

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-248-2012 (O&M)

Date of Decision:-17.01.2018.

Ram Mehar

.....Appellant

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Virender Kumar, Advocate for the appellant.

Mr. Rohit Arya, AAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, appellant has questioned the validity of the appellate authority's order dated 23.07.2011.

Appellant was subjected to disciplinary proceedings and it was concluded in imposing penalty of withholding of 3 increments with permanent effect. Imposition of penalty and consequential order were subject matter of suit before the trial Court. Trial Court decreed the suit. Respondents-State preferred appeal before the Appellate Court. Appellate Court allowed the appeal. Hence, the present appeal.

Substantial question for consideration in the present appeal is whether Rule 16.38 of the Punjab Police Rules, 1934 (as applicable to the State of Haryana) (for short 'the 1934 Rules') for the purpose of initiation of disciplinary proceedings, whether District Magistrate's sanction is required or not.

Rule 16.38 of the 1934 Rules reads as under:-

“16.38. Criminal offences by police officers and strictures by Courts – Procedure regarding. - (1)

Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected [Executive Magistrate] 1

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.

(3) Ordinarily a Magistrate before whom a complaint against a police officer is laid proceeds at once to judicial enquiry. He is, however, required to report details of the case to the District Magistrate, who will forward a copy of this report to the Superintendent of Police. The District Magistrate himself will similarly send a report to the Superintendent of Police in cases of which he himself takes cognizance.

(4) The Local Government has prescribed the following supplementary procedure to be adopted in the case of complaints against police officers in those districts where abuses of the law with the object of victimising such officers or hampering investigation is rife. The District Magistrate will order that all petitions against police officers shall be pre-sented to him personally. If he considers that these petitions are of a

frivolous or factious nature, it is within his discretion to take no action on them. When he considers an enquiry to be necessary he will use his discretion whether to send the papers to the Superintendent of Police or to a Magistrate for judicial enquiry. In the case of formal criminal complaints, the District Magistrate will arrange for all cases to be transferred from other courts to his own.

(5) *Orders have been issued by the Hon'ble Judges of the High Court making it obligatory on all civil and criminal courts, whenever they make strictures on the personal character or professional conduct of a police officer, to send a copy of the judgment to the executive authorities. In the case of the High Court itself the copies will be forwarded to the Local Government. In the case of all other courts (including Courts of Sessions), the copies will be sent by the Judges and Magistrates concerned to the District Magistrate.*

(6) *In cases in which strictures are passed on the conduct of the police by a Sessions Court or by a Magistrate's Court and no specific recommendation is made by the Court making such strictures that an enquiry should be made, the District Magistrate will decide whether an investigation into the matter is necessary, and if so, whether it shall be conducted by a police officer or by a selected 1[Executive Magistrate]. If he decides that an investigation shall be made, the procedure subsequent to such investigation shall be that laid down in sub-rule (2) above. In cases in which the court passing strictures on the conduct of the police suggests that an enquiry should be made, the District Magistrate will comply with such request in accordance with the procedure prescribed in paragraphs (1) and (2) above. When strictures on the*

conduct of the police are made by the High Court and communicated to the Local Government direct in accordance with paragraph (5) above, the instructions of Government as to the action to be taken by the local authorities will be communicated to them through the ordinary channels. In cases in which the High Court suggests that an enquiry should be made the Local Government will give orders accordingly.

(7) Rules 24.14 and 24.15 provide for reports of all serious charges against the police being communicated to the Local Government by a special report. In cases where such serious charges arise from strictures passed by criminal courts, the Superintendent of Police and the District Magistrate should communicate, either in the report itself or in a covering letter, the procedure which they propose to adopt and any information or notes in connection with the case which they consider should be brought to the notice of Government. Rule 24.15 provides the opportunity for Deputy Inspectors- General and Commissioners similarly to communicate their comments to the local Government.”

Perusal of the above reproduced rule, it is crystal clear that if a Police Officer is involved in any criminal offence, in that event if the Department proceeds both on the count of criminal as well as departmental proceedings, sanction of the District Magistrate is required whereas in the present case, appellant was not subjected to criminal proceedings, therefore, Rule 16.38 of the 1934 Rules is not at all attracted. Therefore, there is no infirmity in the decision of the Appellate Court dated 23.07.2011. Thus, appellant has not made out a case. Whereas initiation of disciplinary proceedings are under Rule 16.24. Rule 16.24 reads as under:-

following procedure shall be followed in departmental enquiries :-

(i) The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry. That officer shall record and read out to the accused officer a statement summarizing the alleged misconduct in such a way as to give full notice of the circumstances in regard to which evidence is to be recorded. A copy of the statement will also be supplied to the accused officer free of charge.

