

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

CWP No.9577 of 2015

Date of Decision:16.03.2017

Vijay Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. K.S. Banyana, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has questioned the validity of show cause notice dated 18.3.2011, punishment order dated 8.6.2011 and order rejection of appeal dated 2.2.2015.

The petitioner while working as head constable was subjected to disciplinary proceedings. The inquiry officer held that the charges levelled against the petitioner were not proved. Consequently, disciplinary authority passed an order exonerating the petitioner on 3.1.2008. When the petitioner's turn for promotion came up for consideration, the Inspector General of Police issued a show cause notice so as to why the disciplinary authority order dated 3.1.2008 should not be reviewed and also proposed to impose the punishment of stoppage of five annual increments with permanent effect. The petitioner submitted his reply to the show cause notice. The same was examined by Inspector General of Police and proceeded to impose the penalty of stoppage of two annual future increment with permanent effect on 8.6.2011. The petitioner feeling aggrieved by the order of Inspector General of Police preferred an appeal before the Director General of Police. Director General of Police-Appellate Authority

confirmed the order of the Inspector General of Police. Thus, the present petition has been filed.

Learned counsel for the petitioner submitted that issuance of notice (Annexure P-6) by Inspector General of Police while invoking Rule 16.28 of PPR is incorrect for the reasons that Rule 16.28 empowers concerned authority only where disciplinary authority has imposed the penalty. Therefore, action taken by the Inspector General of Police on 18.3.2011 and consequential proceedings of the Inspector General of Police as well as order passed by the appellate authority are liable to be set aside.

Per contra, learned counsel for the respondents submitted that under Rule 16.28 empowers to review proceedings by various authorities mentioned in the Rule. Thus, Inspector General of Police exercised the power to review the order passed by the disciplinary authority after giving due notice to the petitioner. Hence, there is no infirmity in the proceedings both by Inspector General of Police as well as Director General of Police-Appellate Authority. Thus, the petitioner has not made out a case so as to interfere with the orders passed by the Inspector General of Police as well as Appellate Authority i.e. Director General of Police.

Heard learned counsel for the parties.

The petitioner was subjected to disciplinary proceedings by the Superintendent of Police. The inquiry officer held that the charges levelled against the petitioner were not proved. Consequently, disciplinary authority i.e. Superintendent of Police exonerated the petitioner way back on 3.1.2008. The Inspector General of Police abruptly re-opened the file on 18.3.2011 while invoking Rule 16.28 and issued a show cause notice to the petitioner. Rule 16.28 reads as under:

“PPR-16.28 (i) 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.
(ii) 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.
(iii) 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.”

In view of the language employed in Rule 16.28 of PPR, it is crystal clear that review powers are entrusted to the concerned authority including the Government only where the disciplinary authority passes an award of punishment, in such event, if the higher authority feels that matter is required to be reviewed, in that event, only Rule 16.28 can be invoked. Whereas in the present case, disciplinary authority has exonerated the petitioner. Therefore, there is no question of call for the records of the 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. Under Rule 16.28 nowhere it is stated that if the disciplinary authority has exonerated, in such event, suo moto power is vested with the next higher authority to the disciplinary authority to invoke Rule 16.28. Moreover, in the present case, Inspector General of Police issued a show cause notice invoking Rule 16.28. If he is of the view to enhance the penalty in the absence of penalty imposed by the disciplinary authority, there is total non application of mind by the Inspector General of Police while issuing show cause notice dated 18.3.2011 (Annexure P-6).

Accordingly, show cause notice dated 18.3.2011, punishment order dated 8.6.2011 and order rejection of appeal dated 2.2.2015 are set aside.

Petition stands allowed.

16.03.2017
rajeev

(P.B. Bajanthri)
Judge

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