

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

Date of decision: 13.02.2019

CWP No.16488 of 1997

Jagdish Rai

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. O.P.Goyal, Senior Advocate, with
Mr. Piyush Aggarwal, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner was proceeded against departmentally through charge-sheet dated 26.09.1992. The substance of the charge was that while on night duty on 25.07.1992 at about 11.00 PM, the petitioner, namely, Jagdish Rai posted as ASI in Police Station City Sonapat and Traffic In-charge with a posse of policemen flagged truck bearing No.UP07-A-1190 to stop in which the complainant, namely, Gobind Ram son of Radhey Sham was on board transporting his sugar. When signaled to stop, the truck stopped at some distance obviously while applying brakes and decelerating to a halt. When the vehicle came to a standstill, Jagdish Rai and party reached the spot, and the latter without any reason started roughing up the truck driver Ram Kumar. In this situation, Gobind Ram accepted the mistake and asked for forgiveness to the driver. Thereafter, Jagdish Rai took to the wheel and drove the Truck to the police station where he beat up both him and the driver to be joined by Head Constable Bhagwan Singh in further

belabouring the owner of the goods for no provocation on his part. When brought, he was there asked in the police station how much money he had on him. Gobind Ram replied he had only Rs 215/- in his pocket which he was forced to part with Rs.200/- forced to save himself from what could be still worse. He was then asked to leave the police station and the conductor had to spend the night in the truck. The driver was arrested and the truck impounded along with the goods on 25.07.1992. The truck was released on *superdari* to Gobind Ram on 27.07.1992. He made a complaint to the D.C. Sonapat on the same day i.e. 27.07.1992 (Ex.PW-4/5). The DSP, Headquarters had got the statement of the complainant recorded in writing and obtained his signatures thereon, which is Ex.PW-4/6.

2. The petitioner had got registered a case against the truck driver under Sections 278/336 IPC on 26.07.1992 for rash and negligent driving. Record bears out that no harm was caused to any person in the incident in flagging a goods vehicle to stop.

3. Gobind Ram's complaint in writing to the Superintendent of Police was marked to the Deputy Superintendent of Police, Sonapat on the departmental side: who, in a fact finding inquiry conducted found the driver *prima facie* guilty of misconduct. Accordingly, a regular departmental inquiry was marked to Deputy Superintendent of Police, Gohana. Prosecution and defence evidence was adduced in the inquiry proceedings. The Inquiry Officer by his report dated 05.12.1992 held that allegation of beating up was not established on record as the complainant could not produce any medical certificate in support of the allegation. However, as far

as receiving illegal gratification of Rs.200/- in the road side hold-up is concerned, the petitioner was held guilty of the charge.

4. Pursuant to the report submitted by the Inquiry Officer, a notice was issued to the petitioner by the disciplinary authority to show-cause why punishment of stoppage of five future annual increments with permanent effect be not inflicted. In the written explanation, the petitioner defended himself pleading innocence of the accusation saying that a concocted case was fabricated and manipulated against him to cause harm in service. He pleaded that the complainant Gobind Ram had made a false complaint to take revenge against him for recording FIR against the driver for rash and negligent driving and at the instigation of some 'notorious persons' he had twisted the case alleging payment of bribe of Rs.200/- against the petitioner. The complainant had only hired the truck for transporting 100 bags of sugar and the Superintendent of Police thought this was not believable that a truck loaded with 100 bags of sugar could be driven so rashly given the traffic conditions in crowded place. The petitioner objected that the findings of the inquiry officer are based on presumptions and assumptions that he had demanded and was paid bribe by the complainant. During personal hearing, the petitioner prayed that case FIR No.813 is pending trial in the trial court and till its conclusion, departmental inquiry be kept pending and the final order could be issued according to the decision of the criminal court. The Superintendent of Police considered these aspects, but did not attach much importance or weight on them. The case was registered against the driver but not Gobind Ram. The case was registered for rash and negligent driving, whereas the show cause notice was issued to the petitioner for demanding and accepting a bribe of Rs.200/- from the complainant and the two had no

connection. The explanation was considered by the Superintendent of Police, Sonapat. The facts in the criminal case and in the departmental inquiry were different and could not be linked, thought the Superintendent of Police, Sonapat. Thus, keeping in view the totality of circumstances and by taking a lenient view, the punishing authority imposed penalty of stoppage of two future annual increments with permanent effect vide order dated 25.01.1993 scaling down the proposed penalty.

