appointed as Enquiry Officer to conduct the enquiry. The petitioner submitted a representation to the Deputy Commissioner, Una on 28.07.1999 to sit on the hunger strike on 28.07.1999 in the evening against suspension orders.

3. The petitioner was issued the memorandum dated 02.08.1999 for misconduct on the following charges:-

- (i) On the night intervening 25/26.07.1999, when the petitioner was posted as Incharge Barrier at

Mehatpur, checking was conducted by the Addl. S.P. Una when she found that the petitioner was stopping and checking the vehicles, which was contrary to the instructions issued by the Superintendent of Police, Una.

(ii) That consequently, the petitioner was directed to report in Police Line Una, on 26.07.1999, but he did not report back and kept performing duties at the Barrier. The act of the petitioner amounted to disobedience of orders of the superior authority.

(iii) That on 28.07.1999, the petitioner submitted a memorandum against his suspension to the Deputy Commissioner, Una for siting on Dharna.

4. The Deputy Superintendent of Police (L&R) was appointed as Enquiry Officer. The petitioner submitted an application for change of the Enquiry Officer, but his request was initially turned down vide order dated 06.08.1999 (Annexure A-5). However, later on, the Enquiry Officer was changed and the enquiry was entrusted to Sub Divisional Police Officer (in short 'SDPO') Dehra, vide office order dated 01.09.1999. The newly appointed Enquiry Officer issued summary of charges, vide letter dated 29.09.1999

(Annexure A-8) and the petitioner replied to the allegation in the charge sheet and submitted that the departmental enquiry was being conducted in violation of mandatory provisions of Rule 16.24 (IV) of the Punjab Police Rules and the charges mentioned are reiteration of the summary of allegations.

5. After receipt of the reply, the enquiry continued and the Enquiry Officer submitted the enquiry report. It has been averred in the petition that the petitioner was under suspension, but later on reinstated in service w.e.f. 31.01.2000 and it was ordered that the period of suspension shall be dealt in the departmental enquiry. It has also been averred that the petitioner was hoping, that in view of the reply filed by him, the charges shall be dropped, however, the departmental enquiry continued and enquiry report was submitted by the Enquiry Officer.

6. After receipt of the enquiry report, a show cause notice dated 24.01.2001 (Annexure A-12) was issued to the petitioner by respondent No.3 without supplying the enquiry report. The petitioner after receipt of the show cause notice sought time to file reply since he was undergoing Upper School Course in Police Training College

(in short 'PTC Daroh') w.e.f. 05.11.2000, which was to conclude in April, 2001, but he was only granted 20 days' additional time to file reply vide letter dated 24.02.2001. Since the petitioner was not supplied with the enquiry report, he approached the Himachal Pradesh Administrative Tribunal (in short 'the Tribunal') by way of OA No.431 of 2001, titled, ***Dhrub Kumar vs. State of Himachal Pradesh and others***, and the Tribunal vide order dated 12.03.2001 issued notice to the respondents and till further orders, the respondents were directed not to pass any order on the basis of the show cause notice dated 24.01.2001 (Annexure A-12). The said original application has now been registered as present petition.

7. It has been averred in the petition that the mandatory procedure as contained in Rule 16.24 of the Punjab Police Rules has not been followed while conducted the enquiry against the petitioner, which is in violation of principles of natural justice. The respondents were to follow the provisions of Rule 16.24 of the Punjab Police Rules and only after recording the evidence oral or documentary, the charges were to be framed. But to the contrary, the provisions of Rule 16.24 were not followed. It has also been

averred that the Enquiry Officer has come to a wrong conclusion, that charges No.2 & 3 were proved against the petitioner, whereas charges No. 2 & 3 were consequential to the main charge No.1 and since charge No.1 has not been proved, charges No.2 & 3, could not have been proved against the petitioner. The petitioner was not furnished the copy of the enquiry report, before issuance of Annexure A-12, which is in violation of the law laid down by the Hon'ble Supreme Court. Before passing any order, the petitioner being a delinquent officer was to be heard and only thereafter the show cause notice to impose penalty of reduction in the rank could have been issued.

