

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**LPA No.376 of 2026****Reserved on : 28.09.2026****Decided on : 09.10.2026****Uploaded on : 09.10.2026**

Constable Sushil Kumar

...appellant.

Versus

State of HP and Ors.

...Respondents

*Coram****Hon'ble Mr. Gurmeet Singh Sandhawalia, Chief Justice.******Hon'ble Mr. Justice Bipin Chander Negi, Judge.****Whether approved for reporting?¹*

For the appellant : Mr. Rakesh Kumar Dogra, Advocate.

For the respondent(s) : Mr. Pranay Pratap Singh, Additional Advocate General.

ASI Chaman Lal, P.S. Ghumarwin, District Bilaspur, HP present in person.

Bipin Chander Negi, Judge

The present appeal has been preferred against the impugned judgment dated 06.05.2026, whereby the writ petition preferred by the present appellant against the order passed by the Appellate Authority/respondent No.3-Deputy Inspector General of Police (Central Range) Mandi dated 01.02.2025 (Annexure P-14 appended along with the writ petition), ordering a fresh inquiry in terms of the provisions of Rule 16.38 of the Punjab Police Rules, after setting aside the inquiry conducted on technical grounds, has been dismissed.

¹ Whether the reporters of the local papers may be allowed to see the Judgment? *Yes*

2. Heard counsel for the parties and perused the record.

3. The appellant, in the case at hand, was posted as a Traffic Clerk in the SP Office, Bilaspur with effect from 11.07.2019. On 02.06.2023, FIR bearing No. 122/2023, under Sections 420, 468 and 471 of the IPC, had been registered against the present appellant.

4. Facts necessitating the filing of FIR bearing No. 122/2023 being that one HC Rajender Kumar, No. 70, Traffic Police, Bilaspur, had challaned a vehicle bearing No.PB-34B-5818 on 03.05.2023 under Sections 207, 192, and 185 of the Motor Vehicles Act. On challaning the aforesaid vehicle, a scanned copy of the driving licence of the violator/driver-Gursevak Singh, had been taken into possession. Since Section 185 of the Motor Vehicles Act (drunk and drive) is not compoundable by the police, therefore, the challan was forwarded to the learned Chief Judicial Magistrate, Bilaspur for further action, through the Traffic Branch of the SP Office, Bilaspur, on 04.05.2023.

5. On 09.05.2023, Head Constable Rajinder Kumar, No.70, intimated I/C Traffic, SI Kuldeep Singh, that on the e-Challan application, it was observed that Rs.3,500/- was displayed as

the compounding amount of the challan dated 03.05.2023 with respect to vehicle No.PB-34B-5818.

6. On further inquiry, it revealed that the challan in the case at hand, with respect to vehicle No.PB-34B-5818 dated 03.05.2023, was compromised before the learned Chief Judicial Magistrate, Bilaspur on 09.05.2023 with fine of Rs.5,000/- for Section 181 of the MV Act (without driving licence) and Rs. 0/- for Section 185 of the MV Act (drink and driving). Section 181 had never been inserted in the challan dated 03.05.2023 by HC Rajinder Kumar.

7. On further inquiry from the owner of the vehicle No.PB-34B-5818, Shri Gursevak Singh, it came to light that the said individual, along with his lawyer, had visited the Traffic Branch of SP Office, Bilaspur and had paid a fine of Rs. 20,000/- as compounding fee through his lawyer on the Google Pay No.94590-00080, which is in the name of one Sushil Sangar. Receipt qua the same was taken by SI Kuldeep Singh from Gursevak Singh. On inquiry, it was found that there were some variations as compared to the original receipt.

8. SI Kuldeep Singh submitted a complaint to the SP, Bilaspur, who ordered a preliminary inquiry into the matter on 26.05.2023. During the preliminary inquiry, on verification of

the Online Treasury, District Bilaspur, a sum of Rs.20,000/- was not found deposited with effect from 03.05.2023 to 27.05.2023, as per the report received from DIO, NIC Kangra, through email dated 29.05.2023.

9. On completion of inquiry, it was concluded that the appellant in the case at hand had made additions and deletions in the challan without prior permission from higher authority and had received compounding fee of Rs.20,000/- from Gursevak Singh on his own personal Google Pay account. Based on the aforesaid, FIR No.122/2023, dated 02.06.2023, under Sections 420, 468, and 471 of the IPC, was registered at Police Station Sadar against the appellant.

10. Other than the aforesaid, after the preliminary inquiry, departmental inquiry was entrusted to the SDPO, Ghumarwin. The same was conducted under Rule 16.24 of the Punjab Police Rules. The appellant was served with a summary of allegations on 15.06.2023 and was asked to submit his reply within seven days. On 22.06.2023, the appellant requested the Inquiry Officer to grant him ten days' more time to submit a reply. Subsequent thereto, also more time was sought. On 13.07.2025, the appellant requested for keeping the departmental inquiry in abeyance till the completion of the

investigation of the criminal case. In this respect, the appellant had preferred CWP No.5299 of 2023, and the same was withdrawn by the appellant on 15.05.2024.