(ii) If the accused police officer at this stage admits the misconduct alleged against him, the officer conducting the enquiry may proceed forthwith to frame a charge, record the accused officer's plea and any statement he may wish to make in extenuation and to record final order, if it is within his power to do so, or a finding to be forwarded to an officer empowered to decide the case. When the allegations are such as can form the basis of a criminal charge, the Superintendent shall decide at this stage, whether the accused shall be tried departmentally first and judicially thereafter.

(iii) If the accused police officer does not admit the misconduct, the officer conducting the enquiry shall proceed to record such evidence, oral and documentary, in proof of the accusation, as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay and expense or inconvenience, if he considers such statement necessary,

and provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate, and is signed by the person making it. This statement shall also be read out to the accused officer and he shall be given an opportunity to take notes. The accused shall be bound to answer any questions which the enquiring officer may see fit to put to him with a view to elucidating the facts referred to in statements or documents brought on the record as herein provided.

(iv) When the evidence in support of the allegations has been recorded the enquiring officer shall, (a) if he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him, or recommend his discharge to the Superintendent, or other officer, who may be so empowered, or (b) proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

(v) The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, in no case exceeding forty-eight hours, to prepare a list of such witnesses, together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witnesses whose evidence he considers will be irrelevant or unnecessary in regard to the specific charge framed. He shall record the statements of those defence witnesses whom he decides to admit in the presence of the accused, who shall be allowed to address questions to them, the answers to which shall be recorded; provided that the enquiring officer may cause to be recorded by any other police officer superior in rank to the accused the statement of any such witness whose presence cannot be secured without undue delay

or inconvenience, and may bring such statement on to the record. The accused may file documentary evidence and may for this purpose be allowed access to such files and papers, except such as form part of the record of the confidential office of the Superintendent of Police, as the enquiring officer deems fit. The supply of copies of documents to the accused shall be subject to the ordinary rules regarding copying fees.

(vi) At the conclusion of the defence evidence or, if the enquiring officer so directs, at any earlier stage following the framing of a charge, the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time, not exceeding one week, for its preparation, but shall be bound to make an oral statement in answer to all questions which the enquiring officer may see fit to put to him, arising out of the charge, the recorded evidence, or his own written statement.”

(vii) The enquiring officer shall be proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into consideration the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by the defaulter shall be taken into account by the officer before passing orders in the case.

(viii) Nothing in the foregoing rule shall debar a Superintendent of Police from making or causing to be made a preliminary investigation into the conduct of a

suspected officer. Such an enquiry is not infrequently necessary to ascertain the nature and degree of misconduct which is to be formally enquired into. The suspected police officer may or may not be present at such preliminary enquiry, as ordered by the Superintendent of Police or other gazetted officer initiating the investigation, but shall not cross-examine witnesses. The file of such a preliminary investigation shall form no part of the formal departmental record, but statements therefrom may be brought to the formal record when the witnesses are no longer available in the circumstances detailed in clause (iii) above. All statements recorded during a preliminary investigation should be signed by the person making them and attested by the officer recording them.

(2) (i) Notwithstanding anything contained in sub-rule (1) a Superintendent of Police or any officer of rank higher than Superintendent, may institute, or cause to be instituted, ex parte proceedings in any case in which he is satisfied that the defaulter cannot be found or that in spite of notice to attend the defaulter is deliberately evading service or refusing to attend without due cause.

(ii) The procedure in such ex parte proceedings shall, as far as possible, conform to the procedure laid down in sub-rule (1) :

Provided that the defaulter shall be deemed --

(a) not to have admitted the allegations contained in the summary of misconduct, and

(b) to have entered a plea of not guilty of the charge;

Provided further that the defaulter, if he subsequently appears at any stage during the course of the proceedings shall not be entitled to claim de novo proceedings or to recall for cross-examination any witness whose evidence has already been recorded. He shall, however, be fully informed of the evidence which

has been led against him and shall be permitted to take notes thereof. He shall also be furnished with a copy of the summary of misconduct and of the charge or charges framed.”

Accordingly, appeal stands dismissed.

At this stage, learned counsel for the appellant cited decision reported in **1969 SLR 217 (Delhi Administration Vs. Chanan Shah)** to contend that even if a departmental inquiry, District Magistrate's sanction is required. The said decision is distinguishable having regard to the language employed in Rule 16.38 of the 1934 Rules which commences with “*Criminal offences by police officers and strictures by Courts – Procedure.*” Therefore, Rule 16.38 of the 1934 Rules relates to initiation of parallel proceedings like criminal and departmental. Supreme Court in the case of **Nair Service Society vs T. Beermasthan 2009 (2) SCC 545** in para 48 held as under:-

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

In view of the latter decision, one has to examine relevant Rule like initiation of enquiry viz, Rule 16.38 of the 1934 Rules. In the present appeal Rule 16.38 of the 1934 Rules deals with both criminal as well as departmental inquiry. Therefore, cited decision by the appellant is

distinguishable.

(P.B. BAJANTHRI)
JUDGE

January 17, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.