8. The respondents filed reply to the petition and averred that it is wrong to submit that the respondents have not followed the mandatory procedure stipulated in Rule 16.24 of the Punjab Police Rules. The petitioner was served with summary of allegations vide memorandum dated 29.09.1999 and directed to submit his reply to the same within seven days. The reply submitted was considered by the Enquiry Officer, whereby the charges were not admitted. Therefore, the Enquiry Officer legally proceeded with the departmental enquiry. It has further been averred

that the proposed penalty is commensurate with the misconduct and moreover the punishment has not been awarded which will be awarded after receipt of the reply to the show cause notice.

9. The petitioner filed rejoinder to the reply and controverted the facts.

10. It is relevant to mention here that the petition filed by the petitioner was dismissed in default on 20.12.2012. However, vide order dated 18.04.2013, the order dated 20.12.2012 was recalled and the petition was restored.

11. This Court after noticing the specific averment made in para 15(O) of the writ petition, that no enquiry report was supplied to the petitioner passed an order on 06.11.2025 directing the respondents to file supplementary affidavit disclosing therein that before imposing the penalty, whether enquiry report was furnished to him. In sequel to the direction given by the Court, respondent No.2 filed supplementary affidavit, stating therein that after completion of the departmental enquiry by the Enquiry Officer, the final enquiry report along with findings was duly submitted before the Disciplinary Authority i.e.

Superintendent of Police, Una, and copy of the same was also supplied to the petitioner on 06.01.2014 (Annexure R-2/1). Thereafter, the show cause notice proposing the penalty of reduction in rank was issued to the petitioner vide S.P. Office, District Una, notice dated 24.01.2001. However, instead of submitted a reply to the show cause notice, the petitioner challenged the same before the learned Tribunal by filing OA No.431 of 2001 and the learned Tribunal directed the respondents not to pass any order on the basis of the show cause notice. The petition instituted by the petitioner was dismissed in default on 20.12.2012. After the dismissal of the petition, a show cause notice dated 10.05.2013 was issued, whereby the penalty of reduction in rank was proposed. Thereafter, another show cause notice was issued on 17.01.2014 by proposing the penalty of stoppage of two years future increments on permanent basis, which was duly received by the petitioner on the same day. The petitioner did not make any representation against the show cause notice despite issuance of two reminders.

12. I have heard learned counsel for the parties and also perused the record carefully.

13. A perusal of the charges reveals that the first charge against the petitioner was that he while posting as Incharge Barrier at Mehatpur, was found checking the vehicles, which was contrary to the instructions issued by the Superintendent of Police. The second charge was that he did not report in Police Line Una on 26.07.1999, and kept on performing duties at the Barrier and the third charge was with respect to the fact that the petitioner on 28.07.1999, submitted a memorandum against his suspension to the Deputy Commissioner, Una, for sitting on 'Dharna'.

14. As per the report submitted by the Enquiry Officer, it was found that charge No.1 was not proved against the petitioner. So far as charges No.2 & 3 are concerned, which were pertaining to not report at Police Lines Una and further submit a representation to the Deputy Commissioner, Una for sitting on Dharna are concerned, those were stated to be proved.

15. It is not in dispute that the petitioner was put under suspension by the respondent-Department on 26.07.1999. The first charge with respect to checking of the vehicles was contrary to instructions has not been proved. No doubt as per the report submitted by the Enquiry Officer,

it has been found that the petitioner did not report in Police Lines Una on 26.07.1999, but the Court cannot lose sight of the fact that the petitioner was put under suspension on 26.07.1999 at 02.30 AM and the charge that the vehicles were found to be checked during the intervening night of 25/26.07.1999 without any permission has been found to be not proved. The petitioner due to the fact that he was not checking the vehicles may not have joined at Police Lines Una on the next day and thereafter had made a representation to the Deputy Commissioner, Una to sit on Dharna. This can be considered a normal action of an employee who was not checking the vehicles as per the charge.

16. The respondents after receipt of the enquiry report did not supply the copy of the enquiry report to the petitioner and straightaway issued show cause notice on 24.01.2001 (Annexure A-12), which was totally in violation of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in ***Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others***, (1993) 4 SCC 727, wherein it has been held that non supply of the enquiry report vitiates the action proposed to be

taken against an employee. The respondents when specifically directed to respond with respect to the non-compliance of the mandate of law; (i) in not furnishing the enquiry report; (ii) in not affording the opportunity to submit representation against the enquiry report; (iii) in not recording findings after considering a representation against the enquiry report and (iv) the order dated 24.01.2001 proposing penalty without complying with the earlier legal requirement had tried to justify their action while filing the compliance affidavit, however, the same is contrary to the factual position. The relevant paras of the affidavit reads as under:-

"3. That after completion of the departmental enquiry by the Enquiry Officer, the final enquiry report along with findings was duly submitted before the disciplinary authority, i.e., the Superintendent of Police, Una, vide letter No. 1097/SDPO dated 21.12.2000. A copy of the same was also supplied to the petitioner and appended here with as (Annexure R-2/1), the perusal of same would show the receiving of the same by the petitioner on 06.01.2014. Thereafter, a Show Cause Notice proposing the penalty of "Reduction in Rank" was issued to the petitioner (ASI Dharub Kumar) vide SP Office District Una Notice dated 24.01.2001. (Annexure A-12). Instead of submitting a reply to the Show Cause Notice, the petitioner challenged the same before the erstwhile HPSAT by filing OA No. 431/2001. Vide order dated 12.03.2001, the learned Tribunal directed the respondents not to pass any order on the basis of Annexure A-12 (Show Cause Notice).

That upon abolition of HPSAT. the matter was transferred

to the Hon'ble High Court of H.P. and registered as CWP(T) No. 7575/2008. The petition was later dismissed in default vide order dated 20.12.2012. After dismissal of the petition, the disciplinary authority i.e. Commandant, 1st HPAP Bn., Junga has issued a Show Cause Notice vide No. DA-1(16)/2013-7485 dated 10.05.2013. It was clearly mentioned therein that:-

"Since, the department enquiry against you has already been completed by the SP Una and charges levelled against you (2 and 3) have also been fully proved and after going through the enquiry report submitted by the Superintendent of Police Una, relevant record available in the 'D.E file in depth a show cause notice was issued to you by SP Una proposing therein the quantum of punishment of Reduction in Rank, (copy enclosed) therefore, you are hereby called upon to submit your reply to the show cause notice to this office within 07 days from the receipt of this communication otherwise it will presumed that you have deliberately committed this misconduct and you have nothing to say and proposed punishment will be confirmed/ inflicted upon you accordingly"

As the petitioner did not respond, a reminder was issued vide memo No. DA-1(16)/2013-7910 dated 18.05.2013, directing him to submit his reply within three days, failing which the proposed punishment would be confirmed. A copy of the final enquiry report/finding was supplied to the petitioner free of cost vide office memo No. 492 dated 06.01.2014 (Annexure R-2/1) issued by the Commandant, 1st HPAP Bn., Junga. The petitioner acknowledged receipt thereof. A fresh Show Cause Notice on the basis of final enquiry report submitted by the Enquiry Officer on 03.01.2001 in the office of SP office District Una vide Notice No.DA-1(16)/2014-1001 dated 17.01.2014 by proposing a penalty of. "Stoppage of two years future increments on permanent basis". The copy of Show Cause Notice dated 17.01.2014 was received by the petitioner on same day which is duly signed by the petitioner as evident from the (Annexure R-2/2). On this, the petitioner has made a representation against the Show Cause Notice vide office of the CO, 1^a HPAP Bn Junga dairy receipt No.415 dated 14.01.2014. Before passing final order in

the departmental enquiry, reasonable opportunities were afforded to the petitioner as two reminders were issued by the disciplinary authority to the petitioner to submit his reply against the Show Cause Notice vide Memo dated 21.01.2014 & 22.01.2014 (Annexure R 2/3 Colly) with the directions that points mentioned in the representation made by the petitioner will be considered while taking final decision in the departmental enquiry.

