

**IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF
PUNJAB AND HARYANA, AT CHANDIGARH**

Letters Patent Appeal No. 1938 of 2013(O&M)

Date of Decision: September 29, 2015

Partap Singh

---Appellant

Versus

State of Haryana and others

---Respondents

**CORAM: Hon'ble Mr. Justice Satish Kumar Mittal
Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Shri Surender Lamba, Advocate, for the appellant.

Shri Sudeep Mahajan, Additional Advocate General, Haryana,
for the respondents.

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

Appellant, Partap Singh, while working as a Constable at R.T. Police Station, Dabwali proceeded on earned leave for fifteen days on account of death of his father but overstayed leave and, thus, absented from his duty for the period from October 05, 1994 to May 29, 1995 (total 237 days). The departmental proceedings initiated in the matter culminated into appellant's dismissal from service vide order dated March 22, 1996 (Annexure P1). Appellant's appeal against order dated March 22, 1996 having been dismissed by Deputy Inspector General of Police, the prescribed appellate authority, vide order dated December 05, 1996

(Annexure P2), appellant preferred a revision petition before Director General of Police, Haryana (for short, 'DGP') but it was also rejected vide order dated September 01, 1997 (Annexure P3). Even a mercy petition filed by the appellant came to be dismissed vide order dated August 11, 1999 (Annexure P4). However, the DGP, pursuant to another mercy petition brought by the appellant, reviewed his earlier order and vide order dated June 16, 2004 (Annexure P6) reduced the punishment of dismissal from service to punishment of stoppage of five annual increments of pay with cumulative effect besides ordering that period of absence and the period during which appellant remained out of service on account of his dismissal be treated as extraordinary leave and the appellant would not be entitled to any monetary benefits for the afore-said period. However, good luck of the appellant did not last long as with the change of guard at the helm of affairs of the police force in Haryana, the new incumbent of the office of DGP reviewed order dated June 16, 2004 (Annexure P6) and served upon the appellant a notice dated July 07, 2006 (Annexure P7) to show cause why punishment of dismissal from service be not awarded to him and after receipt of appellant's reply, passed order dated September 08, 2006 (Annexure P10) restoring the punishment of dismissal of the appellant from service.

02. To lay a challenge to order dated September 08, 2006 (Annexure P10) appellant approached this Court vide Civil Writ Petition No. 15492 of 2006, Partap Singh versus State of Haryana and others, which, together with two other writ petitions, has been dismissed by the learned Single Judge vide order dated October 05, 2013.

03. To impugn order dated October 05, 2013 appellant has brought this intra court appeal under Clause X of the Letters Patent.

04. We have heard learned counsel for the parties besides examining the documents available on record.

05. On behalf of the appellant it has been argued that consequent upon sudden and sad demise of his father appellant proceeded on fifteen days' earned leave but on expiry of the period of leave could not return to his duty owing to unfavorable circumstances obtaining in his family, viz. blindness of his mother and sudden and sad demise of his brother. Further, according to learned counsel for the appellant, under Rule 16.2 of Punjab Police Rules, 1934 (as applicable to State of Haryana) (for short, 'the Rules') punishment of dismissal can be awarded only for '*gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service*' and absence from duty does not find a mention in the list of 'gravest acts' of misconduct appended to that Rule by way of an Explanation. Learned counsel has also pointed out that the appellant did not earn even a single adverse remark in his annual confidential reports during eleven years of service, rather has earned twenty two commendation certificates and, as such, cannot be held to be guilty of '*continued misconduct proving incorrigibility and complete unfitness for police service*'. It is also submitted by the learned counsel that a perusal of the show cause notice dated July 07, 2006 (Annexure P7) would reveal that the DGP had made up his mind to restore punishment of dismissal from service without hearing the appellant and the show cause notice was only an eye-wash because submissions made by the appellant in

reply to the show cause notice were not even noticed by the DGP in order dated September 08, 2006 (Annexure P10), leave apart discussion on those submissions. These aspects, according to the learned counsel for the appellant, have been overlooked by the learned Single Judge.