11. Reply to the summary of allegations was filed by the appellant on 16.09.2023. Thereafter, in the inquiry, the appellant was proceeded ex-parte on 04.10.2023.

12. A copy of the inquiry report was provided free of cost to the appellant on 07.12.2023. Along with the inquiry report, a copy of the notice was sent to the appellant to submit his reply. Representation made by the appellant dated 10.12.2023 was received in the office of the Director General of Police on 15.12.2023. The appellant was also called for personal hearing on 16.12.2023. His explanation offered was not found to be satisfactory.

13. After completion of the ex-parte departmental inquiry, the Superintendent of Police, i.e., respondent No. 4, dismissed the appellant, vide office order dated 22.12.2023.

14. Appeal against the order of dismissal dated 22.12.2023 was preferred before the Deputy Inspector General of Police (Central Range) Mandi on 10.06.2024 (page Nos.111 to 122 of the paper book). Since the appeal had been preferred not within the period of limitation, hence the same was rejected

by the Deputy Inspector General of Police (Central Range) Mandi vide order dated 20.06.2024 (Page 123 of the paper book).

15. Against the same, writ petition bearing CWP No.6365 of 2024 was filed. The same was allowed vide judgment dated 10.07.2024, whereby a direction was issued to the Appellate Authority to consider the appeal on merits.

16. In pursuance to the aforesaid, vide order dated 14.08.2024 passed by the Deputy Inspector General of Police (Central Range) Mandi, one opportunity was afforded to the appellant to appear in a de novo inquiry to be conducted in terms of Rule 16.28 of the PPR (Punjab Police Rules, as applicable to the State of Himachal Pradesh), and the Superintendent of Police, Bilaspur was ordered, in terms of order dated 14.08.2024, to appoint a GO (Gazetted Officer) of his district as Inquiry Officer who was to conduct the inquiry on merits and submit his inquiry report to the Deputy Inspector General of Police.

17. Against the same, on 22.08.2024, the appellant preferred an application for withdrawal of the order dated 14.08.2024. In the meanwhile, the Superintendent of Police, Bilaspur handed over the de novo inquiry to one Shri Shiv Ram

Choudhary, Additional Superintendent of Police, Bilaspur, vide order dated 20.08.2024. The said Additional Superintendent of Police issued letters dated 22.08.2024 and 30.08.2024 to the appellant to appear in the inquiry, however, he did not participate in the inquiry.

18. It is in the aforesaid backdrop that the application preferred by the appellant dated 22.08.2024 to withdraw order dated 14.08.2024 and to hear the appeal on merits, as directed by the learned Single Judge vide judgment dated 10.07.2024 passed in CWP No. 6365 of 2024, was considered. In the appellate order dated 01.02.2025, infraction of Rule 16.38 of the Punjab Police Rules, as applicable to the State of Himachal Pradesh, formed the basis for setting aside the inquiry and for directing the conducting of a fresh inquiry in terms of the provisions of Rule 16.38 of the Punjab Police Rules. Further, the appellant was ordered to be reinstated.

19. In the aforesaid backdrop, the period between the date of passing of the dismissal order dated 22.12.2023 and the date of rejoining, i.e., 01.03.2025, had been ordered to be considered as deemed suspension under Rule 10(3) of the CCS (CCA) Rules.

20. Chapter XVI of the Punjab Police Rules deals with punishments. Rule 1 prescribes the punishments and provides that "no police officer shall be departmentally punished otherwise than as provided in these rules". Rule 16.23 provides for prompt record of complaints against a police officer made by a member of the general public and the transmission of the record to the Superintendent of Police or other Gazetted Officer under whose immediate control the officer who has recorded the complaint is serving, if such officer is of opinion that the allegations in the record constitute a prima facie case for inquiry, a departmental inquiry as in Rule 16.24 must be held. Rule 16.38 specially deals with certain types of complaints against a police officer. Sub-rules (1) and (2) of Rule 16.38 are as follows:

"(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate, will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Magistrate having 1st class powers.

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally, the procedure prescribed in Rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed."

21. The provisions of sub-rules (1) and (2) of Rule 16.38 are attracted in cases of complaint received by the Superintendent of Police, indicating the commission by a police officer of a criminal offence in connection with his official relations with the public. In such a case, the Superintendent of Police is required to bring the complaint to the notice of the District Magistrate who is to decide whether the investigation of the complaint should be made by a selected Magistrate having first class powers or should be left to a police officer. If the investigation discloses a prima facie case, a judicial prosecution should normally follow unless for reasons to be recorded in writing the District Magistrate directs that the matter should be disposed of departmentally.