5. Dissatisfied with the punishment, the petitioner appealed against the decision to the Deputy Inspector of General, Rohtak Range, Rohtak being the appellate authority again pleading innocence against a false accusation of misconduct while he committed none. The Deputy Inspector of General considered the case and looking to the findings of the inquiry officer and the penalty order was provisionally of the opinion that punishment of dismissal from service should be inflicted upon the petitioner. However, before taking any action, an opportunity of showing cause against the proposed action for explaining his conduct the petitioner was offered hearing. In the reply filed, the petitioner said he was innocent urging that the charge against him was pre-determined merely on the verdict of guilty recorded by the Superintendent of Police, Sonapat without considering the grounds of appeal in depth. He prayed for a dispassionate consideration of the appeal in the light of his submissions and prayed for acceptance of dropping of the show cause notice and for setting aside the order of punishment. The appellate authority was not impressed with his submissions and maintained the order passed by the punishing authority affirming infliction of punishment of stoppage of two annual increments with permanent effect remarking that a lenient view had already been taken for

such a grave act of misconduct on the part of the petitioner. The appeal was rejected.

6. Thereafter, the petitioner preferred a revision before the Director General of Police, Haryana against the orders passed by the Deputy Inspector of General of Police, Rohtak Range, Rohtak. Inter alia, he brought to the notice of the revising authority that the Illaqa Magistrate vide order dated 08.04.1993 had closed the case of rash and negligent driving with the accused driver, namely, Ram Kumar pleading guilty and refusing to claim trial. Keeping in view the petty nature of the offence and the voluntary admission made by the accused, the Judicial Magistrate IInd Class, Sonapat by order dated 08.04.1993 took a lenient view due to “petty nature of offence” and imposed; ironically, a fine of Rs.200/- and in default of payment of fine, the accused was ordered to undergo simple imprisonment for one month.

7. Petitioner urged in the revision that Gobind Ram was the complainant party and as such was interested in the entire episode as his truck along with goods was impounded by the petitioner and only because of this he made a false complaint against him. He alleged that Gobind Ram was not even present at the spot at the time of occurrence. Gobind Ram neither got himself medically examined nor did he make any complaint to the Illaqa Magistrate at any point of time and, therefore, this complaint is an afterthought. He referred to the statement of Gobind Ram deposing that HC Bhagwan Singh along with the petitioner started beating him and that HC Bhagwan Singh had asked him about payment of money. This proves that the main allegation in the complainant is against HC Bhagwan Singh. The

petitioner argued that on the face of this statement that HC Bhagwan Singh enquired about taking money from the complainant, it cannot be believed that said money would be passed on to the petitioner. Therefore, the complaint was false and made for extraneous reasons.

8. Not impressed by the defence against the order of punishment, the Director General of Police, Haryana issued a show cause notice to the petitioner to show cause why punishment of stoppage of two annual increments with permanent effect may not be enhanced to reversion in rank from Assistant Sub Inspector to that of Head Constable in exercise of powers vested under Rule 16.28 of the Punjab Police Rules, 1934 as applicable to Haryana. It is observed in the notice that the misconduct on the part of the revisionist/petitioner is of a grave nature and warranted punishment commensurate with the gravity of the misconduct. The petitioner was informed that any representation which he might like to submit in this connection will be considered by the officer before the proposed action of reversion in rank was taken.

9. The petitioner filed a reply to the show cause notice dated 09.12.1996 in which he repeated his defence inter alia pleading that he was innocent and in the alternative punishment may not be enhanced in exercise of powers under Rule 16.28 PPR. He stated that the notice was illegal, uncalled for, unjust and without any material and the notice has been issued without application of judicious mind. The facts and circumstances of the case have not been taken in the correct perspective and the notice is, thus, liable to be withdrawn on the grounds taken in the objections. He reasoned that if he had accepted money, he would not have challaned the driver and

the cleaner and put them behind bars. The court has also held them guilty and they were convicted by admission and not claiming trial. Meaning thereby, the action of the petitioner as a police officer has been found to be legal and valid by the court of law. He pleaded that this fact may not have been either brought to the notice of the authority or had escaped attention. He attached the copy of the court order with the reply. In the departmental inquiry neither the driver nor the cleaner were examined. It was only the owner of the goods in transport- sugar being ferried in the truck who had made the false complaint against the petitioner after three days of the incident. Even the inquiry officer has disbelieved that part of the statement that he was physically thrashed. Indictment was based only on an oral and bald statement of the complainant Gobind Ram that he paid bribe of Rs.200/- to the petitioner. There was no substance in the accusation according to the petitioner. However, after examining the entire record, the Director General of Police, Haryana by order dated 30.09.1997 enhanced the punishment of stoppage of two future annual increments with permanent effect to that of reversion in rank from ASI to Head Constable after following the due procedure prescribed in Rule 16.28(3).

10. On a consideration of the facts of the case, one ought not to hold that the petitioner is innocent of the charge of misconduct in domestic settlements arising from an enquiry which is procedurally within the law. Neither because HC Bhagwan Singh was not tried departmentally even though mentioned in the complaint nor for the reason that if the petitioner took illegal gratification on a demand made by HC Bhagwan Singh why should he have passed on the money to the petitioner as by that logic he would not have registered the case against the driver. A policeman may take

money from one while proceeding against another in the same episode. There is nothing of surprise or far-fetched in this. After all, the evidence collected suggested that money was demanded and paid but there was lack of evidence to prove physical assault on the person of the complainant.

11. In my view, innocent he is not but the legal argument advanced by the petitioner deserves to be considered. It is contended that Rule 16.28 PPR as it applies in Haryana does not empower the Director General of Police, Haryana to enhance punishment, when the orders of the punishing authority and the appellate authority in appeal inflicting penalty of withholding two increments with permanent effect have not been further appealed against by the department. And it is only in revision voluntarily preferred by the petitioner has the punishment of reversion to lower rank been inflicted keeping in view the gravity of the misconduct of a criminal nature as judged by the officer on quantum proportionate with the gravity of the misconduct. For this legal proposition the petitioner relies on a ruling of Single Bench of this Court delivered in Raj Pal Vs. State of Haryana & other, 2017 (4) Law Herald 3439 on the construction of Rule 16.28 PPR.

Rule 16.28 is worded as follows:

“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.”

12. Rule 16.28 has existed in the Punjab Police Rules, 1934 from pre-partition days and after reorganization in 1966, the Rules were inherited by the newly formed State of Haryana, the territory getting statehood on 01.11.1966. At that time, there was only one Inspector General of Police, who headed the police force both in Punjab and Haryana. To him was entrusted powers under Rule 16.28. There was no post of Director General of Police either in the State of Haryana or in the State of Punjab till a new arrangement was made by the Haryana Government in the Home Department with the promulgation of the order dated 02.08.1982. By this order, the Governor of Haryana was pleased to create an ex-cadre post of Director General of Police and Inspector General of Police to be one person/officer. Consequently, the cadre post of Inspector General of Police, Haryana was held in abeyance as per the decision. Not only this, the Government decided to create two ex cadre posts of Additional Inspector General of Police, namely, Additional Inspector General of Police, Administration & Training and the Additional Inspector General, Haryana Armed Police. Consequently, the cadre post of Deputy Inspector General of Police, Administration & Training and Deputy Inspector General, Haryana Armed Police were ordered to be held in abeyance. The order dated 02.08.1982 has been produced by Ms. Shruti Jain Goyal by calling for the

record of the Police Department by me. Photocopy of the relevant order has been retained on record as Mark – ‘A’.

13. As a result of this order, the erstwhile Inspector General of Police being a solitary post was converted into the upgraded post of Director General of Police, Haryana and, therefore, the nomenclature of Director General of Police means nothing more or less than Inspector General of Police, Haryana. The Haryana Government has not carried out any amendment to Rule 16.28, but by necessary implication the Director General of Police has stepped into the shoes of Inspector General of Police in Rule 16.28 and he would because of the new arrangement exercise all powers of Inspector General of Police. This is easily achieved by reading the order dated 02.08.1982 in the Rule.

14. This order was not brought to the notice of the learned Single Bench in *Raj Pal*'s case. But it has made the material difference in terms of the jurisdiction exercisable under the aforesaid Rule. The Director General of Police, Haryana consequently had the authority to enhance the punishment and it would be quite another matter whether the power was exercised reasonably and fairly. On the latter I have no reason to intrude into the executive domain of measuring the appropriate doze of punishment in a disciplined force so long as it does not trouble my conscience. Hence, it was not necessary for Director General of Police to refer the matter for review to the Inspector General of Police or the State Government. The case in *Raj Pal* is thus rendered on its own facts and the expression of law therein is distinguishable in view of order dated 02.08.1982.

15. Thus, I find no reason to interfere in the matter as neither can the quantum of punishment be said to be disproportionate to the misconduct committed by the petitioner for the writ court to intercede to revert the petitioner to the lesser punishment. I also find no perversity, irrationality or error apparent on the face of the record or in the decision making process and would as a result of the discussion in the preceding paragraphs and especially in the tail-enders, refuse to interfere and accordingly would dismiss the petition without any order as to costs.

13.02.2019

Vimal

**[RAJIV NARAIN RAINA]
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No