

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(Heard through VC)**

**CWP No. 7473 of 2020 (O&M)
Date of Decision: March 25, 2022**

Suresh Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Pawan Kumar, Senior Advocate with
Mr. Surya Kumar, Advocate and
Mr. Surinder Kumar Daaria, Advocate,
for the petitioner.

Mr. Rohit Arya, DAG, 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 impugned order dated 21.1.2020 as passed by respondent No.3 ordering for de novo inquiry for the third time in the complaint in which the petitioner has already been awarded the punishment and quashing of the charge sheet dated 18.2.2020 as also quashing the notice dated 16.5.2020 whereby the petitioner has been asked to join the inquiry.

2. In brief the facts are that the petitioner joined the respondent department on 2.12.1988 as Constable and stood promoted to the post of Inspector as on 29.3.2018. One FIR No. 103 dated 11.2.2017 under Sections 420/467/468/471/120-B IPC, Sections 25/54/59 of the Arms Act and Sections 7/8 and 13 of the Prevention of Corruption Act was registered at

Police Station Civil Lines, Gurugram, against the accused—Mohan Lal and Manish Bhardwaj. An SIT was constituted and the investigation was launched under the supervision of Anil Kumar, HPS, Assistant Commissioner of Police, Sadar Gurugram. In fact, the said FIR was registered on the basis of a secret information in which inquiry was conducted by Shri Sivash Kaviraj, IPS against Manish Bhardwaj son of Shri Uma Shankar Bhardwaj of Gurgaon, Mohan Lal son of Shri Puran Chand, Taras Pal, Ms. Hyoti Sharma, Shri Mahinder Singh etc. regarding operation of a gang who were involved in preparation of bogus/duplicate and fictitious documents regarding registration of illegal weapons brought into the State of Haryana. Manish Bhardwaj was arrested on 24.2.2017 along with his car from Mohali, Chandigarh and during the interrogation seven country made and imported pistol along with 8,762 live cartridges of different types were recovered. Apart from that, a number of other illegal forged registration certificates of arms and other forged/duplicate stamps of various states were recovered.

3. The petitioner herein was one of the eight members of SIT that was constituted. The main accused Manish Bhardwaj made a complaint against the petitioner and others regarding torture inflicted upon him and demand of bribe to the Commissioner of Police Gurugram, which was registered as **2257/CP/2018 dated 16.2.2018**. The said complaint was also sent to the DGP, Haryana as well as to the Chief Minister Office and was registered as Complaint No. 2256/CP/2018/DGP dated 21.2.2018 and CMOFF/N/2018/015995 dated 12.2.2018. The petitioner submitted his reply to the complaint and inquiry was conducted by associating the

petitioner and all other persons involved. The Deputy Commissioner of Police, Headquarters, Gurugram vide order dated 7.4.2018 found that the allegations as leveled in the complaint by Manish Bhardwaj were false, but at the same time the Inquiry Officer found that the petitioner has used un-parliamentary language against senior police officials in one of the audio recordings and on this basis it was recommended that departmental inquiry be carried out against the petitioner for using un-parliamentary language. On the recommendation of the Deputy Commissioner of Police, a departmental inquiry was initiated on the allegations that the petitioner had used un- parliamentary language in the audio recording. Regular inquiry was conducted and the petitioner was given punishment of '**censure**' by the Superintendent of Police, Rohtak by order dated 29.4.2019.

4. During the time, the petitioner was posted at Gurugram, the Commissioner of Police Gurugram Shri Mohd. Akil received a communication from the office of the DGP, Haryana, in which order dated No. 2680/CR-3 dated 27.11.2019 was passed that under Rule 16.28 of the Punjab Police Rules, 1934, as applicable to the State of Haryana, stating that the order dated 29.4.2019 be reviewed in which the petitioner had been awarded the punishment of censure. On receipt of the said communication, a show cause notice was issued to the petitioner on 18.1.2020 and ultimately on 5.2.2020 an order was passed by the Commissioner of Police, Gurugram, converting the punishment of censure to that of stoppage of one annual increment with permanent effect. Now on the basis of the same set of allegations, the Deputy Commissioner of Police, Gurugram has initiated a regular departmental inquiry against the petitioner and has entrusted the

same to Shri Ashok Kumar, HPS, Assistant Commissioner of Police, Old Gurugram. By order dated 21.1.2020, the Commissioner of Police Gurugram has approved initiation of departmental Inquiry and that too on the basis of direction received from the office of the DGP, Haryana pertaining to the allegations levelled by Manish Bhardwaj in his complaint bearing No. 2257/CP/2018 dated 16.2.2018. The petitioner has been asked by the show cause notice to file his reply.