4. That in view of the submissions made in para supra, it is respectfully submitted that the Inquiry Report dated 03.01.2001 was duly furnished to the petitioner. The petitioner was informed of the findings of the Inquiry Officer, and the relevant documents were made available to him. Hence, the contention regarding non-supply of the Inquiry Report is incorrect and denied. The respondents shall place on record the documentary proof.

5. It is further submitted that the petitioner was afforded adequate and reasonable opportunity to submit his representation made by the petitioner will be considered while taking final decision in the departmental enquiry. Therefore, the allegation that the petitioner was deprived of the right to represent is totally misconceived, baseless and denied in toto.

6. It is submitted that the show cause notice dated 04.01.2011 (Annexure A-2) as well as the proposed penalty order dated 24.01.2001 (Annexure A-12) were issued only after following the prescribed procedure under law. There is no violation of any statutory mandate or principle of natural justice. The petitioner has suffered no prejudice, and the proceedings are legally valid."

17. A perusal of para 3 of the affidavit reveals that the petitioner was supplied the copy of enquiry report on 06.01.2014, whereas a show cause notice proposing the penalty of reduction in rank was issued to him on 24.01.2001. Therefore, it is wrong to aver by the respondents that before issuing the show cause notice to

the petitioner to propose a penalty, the enquiry report was supplied to him. The respondents have not placed on record any document that before issuing the show cause notice dated 24.01.2001, the petitioner was ever supplied the enquiry report. The document supplying copy of the enquiry report is dated 06.01.2014, which is before issuing another show cause notice dated 17.01.2014, whereby the decision was taken that why should the petitioner be not awarded punishment of stoppage of two years future increments on permanent basis for the act of indiscipline and disobedience and acting prejudicial to the discipline of the force.

18. No doubt the petitioner was working in the disciplined force, but once in the enquiry report, it had come that the petitioner was not checking the vehicles on the relevant date and the charge against him has not been proved, the other charges that he did not report in the Police Line Una and why did he make a representation to the Deputy Commissioner were emanating from this first charge, for the reason that the petitioner was being harassed, which can be found from the fact that he was put under suspension on 26.07.1999 at 02.30 AM, only on the allegation that he was found checking the vehicles which

charge has not been proved. Under normal circumstances, if a person had not committed any offence or there was no dereliction of his duties, the normal course was only to make a representation to the competent authority and in the present case, the petitioner had written to the Deputy Commissioner, Una only to the extent that against his suspension, he is going to sit on 'Dharna'.

19. The Court could have taken charges No.2 & 3 seriously; in case the conduct of the respondents was also proper. In the present case, initially the petitioner was not given the copy of enquiry report, which was *sine qua non* as per the judgment of the Constitution Bench in the aforementioned case wherein, it was held that before proceeding to impose the penalty on the delinquent officer, the copy of the enquiry report has to be supplied. In the present case, as already noticed above, the respondents have failed to justify their action while issuing the show cause notice dated 24.01.2001 and had tried to hoodwink the Court that the enquiry report was indeed supplied to the petitioner before issuing the show cause notice, which is against the record. The petitioner on account of the enquiry report, as well as the show cause notice issued to him was

deprived of his chances of promotion too and since the charges were not serious, inasmuch as the first charge of checking the vehicles was not proved, charges No.2 and 3 are not serious charges, keeping in view the fact that the petitioner for the charge of checking the vehicles, which was not proved, was put under suspension. Initially when the show cause notice was issued, the penalty proposed was reduction in rank and after the dismissal of the writ petition on 20.12.2012, another show cause notice was issued on 17.01.2014, when the penalty of reduction of two increments with cumulative effect was proposed, though the petition, which was dismissed in default on 20.12.2012 was restored to its original number on 18.04.2013. Once the petition was restored, the respondents could not have issued another show cause notice to the petitioner which clearly shows that the respondents were also prejudicial towards the petitioner.

