

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

CWP No. 2131 of 2020 (O&M)

Reserved on 2.8.2022

Date of Pronouncement: August 10, 2022

Kuldeep Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil Kumar Nehra, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the Disagreement Note-cum-Show Cause Notice dated 10.05.2018 (Annexure P-13) and order dated 06.06.2018 (Annexure P-15), vide which the petitioner has been compulsorily retired from service in violation of the Punjab Police Rules, 1934, as applicable to the State of Haryana.

2. In brief, the facts of the case are that the petitioner herein joined the respondent Police Department on 09.11.1981 as a Constable and later on earned promotion to the post of Inspector. When the petitioner was posted as Sub-Inspector (Crime) Faridabad, an FIR No. 412 dated 06.09.2016 was registered at Police Station Sector 31, Faridabad, under

Sections 365, 302, 201 and 120-B of Indian Penal Code against two accused namely Pawan Adhana and Yogender alias Sachin and the petitioner was appointed as an Investigating Officer in this case. In that case, both the accused were arrested on 28.11.2016 and proper investigation was conducted by the petitioner. The two accused were allowed default bail under Section 167(2) of the Code of Criminal Procedure, as final report was not presented within the stipulated period. Thereafter, an intimation dated 01.03.2017 was received from the office of the District and Sessions Judge, Faridabad, by the Commissioner of Police, Faridabad, in which it was mentioned that default bail has been granted to the aforesaid two accused, as no challan was filed by the Investigating Officer within the stipulated period. A similar letter was also received from the office of District Attorney, Faridabad, regarding non-filing of final report by the petitioner within stipulated time period. On receipt of said letters, the respondent department served a show cause notice vide memo No.256-D dated 09.03.2017 upon the petitioner to state reasons as to why the final report was not filed within the stipulated period in the said FIR No.412 dated 06.09.2016. The petitioner filed a detailed reply to the said show cause notice stating that because of his illness, the delay has occurred in filing the final report. Thereafter, vide letter dated 16.03.2017, the Assistant Commissioner of Police, Faridabad, wrote to the Deputy Commissioner of Police, Faridabad, recommending the suspension of the petitioner from the service and to initiate a departmental inquiry against him. Thereupon, vide order dated 17.03.2017, the Deputy Commissioner of Police, Headquarters, Faridabad, initiated departmental inquiry against the petitioner on the

charges levelled against him. The petitioner was charge-sheeted, which was replied by him. The said departmental inquiry was completed by the Inquiry Officer and a report was submitted to the competent authority on 19.06.2017. The competent authority issued a show cause notice dated 22.06.2017 with a proposal that penalty of stoppage of 4 annual increments should be inflicted upon the petitioner. However, the competent authority by an order dated 11.7.2017 came to the conclusion that though the charge of negligence is proved against the petitioner yet taking into account his previous service, imposed a punishment of warning to be careful in future.

3. Thereafter, the complainant of FIR No. 412 of 2016 made a complaint dated 04.04.2018 to the Deputy Commissioner of Police, Central, Faridabad, in which a request was made by him to take a strict action against the petitioner, as he was held responsible for non-filing of challan within the stipulated period. On this, a letter dated 04.04.2018 was issued by the Commissioner of Police, Central, Faridabad to the Deputy Commissioner of Police, Faridabad, to submit a report regarding the fact provided in the complaint by the complainant. By letter dated 23.04.2018, the Deputy Commissioner of Police, Central Faridabad, made a recommendation to reconsider the order dated 11.07.2017 by which the punishment of warning was imposed upon the petitioner. Thereafter, Disagreement Note-cum-Show Cause Notice dated 10.05.2018 was issued by the Commissioner of Police, Faridabad, to the petitioner in which it was mentioned that he is not in agreement with the order passed by the punishing authority, DCP, Headquarters, Faridabad and decided to review the departmental proceedings. The Commissioner of Police, Faridabad,

while exercising power under Rule 16.28 of Punjab Police Rules, 1934 (“**the Rules**” for short) mentioned that he disagreed with the order and is of the view that the petitioner should be dismissed from service. The petitioner filed a detailed reply to the said Disagreement-cum-Show Cause Notice served upon him and thereafter, vide order dated 06.06.2018, the Commissioner of Police passed the order vide which the punishment of compulsorily retirement was imposed upon the petitioner. Being aggrieved, the petitioner filed an appeal before the Director General of Police, Haryana, however, the petitioner received a communication dated 25.01.2019 stating that there is no provision to entertain appeal against compulsory retirement as per Rule 16.29 (1) of the Rules. Hence, the instant writ petition.

4. Mr. Sunil Kumar Nehra, learned counsel appearing on behalf of the petitioner, would argue that the charge-sheet was issued without taking any approval from the competent authority. It is contended that the Commissioner of Police could not have issued the Disagreement Note-cum-Show Cause Notice as it could only be issued when the Inquiry Officer exonerates a delinquent employee and the competent authority disagreed with the finding of the Inquiry Officer. It is also submitted that no detailed reasons have been mentioned in the Disagreement Note for disagreeing with the order passed by the competent authority of giving warning. Learned counsel for the petitioner would rely upon judgments rendered by the Apex Court in **Lav Nigam vs. Chairman, MD, ITI Ltd. and another, 2007(3) SCT 179**, **Yoginath D. Bagde vs. State of Maharashtra, 1999(4) SCT 403** and **Punjab National Bank vs. Kunj Bihari Misra, 1998(3) SCT 833**, to

contend that in case of disagreement by the disciplinary authority from the finding of exoneration given by an Inquiry Officer, he is bound to give a notice setting out his tentative reason to the delinquent employee.

5. Per contra, Ms. Upasana Dhawan, AAG Haryana, appearing on behalf of the respondent-State would contend that impugned Disagreement Note-cum-Show Cause Notice dated 10.05.2018 and order dated 06.06.2018 are reasonable and proper and sustainable in the eyes of law. It is contended that in the departmental inquiry, the petitioner was found guilty of the charges framed against him.

6. I have heard learned counsel for the parties and have also gone through the pleadings of the case and case laws relied upon.

7. Admittedly, the facts are not in dispute. The petitioner herein was the Investigating Officer and was supposed to present the final report before the trial court in FIR No.412 dated 06.09.2016 registered in Police Station Sector 31, Faridabad, under Sections 365, 302, 201 and 120-B of Indian Penal Code within a period of 90 days. Both the accused were arrested; however, they were allowed default bail under Section 167(2) Cr.P.C., due to non-filing of the challan within 90 days. After that a regular departmental inquiry was conducted, in which the petitioner was held guilty of charges and the Deputy Commissioner of Police, Headquarters, Faridabad, after examining the finding, inquiry file and all other record, came to the conclusion that the charge of negligence levelled against the petitioner stood proved beyond any shadow of doubt, however, by taking a lenient view, the Deputy Commissioner of Police, Headquarters, Faridabad, imposed the penalty of “warning to be careful in future” upon the petitioner.

8. A Disagreement Note-cum-Show Cause Notice dated 10.05.2008 was issued by the Commissioner of Police, Faridabad, stating that he was not in agreement with the order passed by the punishing authority and had decided to review the departmental proceedings. Under Rule 16.28 of the Rules, the Commissioner of Police, Faridabad, served a notice of dismissal from service upon the petitioner, which was duly replied to by the petitioner. Vide said Disagreement Note-cum-Show Cause Notice punishment of dismissal from service was proposed. However, vide order dated 06.06.2018 (Annexure P-15) proposed punishment of dismissal from service was reduced to compulsorily retirement.

9. Disagreement note and show cause notice has been issued under Rule 16.28 of the Rules which is reproduced 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.”

A perusal of the statutory provision makes it apparent that the Inspector General of Police, a Deputy Inspector General of Police and a Senior Superintendent of Police may call for the records of awards made by their subordinates and thereafter, confirm, enhance, modify or annul the same. Still further, under Rule 16.28 (3) a protection has been afforded to the delinquent in as much as wherever the officer concerned is proposing to enhance an award already made, the delinquent is to be afforded an opportunity of showing cause either personally or in writing. In the present case, the Commissioner of Police, Faridabad, has exercised the powers to review the proceedings under Rule 16.28 of the Rules in relation to an order passed by the Deputy Commissioner of Police, Faridabad, who is the Punishing Authority of the petitioner, who would admittedly be his subordinate. Prior to passing the impugned order, the Commissioner of Police, Faridabad, had issued a show cause notice dated 14.5.2018 as regards enhancing the penalty and has even afforded an opportunity of personal hearing. In the said show cause notice, it was mentioned that there was grave misconduct and negligence shown by the petitioner towards his duty and it was proposed to review the departmental proceedings and enhance the punishment to dismissal. It is only thereafter that the impugned order was passed by imposing a lesser punishment of compulsory retirement. The action, as such, has been taken strictly in conformity with the statutory provision.

10. It is also argued that the Disagreement- Note-cum-Show Cause Notice was issued with a predetermined mind and simultaneous notice reviewing the order of punishment and proposing penalty could not have

been issued. The judgments as cited in **Lav Nigam and Yoginath D. Bagde (supra)** are relied upon. The case laws as relied upon by the petitioner in the case of **Lav Nigam vs. Chairman, MD, ITI Ltd. and another, Yoginath D. Bagde vs. State of Maharashtra and Punjab National Bank vs. Kunj Bihari Misra (supra)** are distinguishable and not applicable to the facts and circumstances of the present case. In the case of **Punjab National Bank vs. Kunj Behari Misra (supra)** the disciplinary authority disagreed with the Inquiry Officer and no opportunity was given to the delinquent to represent before the disciplinary authority, who recorded its findings against the delinquent official. However, in the present case, the petitioner was held guilty of the charges levelled against him and imposed a punishment letting him off with a warning. This order was reviewed by the Commissioner of Police under Rule 16.28 of the Rules. Similarly, in the case of **Lav Nigam (supra)**, the delinquent officer was not held guilty by the Inquiry Officer and the Disciplinary Authority without any notice to the delinquent officer, recorded its final conclusion different from the Inquiry Officer, which is not so in the present case. Lastly, in the case of **Yoginath D. Bagde (supra)** the Apex Court observed that the Disciplinary Committee had taken its final decision without giving an opportunity of hearing to the appellant therein at the stage at which it proposed to differ with the findings of the Inquiry Officer, whereas, in the present case proper opportunity of hearing was given to the petitioner and otherwise also, the charges levelled against the petitioner were proved against him during the inquiry. There was no challenge to the

punishment imposed. As far as the question that the reviewing authority issued the notice with a predetermined mind, the same is not sustainable in the light of the fact that the show cause notice was issued with a proposed punishment of dismissal from service, while in fact a lesser punishment of compulsory retirement was given. Such action would not reflect a predetermined mind, other than to review the proceedings and to enhance, modify the award, as has been done.

11. It is also submitted that the charge sheet was issued by a person who was not competent to do so. However, this argument would pale into insignificance as the disciplinary authority accepted the report of the Inquiry Officer and taking into account his service imposed a penalty of mere warning. This punishment culminated with the petitioner accepting the punishment as no appeal was filed under Rule 16.30 of the Rules.

12. In view of the above discussion, this court finds no illegality or infirmity in the impugned orders so passed by the respondent, which would warrant interference by this court. Accordingly, the instant petition is hereby dismissed.

August 10, 2022

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(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No