

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

422

RSA-3150-2001 (O&M)

Decided on: 11.10.2017

Raj Pal

....Appellant

vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Gaurav Rana , Advocate
for the appellant.

Mr. Anil Mehta, DAG, Haryana.

AJAY TEWARI, J.(Oral)

This appeal has been filed against the judgment of the Lower appellate Court reversing that of the trial Court and thereby dismissing the suit filed by the appellant.

The appellant was working as a Constable when a charge sheet was issued to him (after 12 years of service) that he had demanded illegal gratification and thereafter an order of dismissal was passed. In appeal the appellate authority reduced the punishment to stoppage of 5 increments with cumulative effect. The Punishing authority did not challenge the order of the appellate authority while the appellant filed a revision before Director General of Police. The Director General of Police issued fresh show cause notice to him proposing enhancement of punishment to dismissal-as was originally imposed and ultimately dismissed him from service. In the suit filed by the appellant the Civil Court did not find fault with the enquiry but held that the authority had misdirected itself while imposing the punishment of dismissal

and went on to hold all the orders to be vitiated and quashed them. The appellate Court held that the enquiry proceedings were correct and as per law and further went on to hold that the order of the punishing authority and that of the reviewing authority were correct and consequently allowed the appeal and that is how the appellant is before this Court.

Learned counsel for the appellant has argued that the Civil Court had correctly noticed that in the enquiry only the complainant had appeared to give evidence; the only independent witness had exculpated the appellant and the fact that the appellant had 12 years of service while the lower Appellate Court failed to notice these facts.

Learned DAG on the other hand has argued that it is not the province of the Courts while exercising the power of judicial review to look into the merits of the case and act as appellate authority and in the present case it is clear that the procedural safeguards were met and the appellant was given adequate opportunity and hearing during the domestic enquiry.

There is some weight in the arguments of both the learned counsel. Though the argument of the appellant to the effect that he is innocent cannot be accepted yet the Court can also not turn a blind eye to the fact which are otherwise not disputed. I cannot also be unmindful of the fact that no power of review under Rule 16.28 has been conferred upon the DGP and under that Rule power is restricted either to IG or the State Government. Learned DAG has argued that once the appellant had himself filed revision to the DGP the exercise of power of review under Rule 16.28 cannot be objected. I regret my inability to favour this argument. In the circumstances of this case, the DGP could best have referred the matter for review to the competent IGP or the State Government but could not pass an order himself.

Consequently, I have no hesitation in setting aside the order passed in the revision petition. Now the issue which remains is with regard to the relief which can be granted to the appellant.

Counsel for the appellant has very fairly stated that the appellant has already attained the age of superannuation since he was inducted in the service as far back in 1981. Therefore, even if the order of the appellate authority is maintained further directions will have to be passed.

In the circumstances, the appeal is allowed to the extent that the order of the Director General of Police reimposing punishment of dismissal is set aside while that of the appellate authority is maintained. The appellant would be deemed to have been reinstated with continuity of service. However, he shall not be entitled to any pay and allowance for the period he did not work or any other benefit except counting the service for the purpose of retirement benefits. The respondents are now directed to work out his retiral dues and start paying his due pension to him. The arrears of pension would also be remitted to him. In case the necessary exercise of starting of pension and payments of arrears is not concluded within 3 months from the date of receipt of certified copy of this order, the appellant would be entitled to claim the same with interest @ 6% per annum from the date/s the amount/s fell due till the date/s of payment.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

11.10.2017
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No