22. In *Delhi Admn. v. Chanan Shah, (1969) 1 SCC 737*

Rule 16.38 of the Punjab Police Rules came up for consideration before the apex court. The apex court therein did not go into the question of whether the said rule was mandatory or directory. However the departmental action taken was invalidated on account of no substantial compliance with Rule 16.38. Besides therein since the complaint fell within Rule 16.38 the first inquiry held by the Superintendent of Police wherein an order of censure was set-aside on account of non-compliance of the provisions of Rule 16.38. Thereafter the Superintendent of Police, asked for the sanction of the District Magistrate to proceed departmentally. The District Magistrate gave his sanction without recording any reasons and without applying his mind to the requirement of Rule 16.38. Yet again on account of non-compliance of the provisions of Rule 16.38 departmental action taken against the respondent was held to be invalid. It is pertinent to note that after setting aside the first inquiry the holding of the second inquiry was not held to be bad. As already stated supra the second inquiry was set-aside for infraction of Rule 16.38. Relevant extract of *Chanan Shah* (Supra) reads as under;

It is not necessary to decide in this case whether the provisions of Rule 16.38 of the Punjab Police Rules are mandatory or directory. Even assuming that the rule is directory we find that there has been no substantial compliance with its provisions. The complaint fell within Rule 16.38, and it was for the District Magistrate to decide who should investigate the case. No investigation of any kind was made under his directions without obtaining his directions, the Superintendent of Police held an inquiry and passed an order of censure. The order was set aside by the Deputy Inspector General. Thereafter by D.O. Letter No. 2165-C, the Superintendent of Police, asked for the sanction of the District Magistrate to proceed departmentally. Even at this stage, the District Magistrate was not informed that the Superintendent of Police held an inquiry and passed an order of censure and that, his order was set aside by the Deputy Inspector General. The inquiry held by the Superintendent of Police was not authorised by the District Magistrate nor did it receive his approval. The District Magistrate gave his sanction without recording any reasons and without applying his mind to the requirement of Rule 16.38. In the circumstances, we are constrained to hold that the departmental action taken against the respondent is invalid.

23. The rationale for the special procedure provided in rule 16.38 as held in ***State of Punjab v. Raj Kumar, (1988) 1SCC 701*** is to protect efficient and honest police officers against victimisation on the one hand and favouritism being shown to the delinquent police officers on the other. Hence a personal control and supervision over the complaints received against members of the police force in the performance of their duties by the District Magistrate and the District Superintendent of Police is contemplated in rule 16.38 in order to exercise and enable the District Magistrate to ensure that the complaint is not a baseless or mala fide one. Relevant portion reads as under;

11. *It may be noticed that the three decisions of this Court which have been referred to above related to departmental enquiries and not criminal prosecutions for offences committed by the delinquent police officers. The pronouncements in these cases will therefore govern only cases where departmental enquiries are held in contravention of the procedure prescribed by the Police Rules. The reason for a special procedure being prescribed in the Rules for investigations before departmental enquiries are held against delinquent police officers is not far off to see. In the very nature of their duties, the members of the*

police force would often stand exposed to criticism and complaints by not only the members of the public but also by the members of the force themselves and consequently they stand placed more vulnerable than members of other government services, of being implicated in false or exaggerated charges. In order to protect them from false implications and resultant proceedings, the government had thought it necessary to have an initial screening of the complaints received against members of the police force by the District Magistrate. Such screening would however extend only to matters which fall within the zone of departmental action and it could never extend to cases where the offences alleged to have been committed would attract investigation under the Criminal Procedure Code, in the same manner the investigation would be attracted if the offences complained of had been committed by any member of the public. That the procedure prescribed in Rule 16.38 has only a limited field of operation i.e. applicable only to departmental enquiries and punishments could be seen from the fact that clause (3) of the rule enjoins every Magistrate to whom a complaint against a police officer is referred by the District Magistrate for judicial enquiry to report the details of the case to the District Magistrate in order to enable the District Magistrate to forward the report to the Superintendent of Police. The clause further says that if the District Magistrate himself takes cognizance

of a case, he should of his own accord send a report to the Superintendent of Police. Clause (4) of Rule 16.38 also throws light on the matter and brings out the objective in greater clarity. This clause sets out that in order to protect the interests of police officers serving in districts where petition-mongering activities are notorious, the District Magistrate can direct that all petitions complaining about police officers shall be presented to him personally so that he can scrutinize them to find out whether the petitions are of a frivolous nature or they have been engineered by factious groups in the districts etc. In fact, the words used in the clause are of a tell-tale nature viz. "complaints against police officers in those districts where abuses of law with the object of victimising such officers or hampering investigation is rife".

12. All these features make it clear that the purpose of underlying the rule is to enable the District Magistrate and the District Superintendent of Police to exercise personal control and supervision over the complaints received against members of the police force in the performance of their duties and enable the District Magistrate to ensure that the complaint is not a baseless or mala fide one and secondly to determine whether the complaint requires investigation by a police officer or by a selected magistrate. The procedure envisaged by the rule is for effective check being exercised against victimisation of efficient and

honest police officers on the one hand and favouritism being shown to the delinquent police officers on the other. These rules were not intended to replace and certainly cannot override the provisions of the Criminal Procedure Code. The Full Bench was therefore in error in taking the view that the rules lay down a special procedure for investigation of all offences committed by the members of the police force and, that they have overriding effect over the provisions of the Criminal Procedure Code in terms of Sections 4 and 5 of the Code.

24. For the aforesaid reasons, we see no reason to interfere in the impugned judgement, the present appeal is dismissed being devoid of any merit. Pending miscellaneous application(s), if any stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

09th October, 2026
(Gaurav Rawat)