06. *Per Contra*, on behalf of the respondents it has been contended that order dated June 16, 2004 (Annexure P6) of the then DGP (reducing the punishment) was without jurisdiction as he was not competent to review his earlier order that too after a gap of about seven years since passing of order dated September 01, 1997 (Annexure P3). It has also been contended that the list appended to Rule 16.2 of the Rules is not exhaustive and there are numerous authoritative pronouncements holding absence from duty as an act of gravest misconduct and that being so no fault can be found with the order of the learned Single Judge.

07. No other or further point has been raised on either side.

08. Let's first examine the question-whether or not the DGP is vested with the power of review? and if answer to this question is found to be in the affirmative, is there any time limit for exercise of such power and how and when is this power to be exercised?

09. On behalf of the appellant it has been contended that Rule 16.28 of the Rules deals with the review jurisdiction of the departmental authorities. Rule 16.28 no doubt, is designated as the rule dealing with "Powers to review proceedings" but a perusal thereof would reveal that the powers of review contemplated thereby pertain to review of orders passed by the authorities subordinate to the Reviewing Authority and it nowhere empowers an authority to review its own orders or the orders passed by his

predecessor in office. Rule 16.28 reads as under:

"16.28. Powers to review proceedings-(1) The Inspector General, a Deputy Inspector General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders. (The State Government may also call for the records and review the awards made by the Inspector General of Police, Punjab or by any other authority subordinate to him.)

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, given the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced."

10. A perusal of Rule 16.28 makes it clear that the Inspector General of Police, a Deputy Inspector General of Police and a Senior Superintendent of Police may call for the records of awards made by their subordinates and, thereafter, confirm, enhance, modify or annul the same. This rule cannot be construed to empower the DGP or any other administrative authority to review its own order. Rule 16.32, however, contains the power to review. It reads as under:

"16.32. Revision. An officer whose appeal has been rejected is prohibited from applying for a fresh scrutiny of the evidence. Such officer may, however, apply, within a month of the date of dispatch of appellate orders to him, to the authority next above the prescribed appellate authority for revision on grounds of material irregularity in the proceedings or on production of fresh evidence, and may submit to the same authority a plea for mercy: provided that no application for the revision of an order by the Inspector-General will be entertained.

An officer whose appeal has been heard by the Inspector General may however, submit to the Inspector-General a plea mercy or may apply to the Inspector-General for a review of his appellate order only on the ground that fresh evidence has become available since the appellate order has been pronounced. This rule does not affect the provisions of rule 16.28. Such application or plea must be in English.”

11. Be that as it may, the Hon’ble Supreme Court in **Vinod Kumar v. State of Haryana and others, 2013(16) SCC 293**, has set this question to rest. In this case integrity of the appellant therein was adversely commented upon in his annual confidential report by the then Superintendent of Police, Hisar Range, Hisar. His representation to get the adverse remarks expunged was rejected by the Deputy Inspector General of Police, Hisar. He made another representation to the DGP, which was accepted and the adverse remarks were expunged. After the change of regime when new DGP took over charge, a show cause notice was issued to the appellant to which he submitted his reply. After considering the same, the DGP passed orders restoring/reconstructing the earlier adverse remarks and recalled the orders vide which the aforesaid remarks were expunged. Challenge made by the appellant therein to the order of the DGP before this Court did not succeed. Hon’ble supreme Court though dismissed the appeal but held that “*if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be ultra vires. Of course, it is to be done after following the principles of natural justice.*”

12. It, thus, emerges that the DGP is empowered to review his own orders as also the ones passed by his predecessor in office but we may

reiterate that general principle is that merely because there is a change in the regime or when the successor assumes the office, he would not be entitled to review and reopen the cases wherein his predecessor had passed the orders which he was empowered to pass under the Rules and had exercised his discretion in taking a particular view. However, the position would be different when it is found that the order of the predecessor was without jurisdiction or when a palpably illegal order was passed disregarding all the canons of administrative law viz. when the predecessor's decision was without jurisdiction or ultra vires or when it was *ex facie* an act of favoritism. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found. It may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merit. That would be in the province of an Appellate Authority. The power of review is not to be confused with appellate power which may enable an Appellate Authority to correct all manner of errors committed by the subordinate authority. It must be understood that there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but can be used only for

rectification of patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out (per *M/s. Thungabhadra Industries Ltd. (in all the Appeals) v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 1372).*