5. Learned Senior Counsel appearing on behalf of the petitioner herein would argue that the impugned action of the respondent in issuing order dated 21.1.2020 for holding inquiry for the third time with regard the same set of allegations, in which inquiry already stands concluded and punishment awarded, is not sustainable in the eyes of law. It is submitted that Manish Bhardwaj had filed Complaint No. 2257/CP/2018 dated 16.2.2018 which was looked into by the Deputy Commissioner of Police and the complaint was filed. In the said complaint, there were allegations that the petitioner had taken an amount of ₹4,50,000/- on the threat of false implication of the complainant's parents and other family members. The Inquiry Officer came to the conclusion that there was no truth in the allegations leveled in the complaint as he could not submit any proof in support of the same. However, in the audio recording, it was found that the petitioner had used abusive language and irresponsible wording against the senior officials and therefore, it was recommended to take separate departmental action against the petitioner. In the departmental inquiry at the first instance punishment of censure was awarded and thereafter during the departmental inquiry held for the second time punishment of stoppage of

one increment with permanent effect was given. It is submitted that the procedure adopted is unknown to the rules and against the settled principle of law. It is submitted that the instant inquiry ordered against the petitioner is nothing but amounts to mental harassment to the petitioner. Learned counsel relies upon the judgment rendered in **SI Talwinderjit Singh Versus Deputy Inspector General, Police Feorzepur Range, Ferozepur and others 2019 (2) SLR 780**, to contend that de novo inquiry could not be ordered, while deriving power from Rule 16.28 of the Punjab Police Rules.

6. Per contra, learned counsel for the respondent—State would submit that proper procedure has been followed, while ordering fresh inquiry into the complaint so made by Manish Bhardwaj and there is no violation of the rules or the law while ordering inquiry in the complaint against the petitioner and the respondents were well within their jurisdiction while invoking Rule 16.24 of the Punjab Police Rules, 1934, as applicable to the State of Haryana.

7. I have heard learned counsel for the parties and have gone through the pleadings of the parties as well as the law cited.

8. The sole question that arises for consideration in the instant case is, whether a fresh inquiry could have been ordered into the complaint made against the petitioner, in which a detailed inquiry has already been held and the complaint was found to be false by order dated 7.4.2018; whether the respondents have the jurisdiction to review the order dated 5.2.2020?

9. Before dealing with the question involved in the instant case, it would be appropriate to re-produce the impugned order dated 21.1.2020,

which reads as under:-

“The Director General of Police, Haryana, Panchkula has sent a memo No. 26803/CR-3 dated 27.11.2019 and directed Commissioner of Police, Gurugram to review the departmental enquiry of SI Suresh Kumar No. 11/GGM (Now Inspector) and if needed a fresh departmental enquiry to be initiated. Now the Commissioner of Police, Gurugram has approved to initiate a regular departmental enquiry against SI Suresh Kumar No. 11/GGM (Now Inspector) on the allegation leveled by Sh. Manish Bhardwaj r/o H. No. 587, 8 Biswa, Gurugram in his complaint bearing No. 2257/CP/2018 dated 16.2.2018 as the earlier departmental enquiry did not take into account the allegation in the mention complaint.

Hence, a regular departmental enquiry is hereby initiated against SI Suresh Kumar No. 11/GGM (Now Inspector) and the same is entrusted to Sh. Ashok Kumar, HPS, Assistant Commissioner of Police, Old Gurugram for submit his findings at the earliest by holding day to day proceedings”

10. A perusal of the impugned order would show that a fresh departmental inquiry has been initiated against the petitioner, after reviewing the departmental inquiry already held against him, on a memo sent by the Director General of Police, Haryana. The power of the respondent-authority to review the order falls under Rule 16.28 of the Rules. Thus, from the facts as mentioned above, it appears that entire controversy revolves around the interpretation of Rule 16.28 of the Punjab Police Rules, which reads 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.

(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 this punishment should not be enhanced.”

A bare reading of the provision would make it apparent that the Inspector General of Police is vested with the power to confirm, enhance, modify or annul the order passed by the Subordinate Officer. If he is not satisfied with the manner in which the enquiry was conducted or the orders passed by such Subordinate Officer, the Inspector General of Police could make further investigation in the matter himself or direct such investigation to be made by some Subordinate Officer prior to passing of the final order. However, having set-aside the order of his subordinate, a de novo enquiry could not have been ordered. The language of the provision is unambiguous and clear. No power can be derived from Punjab Police Rules 16.28, whereby a second enquiry can be directed. Such issue has already been considered by this Court in **Joginder Singh Vs. State of Punjab and others, 1984 (1) ILR (Punjab) 512**, wherein while considering the power conferred under Rule 16.28 of Punjab Police Rules, it has been held in the following terms :-

