

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.401 of 2011 (O&M)
Date of Decision:27.10.2017

Baljit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. J.S.Pannu, Advocate for
Mr. J.S.Gill, Advocate,
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.

Brief facts and which are not in dispute may be noticed at the outset.

Petitioner while serving as a Head Constable under Punjab Police was served a charge-sheet dated 07.05.2008 (Annexure P-1) on the allegations that one Inspector Jagir Singh had been paid interest of Rs.62,300/- on account of delayed release of his retiral benefits and that the petitioner was responsible for such delay. The Inquiry Officer so appointed returned findings exonerating the petitioner. The Senior Superintendent of Police, Hoshiarpur-respondent No.4 being the competent authority accepted the findings of the Inquiry Officer and vide order dated 17.10.2008 (Annexure P-2) the inquiry was filed.

Petitioner was served a second charge-sheet dated 15.10.2009 (Annexure P-3) containing allegations that on 16.09.2009 a report had appeared in the 'Dainik Jagran' Newspaper in which comments had been

employees/officials and such news item was attributed to the petitioner. In this case also, a detailed inquiry was held and inquiry report dated 31.05.2010 was furnished exonerating the petitioner. The Senior Superintendent of Police, Hoshiarpur-respondent No.4 being the competent authority accepted the inquiry report and passed an order dated 11.06.2010 (Annexure P-4) whereby charge-sheet was filed.

The instant petition is directed against the orders dated 06.08.2010 (Annexure P-5) and 30.09.2010 (Annexure P-6) passed by respondent No.3 i.e. Deputy Inspector General of Police, Jalandhar Range, Jalandhar whereby de novo inquiries have been directed against the petitioner in relation to the same very set of allegations which already stood examined and the charge-sheets had been filed vide orders at Annexures P-2 and P-4.

The instant petition came up for preliminary hearing on 10.01.2011 and while issuing notice of motion it was directed that the fresh inquiry proceedings shall remain in abeyance. Such interim directions have continued to remain in operation.

Counsel for the parties have been heard at length.

Perusal of the impugned orders would reveal that de novo departmental proceedings have been directed by respondent No.3 invoking the powers under Punjab Police Rules 16.28.

The short question that arises for consideration is that once a specific Article of charge and inquiry having already been conducted and findings having been returned whether it was open for respondent No.3 to direct a de novo departmental inquiry on the same Article of charge under Rule 16.28.

Rule 16.28 reads in the following terms:-

“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.

(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 this punishment should not be enhanced.”

Rule 16.28 of the Punjab Police Rules came to be considered by this Court in ***Joginder Singh Vs. State of Punjab and another 1984 (1) ILR (Punjab) 512*** and it was held in the following terms :-

“Judicial or Quasi Judicial authorities or Tribunals draw their power and authority from statutes. They do not have any inherent powers. Right of appeal, review and revision are creatures of statutes. Unless the statutory Rules so provide, the Inspector-General of Police could not entertain the appeal of the petitioner as a necessary corollary. But Rule 16.28 has authorised the Inspector-General of Police and other officers mentioned therein to re-examine the orders passed by their subordinates and confirm, vary or quash them. Rule 16.28 does not in terms or by inevitable implication confer on the Inspector-General of Police any power to order a second inquiry after quashing the award of the Deputy Inspector-General of Police. There is no other provision in the Police Rules or any other statutory Rules applicable to the petitioner

conferring powers on the Inspector-General of Police to order a second inquiry. While deciding the appeal, he was performing quasi judicial functions. The contention of Mr. Riar that the power to order second enquiry is inherent in the relationship of Master and servant, cannot be accepted. What to say of ordering a second enquiry, even the power to review his own judgment does not vest with the Inspector-General of Police. A Full Bench of this Court in Deep Chand and others v. Additional Director, Consolidation of Holdings, Punjab, and another, AIR 1964 Punjab 249, held that judicial or quasi judicial Tribunal does not possess powers to review its earlier orders unless a statute confers such powers on it. Similarly, the plea of Mr. Riar that Rule 16.28 explicitly grant powers of review to the Inspector-General of Police is equally untenable. In support of his contention he has referred to the Heading of Rule 16.28 which reads "Powers to Review Proceedings". It is well recognised that the Heading of a statutory provision does not control its meaning. The provision is to be interpreted primarily on the language employed therein. The Heading does not control main provision. At best, it can be taken into account in inferring the main provision if there is some ambiguity therein. So the power to review cannot be spelt from the language of Rule 16.28 merely because it is crowned with a caption 'Powers to Review Proceedings'. It is also difficult to accept that since all the powers like the powers to confirm, enhance, modify or annul the awards which are available with the judicial and quasi judicial Tribunal have been conferred on the Inspector-General of Police, it should be accepted that he has also the power to review. This argument can be dismissed out of hand in view of the authoritative pronouncement in Deep Chand's case (supra) that power to review can be conferred only by a statute. It cannot be spelt through some intricate process of induction or deduction. The power to investigate the case or to get it investigated from some subordinate officer cannot be equated with the power to remand the case or order