13. It may also be pointed out that Rule 16.32 of the Rules though prescribes a time limit of one month for filing a revision petition against order of the Appellate Authority before the next higher authority but it does not prescribe any time limit for preferring a plea of mercy or an application for a review of the appellate order. The rule also does not restrict the number of mercy pleas that an aggrieved officer may make. Thus the order dated June 16, 2004 (Annexure P6) of the then DGP, reducing the punishment of the appellant from dismissal to stoppage of increments, cannot be termed as illegal and without jurisdiction only because it was passed on a second plea for mercy which was made after some delay by the appellant. The contention that order dated June 16, 2004 (Annexure P6) of the then DGP (reducing the punishment) was without jurisdiction as he was not competent to review its earlier order that too after a gap of about seven years since of passing of order dated September 01, 1997 (Annexure P3), in our well-thought view, is not available to the respondents because even the order dated September 08, 2006 (Annexure P10), which is subject matter of the instant proceedings, has been passed by the DGP by way of review of

order dated June 16, 2004 (Annexure P6) and that too after more than two years time gap.

14. Order dated September 08, 2006 (Annexure P10) though cannot be said to be without jurisdiction but it certainly is bad in law in so far it is not found to have been passed to rectify an error apparent which could be seen without any elaborate effort. Besides, a perusal of the order dated September 08, 2006 (Annexure P10) reveals that decision to restore punishment of dismissal of the appellant was taken by the Government of Haryana even before show cause notice dated July 07, 2006 (Annexure P7) was served upon the appellant because in the show cause notice order dated September 08, 2006 (Annexure P10) it is clearly stated that the State Government “vide their memo 8/115/2005-6HG-1 dated 25.4.2006 has accorded approval to withdraw the undue benefits” given to the appellant by the then DGP. The show cause notice also proceeds that it was issued only “after reviewing the matter”. It also needs to be pointed out that the order dated September 08, 2006 suffers from lack of application of mind because the contentions raised by the appellant in reply to the show cause notice have not even been noticed, leave apart discussing and meeting those contentions and it has overlooked the fact that punishment of dismissal was awarded to the appellant in complete disregard of what Rule 16.2 of the Rules says. Rule 16.2 reads as under:

"16.2 Dismissal-Dismisal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

Explanation.- For the purposes of sub-rule (1), the following shall, inter alia be regarded as gravest act of

misconduct in respect of a police officer, facing disciplinary action.-

- (i) indulging in spying or smuggling activities;*
- (ii) disrupting the means of transport or of communication;*
- (iii) damaging public property;*
- (iv) causing indiscipline amongst fellow policemen;*
- (v) promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;*
- (vi) going on strike or mass casual leave or resorting to mass abstentions' (vii) spreading disaffection against the Government; and (viii) causing riots and the life"*

(2) An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16.1(3) When a police officer is convicted judicially and dismissed or dismissed as a result of a departmental inquiry in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll with particulars of the punishments, shall be sent for publication in the Police Gazette."

15. It is seen that dismissal can be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and in making such an award, weightage has to be given to length of service of the delinquent officer and his claim to pension. The punishing authority, while passing

order dated March 22, 1996 (Annexure P1), it is seen, has not taken into consideration that the appellant, during his service career spanning eleven years (on the date of passing of order of punishment), had earned no adverse remarks in his annual confidential reports and, instead, had earned twenty two commendation certificates and the solitary instance of absence from duty which was attributable to the unfavourable circumstances obtaining in his family, viz. death of his father, blindness of the mother and death of his brother, cannot be termed as the gravest act of misconduct or continued misconduct proving incorrigibility and complete unfitness for police service. The punishing authority did not even record a finding that the misconduct alleged against the appellant was describable as an act of gravest misconduct. The order of punishment, therefore, besides being contrary to the spirit of Rule 16.2 of the Rules, also suffers from the vice of non-application of mind. The Appellate Authority, the Revisional Authority and the learned Single Judge have also overlooked this aspect of the matter.

16. In view of what has been said and discussed above, the appeal succeeds and is accepted. Order dated October 05, 2013 passed by the learned Single Judge and order dated September 08, 2006 (Annexure P10) passed by Director General of Police, Haryana, are set aside and order dated June 16, 2004 (Annexure P6) is restored.

17. In the peculiar facts and circumstances of the case, parties are left to bear their own costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

September 29, 2015
adhikari