“Judicial or Quasi Judicial authorities or Tribunals draw their

*power and authority from statutes. They do not have any inherent powers. Right of appeal, review and revision are creatures of statutes. Unless the statutory Rules so provide, the Inspector-General of Police could not entertain the appeal of the petitioner as a necessary corollary. But Rule 16.28 has authorised the Inspector-General of Police and other officers mentioned therein to re-examine the orders passed by their subordinates and confirm, vary or quash them. **Rule 16.28 does not in terms or by inevitable implication confer on the Inspector-General of Police any power to order a second inquiry after quashing the award of the Deputy Inspector-General of Police. There is no other provision in the Police Rules or any other statutory Rules applicable to the petitioner conferring powers on the Inspector-General of Police to order a second inquiry.** While deciding the appeal, he was performing quasi judicial functions. The contention of Mr. Riar that the power to order second enquiry is inherent in the relationship of Master and servant, cannot be accepted. What to say of ordering a second enquiry, even the power to review his own judgment does not vest with the Inspector-General of Police. A Full Bench of this Court in **Deep Chand and others v. Additional Director, Consolidation of Holdings, Punjab, and another, AIR 1964 Punjab 249**, held that judicial or quasi judicial Tribunal does not possess powers to review its earlier orders unless a statute confers such powers on it. Similarly, the plea of Mr. Riar that Rule 16.28 explicitly grant powers of review to the Inspector-General of Police is equally untenable. In support of his contention he has referred to the Heading of Rule 16.28 which reads “Powers to Review Proceedings”. It is well recognised that the Heading of a statutory provision does not control its meaning. The provision is to be interpreted primarily on the language employed therein. The Heading does not control main provision. At best, it can be taken into*

*account in inferring the main provision if there is some ambiguity therein. So the power to review cannot be spelt from the language of Rule 16.28 merely because it is crowned with a caption 'Powers to Review Proceedings'. It is also difficult to accept that since all the powers like the powers to confirm, enhance, modify or annul the awards which are available with the judicial and quasi judicial Tribunal have been conferred on the Inspector-General of Police, it should be accepted that he has also the power to review. This argument can be dismissed out of hand in view of the authoritative pronouncement in **Deep Chand's case (supra)** that power to review can be conferred only by a statute. It cannot be spelt through some intricate process of induction or deduction. The power to investigate the case or to get it investigated from some subordinate officer cannot be equated with the power to remand the case or order a fresh enquiry. A dispute arose in the context of the East Punjab Urban Rent Restriction Act. Under Section 15 of the East Punjab Urban Rent Restriction Act, the appellate Authority has been empowered to make further enquiry either personally or through the Rent Controller if it is dissatisfied with the trial of the eviction application by the Rent Controller. Statute does not confer any power of remand. The appellate Authority remanded the case to the Rent Controller for fresh decision. A Division Bench of this Court in **Shri Krishan Lal Seth V. Shrimati Pritam Kumari, 1961 P.L.R. 865**, observed :-*

“When the appellate authority is somehow or other dissatisfied with the trial of an application for eviction of the tenant, it can make a further enquiry as it thinks fit either personally or through the Rent Controller, but it has no power to set aside an order of the Rent Controller and remand such an application to him for retrial and redecision.”

Since a doubt was expressed about the correctness of this

*decision, the matter was re-examined by another Division Bench in **Raghu Nath Jalota V. Ramesh Duggal and another, AIR 1980 Punjab and Haryana 188** and the view taken in 1961 was reaffirmed and it was held that:-*

“The history of the legislation, its object and purpose and the specific language of Section 15(3) clearly show that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision.”

*It is manifest from this that Appellate Authority while hearing an appeal can either make a further enquiry personally or through the Rent Controller, but cannot set aside the impugned order and then remand the case to the Rent Controller for retrial and re-decision. On the parity of reasoning, Inspector-General of Police could investigate the case himself or get it investigated from some subordinate police officer before passing the final order. But, after quashing the orders of Respondent No. 2, he could not order a fresh enquiry. In fairness to Mr. Riar, I must distinguish some of the judgments cited by him in support of his contention. All that was held in **Dwarkachand v. State of Rajasthan, AIR 1958 Rajasthan 38**, was that if there was no rule or law which lays down that an order exonerating a public servant in a departmental enquiry and ordering fresh enquiry, it is not open to a higher authority to order, a fresh departmental enquiry ignoring the result of an earlier enquiry exonerating the public servant. This presumably goes against the contention raised by the learned State counsel. It has been clearly laid down that in the absence of a statutory rule no fresh enquiry can be ordered against public servant who has been exonerated in the first enquiry. The decision of the Mysore High Court in **Vijay Singh Yadava's case (supra)** does not help Mr. Riar because the point in issue in that case was not in controversy before that*

High Court. The only issue raised there was that punishment imposed on a delinquent official on second enquiry amounts to double jeopardy. However, in that case the service rules permitted a second enquiry. This contention was repelled by the Court.” (emphasis supplied).

11. Thus, from the above, it is apparent that the impugned order directing initiation of de novo inquiry in the complaint pursuant to which the petitioner has already been awarded the punishment is against the settled principles of law and is not sustainable. It is also abundantly clear that there has been no independent application of mind at the hands of respondent No.3—Deputy Inspector General of Police, Gurugram who has acted on the dictates of the Director General of Police, Haryana. Such course of action is alien to Rule 16.28 of the Punjab Police Rules.

12. Consequently, the writ petition is allowed. The impugned order dated 21.1.2020 as passed by respondent No.3 ordering for de novo inquiry, charge sheet dated 18.2.2020 and also notice dated 16.5.2020, whereby the petitioner has been asked to join the inquiry, are hereby quashed.

March 25, 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No