

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No. 2998 of 2022 (O&M)

Reserved on: 20.09.2022.

Date of Decision. 4.11.2022.

Paramjeet Singh

...Petitioner

Vs

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Amit Jhanji, Senior Advocate with
Mr. G.S. Gopera, Advocate
Mr. Abhishek K. Premi, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

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JAISHREE THAKUR J.

1. The petitioner herein approached this Court under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for quashing order dated 27.01.2022 (Annexure P-11) passed by respondent No.3 whereby petitioner has been dismissed from service.

2. In brief, facts as enumerated in the writ petition are, that the petitioner was enrolled as Constable on 20.03.1988 and was promoted as Head Constable, ASI, SI and Inspector on 28.04.1994, 14.03.2000, 06.10.2003 and 25.04.2011 respectively. The petitioner worked for a total period of 33 years in Haryana Police Department and had more than 95% good ACRs. The petitioner was due for promotion from the rank of Inspector to the rank of Deputy Superintendent of Police. Vide circular dated 16.09.2021, the Director General of Police sought information and a summary of the ACRs of persons due to be promoted. However, the petitioner was not considered for promotion due to mala fide intention, which would be borne out from the

time when the petitioner was posted as SHO, Police Station, Ding, District Sirsa. He was charge sheeted on 13.03.2018 for gravity of alleged misconduct and FIR No.92 dated 4.7.2018 was registered against him under Sections 4, 13 of the Prevention of Corruption Act at Police Station Ding, District Sirsa. The FIR stood cancelled and the cancellation report was accepted by the Court of Additional Sessions Judge, Sirsa on 16.02.2019. In the disciplinary proceedings initiated, the petitioner was exonerated of the charges framed against him. The disciplinary authority accepted the enquiry report dated 11.04.2019 and discharged/exonerated the petitioner from all charges vide order dated 25.05.2019. The disciplinary authority's findings were not challenged, however, to oust the petitioner from the zone of consideration, respondent No.3 issued disagreement note-cum-show cause notice dated 13.09.2021 by invoking Rule 16.28 of the Punjab Police Rules, 1934 as applicable to the State of Haryana after a period of 2 years 4 months. The petitioner submitted a detailed reply to the disagreement note-cum-show cause notice, however, the reviewing authority held the petitioner guilty and dismissed the petitioner from service vide order dated 27.01.2022. It is argued that the timing of the issuance of the disagreement note-cum-show cause notice dated 13.09.2021 was just to victimize the petitioner and to oust him from the zone of consideration for promotion to the higher rank of DSP. Aggrieved against the order dated 27.01.2022, the petitioner knocked doors of this Court.

3. Mr. Jhanji, learned Senior Counsel assisted by Mr. G.S. Gopera, Advocate appearing for the petitioner would contend that the disagreement note-cum-show cause notice dated 13.09.2021 has been timed in such a fashion as to scuttle the promotion of the petitioner to the rank of

DSP. It is argued that the petitioner had been exonerated by the enquiry officer, which findings were subsequently affirmed by the punishing authority vide order dated 25.05.2019. Thereafter, the office of the Director General of Police, Haryana vide communication dated 16.09.2021 sought information regarding character and antecedents of all persons, who were in line to be promoted as DSPs and it is only then that the disagreement note-cum-show cause notice was issued. It is further argued that there is an inordinate delay of 2 years 4 months in issuing the disagreement note to the order passed by the punishing authority whereby the petitioner stood exonerated. It is further submitted that the very show cause notice was issued with a pre-determined mind that the petitioner was guilty and therefore, despite exoneration of the petitioner from all charges by the enquiry officer in his enquiry report, which was accepted by the disciplinary authority, the petitioner was dismissed by respondent No.3 while exercising power under Rule 16.28 of the Punjab Police Rules after a period of 2 years 4 months from the date of passing of the order by the disciplinary authority.

4. Mr. Amit Jhanji, learned senior counsel appearing for the petitioner would further submit that as per Rule 16.29 (1) of the Punjab Police Rules, 1934, appeal lies against orders of dismissal or reduction or stoppage of increment or forfeiture of approved service for increment. In the instant case, the petitioner was exonerated from all charges vide enquiry report submitted by the enquiry officer, which report was accepted by the disciplinary authority. However, respondent No.3-Inspector General of Police, Hisar Range, Hisar issued a disagreement note-cum-show cause notice and ultimately, dismissed the petitioner from service vide order under challenge. As per sub-rule 6 of Rule 16.29 of the Punjab Police Rules,

Inspector General of Police itself is the highest appellate authority and therefore, no appeal lies against the order which itself has been issued by the authority to whom appeal against the orders passed by the subordinates lies under the Punjab Police Rules, 1934 as applicable to Haryana and therefore, the petitioner has no other alternative remedy than to approach this Court under Article 226 of the Constitution of India.

5. Written statement has been filed on behalf of respondents No.1 to 4. It is worthwhile to note that the written statement has been filed by the same officer, who had issued the disagreement note-cum-show cause notice.

6. Learned counsel appearing on behalf of the respondent-State would submit that a regular departmental enquiry was issued against the petitioner on account of allegations that while he was posted as SHO, Police Station Ding, District Sirsa, he found a car parked on the roadside in a suspicious condition. On checking the car, one person namely Hari Singh s/o Nokh Ram resident of village Ninan and one woman were found in the car. Hari Singh was under the influence of liquor. The petitioner took both of them to the Police Station, Ding and informed their family members. The petitioner released Hari Singh and his companion from custody on 08.11.2017 the next day without taking any legal action but had accepted an illegal gratification of Rs.3 lakhs. He did not inform his senior officer about the incident and also kept the lady in the police station over-night nor made any mention of the said incident in the Daily Dairy Report. A departmental enquiry was initiated against the petitioner wherein he was exonerated from all charges levelled against him. During the pendency of departmental enquiry, he was transferred from District Sirsa to District Fatehabad and his enquiry file was also sent to District Fatehabad. The findings of the enquiry officer were

accepted by the disciplinary authority, however, disagreement note-cum-show cause notice was issued to the petitioner in terms of Rule 16.28(1) to which petitioner duly replied. Being dissatisfied with the reply submitted by the petitioner, respondent No.3 passed order dated 27.01.2022 vide which the petitioner has rightly been dismissed from service.