a fresh enquiry. A dispute arose in the context of the East Punjab Urban Rent Restriction Act. Under Section 15 of the East Punjab Urban Rent Restriction Act, the appellate Authority has been empowered to make further enquiry either personally or through the Rent Controller if it is dissatisfied with the trial of the eviction application by the Rent Controller. Statute does not confer any power of remand. The appellate Authority remanded the case to the Rent Controller for fresh decision. A Division Bench of this Court in Shri Krishan Lal Seth V. Shrimati Pritam Kumari, 1961 P.L.R. 865, observed :-

When the appellate authority is somehow or other dissatisfied with the trial of an application for eviction of the tenant, it can make a further enquiry as it thinks fit either personally or through the Rent Controller, but it has no power to set aside an order of the Rent Controller and remand such an application to him for retrial and redecision.”

Since a doubt was expressed about the correctness of this decision, the matter was re-examined by another Division Bench in Raghu Nath Jalota V. Ramesh Duggal and another, AIR 1980 Punjab and Haryana 188 and the view taken in 1961 was reaffirmed and it was held that:-

“The history of the legislation, its object and purpose and the specific language of Section 15(3) clearly show that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision.”

It is manifest from this that Appellate Authority while hearing an appeal can either make a further enquiry personally or through the Rent Controller, but cannot set aside the impugned order and then remand the case to the Rent Controller for retrial and re-decision. On the parity of reasoning, Inspector-General of Police could investigate the case himself or get it investigated from some subordinate police officer before passing the final order. But, after quashing the orders of Respondent No. 2, he could not order a

fresh enquiry. In fairness to Mr. Riar, I must distinguish some of the judgments cited by him in support of his contention. All that was held in Dwarkachand v. State of Rajasthan, AIR 1958 Rajasthan 38, was that if there was no rule or law which lays down that an order exonerating a public servant in a departmental enquiry and ordering fresh enquiry, it is not open to a higher authority to order, a fresh departmental enquiry ignoring the result of an earlier enquiry exonerating the public servant. This presumably goes against the contention raised by the learned State counsel. It has been clearly laid down that in the absence of a statutory rule no fresh enquiry can be ordered against public servant who has been exonerated in the first enquiry. The decision of the Mysore High Court in Vijay Singh Yadava's case (supra) does not help Mr. Riar because the point in issue in that case was not in controversy before that High Court. The only issue raised there was that punishment imposed on a delinquent official on second enquiry amounts to double jeopardy. However, in that case the service rules permitted a second enquiry. This contention was repelled by the Court.”

Adverting back to the facts of the present case, it was open for respondent No.3 i.e. Deputy Inspector General of Police, Jalandhar Range, Jalandhar to confirm, enhance, modify or annul the order passed by the subordinate officer in the case of the inquiries already conducted against the petitioner. However, as per mandate of Rule 16.28, if respondent No.3 was not satisfied with the manner and conduct of the inquiry or the orders passed by the subordinate officer, he could have made further investigation, in the matter himself or direct such investigation to be made by some subordinate officers prior to passing of the final order. However, in the instant case having set aside the order of his subordinate, a de novo inquiry could not have been ordered. The language of the provision is unambiguous and

clear. No power can be derived from Punjab Police Rules 16.28, whereby a second inquiry can be directed.

That apart a perusal of the impugned orders dated 06.08.2010 and 30.09.2010 at Annexures P-5 and P-6 would reveal that there has been no independent application of mind at the hands of respondent No.3-Deputy Inspector General of Police, Jalandhar Range, Jalandhar. It is discernible from the impugned orders that respondent No.3 has acted on the dictate of the Director General of Police, Punjab. Such course of action is alien to Rule 16.28 of the Punjab Police Rules.

For the reasons recorded above and by following the dictum laid down by this Court in ***Joginder Singh's case (supra)***, I am of the considered view that instant writ petition deserves acceptance.

Accordingly, the writ petition is allowed. Impugned orders dated 06.08.2010 and 30.09.2010 (Annexures P-5 and P-6) are quashed. Petitioner is also held entitled to any other service benefit that may have denied to him only on account of passing of the orders dated 06.08.2010 (Annexure P-5) and 30.09.2010 (Annexure P-6).

Writ petition allowed in the aforesaid terms.

27.10.2017

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes