

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**CWP No.11674 of 2014
Reserved on :18.12.2017
Date of decision: 22.12.2017**

EHC Satpal Singh

....Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.S.N.Yadav, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana.

G.S. SANDHAWALIA, J.

Petitioner challenges the order dated 24.04.2014 (Annexure P-6) whereby respondent No.2-Director General of Police withdrew the order dated 09.04.2014 (Annexure P-5), which had been passed by the Director General of Police (Administration). Vide the earlier order, the DGP (Administration) had accepted the revision petition filed by the petitioner and set aside the punishments which were imposed, vide separate order dated 10.10.2001 (Annexure P-1), whereby stoppage of 4 annual increments with permanent effect had been imposed, vide order dated 19.08.2006 (Annexure P-2), whereby stoppage of 2 annual increments with permanent effect had been imposed; and vide order dated 30.08.2006 (Annexure P-3), stoppage of 1 future annual increment with permanent effect had been imposed. He had also condoned the delay and treated the absent period as leave of kind due.

Vide the impugned order, the DGP noticed that the petitioner had submitted his revision petition on 26.03.2014 against the Appellate order dated 09.09.2013, after a period of more than 6 ½ months and the same was entertained and accepted by the DGP (Administration) without

assigning any cause, in violation of the rules and accordingly, it was held to be *void ab initio* and the order in question was quashed.

Principally, counsel for the petitioner has argued that the order impugned is liable to be set aside, on the ground of violation of principles of natural justice, as the same was passed without hearing the petitioner and in less than a period of 20 days, the earlier order had been recalled.

The facts which would require consideration are that the petitioner, was enrolled in the Haryana Police in the year 1990, had been posted as Constable. On account of absence from 10.03.1998 to 21.05.1998, i.e., for 72 days, punishment of stoppage of 4 annual increments, with permanent effect, had been imposed, after the Enquiry Officer had opined against him.

Similarly, for the absence from 28.02.2006 to 08.03.2006, for a period of 8 days, stoppage of 2 annual increments was imposed upon him, vide order dated 19.08.2006 (Annexure P-2) and the absence period was sanctioned as leave without pay. Thereafter, on account of absence from 23.08.2005 to 29.09.2005, for a period of 37 days, penalty of stoppage of 1 future annual increment, with permanent effect, was imposed upon him on 30.08.2006 (Annexure P-3), after proper enquiry proceedings and his absence period was treated as sanctioned leave without pay.

The petitioner had filed an appeal before respondent No.3, which was rejected on 09.09.2013 (Annexure P-4) on the ground of delay. Thereafter, he filed a joint revision petition, which, as noticed

above, was disposed of by the Director General of Police, by condoning the delay and setting aside the stoppage of 7 annual increments, while treating the absence period as leave of kind due.

It is the grouse of the petitioner that the subsequent order passed by respondent No.2 was without issuing any notice to him and was against the principles of natural justice, apart from the fact that there was no power of review with respondent No.2.

The stand of the respondents, in their reply, was that the revision petition had wrongly been accepted by the DGP(Administration) and was in violation of the Rules. It was submitted that the said officer had also been asked to submit his explanation on 28.04.2014 (Annexure R-1). However, he had superannuated on 30.04.2014. The said officer was subordinate to respondent No.2 and had given undue benefit to the petitioner. As per the provisions of Rule 16.28 of the Punjab Police Rules, 1934, the order had been reviewed against 3 separate punishments. Resultantly, it was pleaded that respondent No.2 was competent to review the orders passed by the subordinate officer and it was, in such circumstances, the impugned order was justified.

State Counsel has vehemently opposed the writ petition also on the ground that the order passed on 09.04.2014 by the DGP (Administration) was without jurisdiction and was *void ab initio* and therefore, the principles of natural justice would not come into play, if the order without jurisdiction, is being reviewed. Reliance has been placed upon the Division Bench judgment in **Satish Kumar Vs. State of Haryana & others 2006 (8) SLR 698**, in support of the said argument.

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, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.”

The said Rule was subject matter of consideration before the Division Bench above. However, in the said case, the punishment of dismissal from service had been reduced to stoppage of 3 annual increments, by the Appellate Authority on 21.05.1996 and petitioner's further revision petition had been upheld by the Director General of Police on 06.12.1996. The mercy petition had been filed whereby vide order dated 21.12.2004, the punishment of stoppage of 3 increments with permanent effect was reduced to stoppage of 1 annual increment with permanent effect, after a period of 8 years.

The subsequent order was sought to be recalled by the Director General of Police and eventually, the same was recalled and the

Appellate order dated 21.05.1996 was upheld. Resultantly, the show cause notice and the subsequent order dated 30.10.2006 were subject matter of challenge before the Division Bench. Resultantly, the Court came to the opinion that if an order is lacking jurisdiction and the proceedings had been reopened after more than 8 years and therefore, the subsequent setting aside could not be held to be bad and there would be no breach of principles of natural justice, in such circumstances.

Thus, the judgment of the Division Bench would not be applicable to the facts and circumstances of the present case, as the petitioner therein was given necessary opportunity of hearing and show cause notice had been issued to him, as to why the order should not be withdrawn. This Court had restrained itself from interfering in the withdrawal order, on the ground that an illegal order had been passed, which had been reopened. In the facts and circumstances of the present case, it is to be noticed that the subsequent order passed on 24.04.2014 has been sought to be withdrawn, without issuing notice to the petitioner and it is his specific grouse in ground No.10(c) regarding this aspect.

The State, in its written statement, has referred to para No.9, to take the ground that the DGP is competent to recall the order and does not deny the fact that the order was passed without issuing notice to the petitioner. Once an order had been passed in favour of the petitioner, it would be axiomatic and the least the respondents could have done is to have issued notice before recalling the order on its own. The principles of natural justice, as such, could not have been brushed aside and the rule of *audi alteram partem* could not have been openly violated, as has been

done in the present case. Reference can be made to the judgment of the Apex Court in **Canara Bank and others Vs. Debasis Dass and others 2004(4) SCC 557** wherein it was held that principles of natural justice have been recognised which is commonly known as “*audi alteram partem*” rule and notice is the first limb of the principle and second limb is to hear the other side and this principle applies to judicial, quasi-judicial and administrative authorities to avoid injustice. Relevant para reads as under:-

“19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.”

Reliance can also be placed upon **Vinod Kumar Vs. State of Haryana & others 2013 (16) SCC 293** wherein similar issue arose and the Apex Court opined that while exercising the powers under Rule 16.28, the successor DGP had the power to review if the same order was found to be *ultra vires* but it had to be done after following the principles

of natural justice. The issue pertained to the Annual Confidential Reports and accordingly, it was held that while reversing the decision of the predecessor in a petition which was not maintainable and was without jurisdiction and not backed by any rules and where the reasons were abhorrent to good administration and when it was an *ex facie* act of favoritism, the administrative authorities could review such orders if it is found to be *ultra vires*. The relevant portion read as under:

“17. We would like to make certain comments, at this juncture, on the powers of the successor DGP, Haryana in over turning the decision of his predecessor who had accepted the representation and expunged the adverse remarks in a petition which was not maintainable and wholly unwarranted. The 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 decided by his predecessor. That would apply in those cases where the predecessor had passed the orders which he was empowered to pass under the Rules and had exercised his discretion in taking a particular view. Therefore, this proposition applies in a situation where order of the predecessor resulted in legal, binding and conclusive decision. 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. In the present case we find that not only the order passed by earlier DGP, Haryana was *ultra vires*, as that was not backed by any authority vested in it under the Rules as the representation/ mercy petition was not maintainable, even while exercising its discretion in passing that order, the alleged reasons are abhorrent to the good administration/ governance and in fact

there was no valid reason or justification shown in exercise of the non existent power. It was, thus, not a case of mere discretion which the DGP was empowered to exercise or the exercise of power on rational basis. Undue sympathy, that too without stating any such sympathetic grounds would be anathema to fairness. There has to be fairness in the administrative action and it should be free from vice of arbitrariness. We may usefully refer to the judgment of the English Court in the case of Roberts v. Hopwood; 1925 All E.R. 24 laying down the law in the following terms:

".... A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what her likes merely because he is minded to do so - he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably....."

The present case is, thus, covered, as such, by the above-said principles and therefore, the impugned order dated 24.04.2014 (Annexure P-6), which has now been passed, without issuing notice and without hearing the petitioner, cannot be held to be justified and the same is, accordingly, quashed.

It is, however, made clear that it will be open to the respondents to issue show cause notice to the petitioner before it proposes to recall the earlier order dated 09.04.2014 (Annexure P-5) and pass orders thereafter.

22.12.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No