7. Learned counsel appearing for the respondent-State would further argue that in view of Section 5 of the Haryana Police Act, 2007, the entire command/supervision of the police force in the State of Haryana is vested with the DGP, which was earlier vested with the Inspector General of Police under the Police Act, 1861. The Punjab Police Rules, 1934 have to be read in conjunction with the new Act of 2007 and therefore, as per Rule 16.29 of the Punjab Police Rules, an appeal against the order of dismissal from service passed by respondent No.3 lies to the Director General of Police, Haryana and therefore, the writ petition itself is not maintainable, as the petitioner has not availed the remedy of filing an appeal under Rule 16.29 of the Punjab Police Rules, 1934.

8. I have heard learned counsel for the parties and have perused the paper book.

9. The petitioner has filed the writ petition by *inter alia* raising a ground that he has no remedy of appeal against an order passed by the Inspector General of Police. The order of dismissal has been passed by the Inspector General of Police on reviewing an order passed by the punishing authority under Rule 16.28 of the Punjab Police Rules, 1934 as applicable to Haryana, who was Superintendent of Police, Fatehabad. For appreciation of the issue in hand, it is worthwhile to reproduce aforesaid Rule 16.28, which is as under:-

“Rule 16.28 Powers to review proceedings.-

(1) Inspect-General, a Deputy Inspect-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.

Rule 16.29 as applicable to Haryana is reproduced as under:

16.29. Right of appeal. –

(1) Appeals shall lie only against orders of dismissal or reduction or stoppage of increment or forfeiture of approved service for increment.

(2) There shall be one appeal only from the original order, and the order of the appellate authority shall be final.

(3) A copy of the original order appealable shall be supplied to the person concerned free of cost.

(4) Any person wishing to appeal under sub-rule (1) may apply to the Superintendent for a copy of the complete record, or any portion

thereof. Such copies shall not be given during the pendency of the original proceedings for the facilitating of cross-examination or the preparation of the defence. Copies of the record of preliminary enquiries [rule 16.24 (viii)] shall not be given for purposes of appeal. Such application shall bear a court-fee stamp of the value of two annas, unless the applicant is in Jail, and shall be accompanied by a deposit of the copying fees chargeable under the scale in force in the civil courts of the district.

(5) The copy of such record shall be given with as little delay as possible, and the Superintendent shall certify to its correctness and to the date on which it was given to the applicant.

(6) The appellate authority in cases of reduction and dismissal is as indicated in the following table :-

<i>Officer by whom original order is punishment in framed</i>	<i>Appellate authority</i>
<i>Deputy Superintendent (Administrative), Government Railway Police, Deputy Superintendent, in charge of Railway Police Sub-Division.</i>	<i>Assistant Inspector-General, Government Railway Police</i>
<i>Superintendent of Police, Senior Assistant Superintendent of Police, Lahore, *[Officer-in-charge of Police Constables Training Centre], Deputy Superintendent of Police, Punjab Armed Police, Lahaul and Spiti.</i>	<i>Deputy Inspector-General of Police and Assistant Inspector-General, Provincial Additional Police (designated as Commandant, Provincial Additional Police)</i>
<i>Deputy Inspector-General of Police, Assistant Inspector General Government Railway Police, Assistant Inspector-General, Provincial Additional Police, (designated as Commandant Provincial Additional Police), Assistant Inspector-General of Police (Traffic)</i>	<i>Inspector-General of Police.</i>

(7) Appeals against reduction shall be presented through the Superintendent of Police of the district in which the appellant is serving; but in the case of officers serving directly under a Deputy Inspector-General of Police appeals shall be forwarded through such Deputy Inspector-General of Police. Appeals against dismissal shall be forwarded direct to the appellate authority.

10. The Rules were framed as far back as 1934 and the highest authority at the relevant time was the Inspector General of Police. He was the head of the Police Department. The Department of Personnel and Administrative Reforms, Ministry of Home Affairs, Government of India after exercising their powers conferred by provisions of All India Services Act, 1951, had notified the post of Inspector General of Police to Director General of Police vide its notification no 11052/8/81-AIS-II-A dated 10.12.1981. In such a situation when the post of Inspector General of Police as mentioned under Rule 16.29 stands re-designated to be the Director General of Police, remedy of appeal would now lie with the Director General of Police of the State. This is also in consonance with the stand of the respondents that the Appellate Authority would be the Director General of Police, Haryana.

11. Therefore once there is a remedy of appeal, this writ petition is being disposed of by giving a direction, that in case the petitioner files an appeal taking all pleas as taken in the writ petition before the Director General of Police, Haryana within a week of receipt of certified copy of this order, the same be considered and decided as expeditiously as possible by the competent authority, preferably within a period of one month thereafter, by passing a speaking order which shall be communicated to the petitioner

forthwith. Needless to say, an opportunity of personal hearing shall also be afforded to the petitioner.

12. Misc. Applications, pending on date, also stand disposed of.

(JAISHREE THAKUR)
JUDGE

November 04, 2022
Pankaj*

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