20. From the facts mentioned above, it is crystal clear that no enquiry report was supplied to the petitioner before issuing the show cause notice dated 24.01.2001 and as per the judgment of the Hon'ble Supreme Court, the delinquent officer is not to show the prejudice of non-supply

of the enquiry report and on this ground alone, the petition deserves to be allowed.

21. Now the second question arises that what should be the recourse available in such like eventuality. Normally, the matter has to be relegated to the stage from which the enquiry was vitiated. But keeping in view the charges levelled against the petitioner, coupled with the fact that the main charge of checking the vehicles without any authority of law has not been proved, as evident from the findings returned by the Enquiry Officer, which fact has not been disputed even while issuing the show cause notice to the petitioner, this Court is of the considered view that instead of relegating the parties to the stage from which the proceedings have been vitiated, the petitioner is held entitled to all service benefits including promotions ignoring the penalty, but the monetary benefits would be given to him only after his retirement.

22. The Court is passing this order keeping in view the fact that the petitioner was issued the show cause notice on 24.01.2001 and he has now retired from service. If the petitioner is asked to face the enquiry afresh from the stage from where the enquiry was vitiated, it would be

unjust and harsh to him. It is not the case of the respondents that the petitioner has caused any financial loss or embezzled the amount. This view is being taken keeping in view the law laid down by the Hon'ble Supreme Court in **Allahabad Bank and others vs. Krishna Narayan Tewari**, (2017) 2 SCC 308. The relevant paragraphs of the judgment read as under:-

"8. There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the disciplinary authority or to the enquiry officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time-lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand.

9. The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During

the intervening period the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.

10. The next question is whether the respondent would be entitled to claim arrears of salary as part of service/retiral benefits in full or part. The High Court has been rather ambivalent in that regard. We say so because while the High Court has directed release of service/retiral benefits, it is not clear whether the same would include salary for the period between the date of removal and the date of superannuation. Taking a liberal view of the matter, we assume that the High Court's direction for release of service benefits would include the release of his salaries also for the period mentioned above. We are, however, of the opinion that while proceedings need not be remanded for a fresh start from the beginning, grant of full salary for the period between the date of dismissal and the date of superannuation would not also be justified.

11. We, therefore, allow this appeal but only in part and to the extent that while orders passed by the Disciplinary Authority and the Appellate Authority shall stand quashed, and the respondent entitled to continuity of service till the date of his superannuation with all service benefits on that basis, he shall be entitled to only 50% of the salary for the period between the date of his removal from service till the date of superannuation. Retiral benefits shall also be released in his favour. The order passed by the High Court shall, to the extent indicated above, stand modified. The parties shall bear their own costs."

23. The Hon'ble Supreme Court has again in recent judgment in ***State of Uttar Pradesh versus Ram Prakash Singh***, 2025(4) SLR 931 (SC) held that since the employee had retired from service, no fruitful purpose will be solved in remitting the case and the issue must be given quietus. In the present case, the petitioner did not perform the duties of the higher post on account of the fact that the Disciplinary Authority had proposed to impose penalty upon him and, therefore, he is not entitled to the actual monetary benefits after his promotions ignoring the proposed penalty, but he shall be entitled to all other monetary benefits after retirement.

24. Consequently, the present petition is allowed and the impugned show cause notice dated 24.01.2001 (Annexure A-12) is quashed and set aside and since the petitioner has retired from service, no penalty shall be imposed upon him. However, he is entitled for all promotions on notional basis till his retirement and the actual benefits shall be paid to him from the date of his retirement. No order as to costs. Pending applications, if any, also stand disposed of.

29th July, 2026
(Anurag)

(Jiya Lal Bhardwaj)
Judge