

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: August 09, 2022
Date of decision: August 26, 2022

1. CWP No.12815 of 2020

SAHIB SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

2. CWP No.12827 of 2020

TEHAL SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

3. CWP No.12765 of 2020

SHIVDEV SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

4. CWP No.12768 of 2020

BALJINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. J. S. Gill, Advocate
for the petitioner in all four petitions.

Mr. Pawan Sharda, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. By this common order, this Court proposes to dispose of the above noted four writ petitions as the facts of the cases are similar and a common law point arises for determination.

2. For the sake of brevity, the facts are being noted from CWP No.12815 of 2020, titled as "*Sahib Singh versus State of Punjab and Others*".

3. This is a petition that has been filed seeking issuance of a writ in the nature of certiorari for quashing the order dated 17.06.2019 (Annexure P-3) passed by the Senior Superintendent of Police, Patiala-respondent No.2, whereby, the petitioner was dismissed from service; order dated 11.10.2019 (Annexure P-4) passed by the Inspector General of Police, Patiala Range, Patiala-respondent No.3, dismissing the appeal preferred by the petitioner against the order of respondent No.2 and order dated 08.07.2020 (Annexure P-5) passed by the Director General of Police, Punjab-respondent No.4, dismissing the revision petition preferred by the petitioner against the orders of respondent Nos.2 and 3.

4. In brief, the facts are that the petitioner herein was appointed as a Constable in the Punjab Police on 01.02.1992 and was subsequently, promoted as Head Constable on 20.08.2008. The petitioner was then promoted to the post of Assistant Sub-Inspector on 07.09.2015 and in total, he has spent approximately 27 years in service. During the tenure of his service, he was

awarded several commendation certificates issued by the competent authority. As In-charge of Police Post Mubarakpur, District Patiala in the year 2017, DDR No.0011 dated 24.07.2017 was lodged by the petitioner, with regard to death of one Malkit Singh S/o Satpal Singh. In counter thereto, Satpal Singh S/o Lachman Singh lodged an FIR No.0012 dated 04.10.2017, under Sections 7, 8 and 12 of the Prevention of Corruption Act, 1988 and Sections 342, 384 and 506 of the IPC, at Police Station Vigilance Bureau, Flying Squad-1, Punjab at Mohali, against the petitioner herein. On account of the said FIR, petitioner was arrested on 04.10.2017 and was remanded to police custody for one day by the Illaqa Magistrate. Petitioner was suspended vide order dated 24.10.2017 with effect from 04.10.2017 by the Senior Superintendent of Police, Patiala and the Deputy Superintendent of Police, City-2, Patiala was appointed as an Inquiry Officer to conduct departmental inquiry against him. During the departmental inquiry, petitioner was reinstated in service on 21.11.2017 by the Deputy Inspector General of Police, Patiala Range, Patiala without being biased of the decision of the departmental inquiry being under consideration. Thereafter, charge-sheet dated 28.03.2018 (Annexure P-2) was served upon the petitioner. The Inquiry Officer, after completion of departmental inquiry submitted his conclusion report to the office of the Senior Superintendent of Police, Patiala mentioning that the allegations levelled in the charge-sheet against the petitioner have been proved. The Senior Superintendent of Police, Patiala, while agreeing with the inquiry report served show cause notice dated 29.08.2018 upon the petitioner, proposing punishment of dismissal from service and the said show cause notice was duly received by the petitioner on 11.09.2018. Petitioner filed reply to the show cause notice, which was carefully examined by the Senior Superintendent of Police, Patiala and the petitioner was afforded

personal hearing. The petitioner appeared personally before the Senior Superintendent of Police, Patiala and put up his defence orally and was carefully heard, but the petitioner could not give any clarification regarding registration of abovesaid FIR against him. The Senior Superintendent of Police, Patiala vide order dated 17.06.2019 (Annexure P-3), dismissed the petitioner from service. Thereafter, petitioner preferred an appeal against the order of dismissal before the Inspector General of Police, Patiala Range, Patiala-respondent No.3 under Rule 16.29 of the Punjab Police Rules, 1934 but the same was also dismissed vide order dated 11.10.2019 (Annexure P-4). Then the petitioner approached the Director General of Police, Punjab-respondent No.4, impugning the order dated 17.06.2019 passed by respondent No.2 and order dated 11.10.2019 passed by respondent No.3 in appeal. The said revision petition was also dismissed by respondent No.4 vide order dated 08.07.2020 (Annexure P-5). Aggrieved against the impugned orders as passed, the instant writ petition has been filed.

5. Mr. J. S. Gill, learned counsel for the petitioner would contend that the impugned orders have been passed in complete contravention of Rule 16.38 of the Punjab Police Rules, 1934. He would submit that the implication of Rule 16.38 of the Punjab Police Rules, 1934 is mandatory and prescribes the procedure to be followed in case of criminal offences by the police officers i.e. sending immediate information to the District Magistrate of any complaint received, which indicates commission of criminal offence by a police officer in connection with his official relations with the public. The District Magistrate will then decide whether the investigation of the complaint shall be conducted by a police officer or by an Executive Magistrate. He would rely upon various judgments rendered in *Jagan Nath vs. Senior Superintendent of Police*,

Ferozepur and others, AIR 1962 (Punjab and Haryana) 38; Delhi Administration and others vs. Chanan Shah, SC 1969 SLR 217; Union of India vs. Ram Kishan, AIR 1971 SC 1403; Raj Kumar vs. State of Punjab, 1976(1) SLR(5)(FB) (Punjab and Haryana); Ashok Kumar vs. State of Punjab and others, 1990(3)SLR (Punjab and Haryana) 127; Mohinder Singh Cheema vs. State of Punjab, 1990(5)SLR (Punjab and Haryana) 690; Punjab State vs. Jagir Singh, 1993(5)SLR (Punjab and Haryana) 102; Ex-Constable Gurshinder Singh vs. State of Punjab, 2000(3)SLR (Punjab and Haryana) 749 and The Punjab State through Secretary to Government of Punjab, Chandigarh and others vs. Lachhman Singh, RSA No.1113 of 1994, decided on 16.12.2009, wherein non-application of the said procedure has been totally deprecated as unsustainable. It is further submitted that the Appellate Authority is duty bound to pass a reasoned order as is the mandate of Rule 16.31 of the Punjab Police Rules, 1934, which provides that any order passed in appeal shall contain the reasons thereof. He submits that the orders passed by the Appellate Authority and the Revisional Authority show total non-application of mind as they completely ignored the grounds as raised by the petitioner and, therefore, impugned orders are liable to be set aside.

6. Mr. Pawan Sharda, Sr. DAG, Punjab, learned State counsel would submit that the petitioner was arrested by the Vigilance Department red handed while accepting bribe money. It is submitted that the procedure for holding departmental inquiry against the police officials has been laid down in Rule 16.24 of the Punjab Police Rules, 1934 and that Rule 16.38 of the Punjab Police Rules, 1934 is not applicable to hold departmental inquiry against the police officials, as urged by the petitioner. It is further submitted that in the same and similar matter, one Ex-Constable Gurpartap Singh filed CWP No.12767 of

2020, titled as “Gurpartap Singh versus State of Punjab and Others” before this Court, which was dismissed vide order dated 26.08.2020. He would submit that there is no infirmity in the impugned orders as passed and the present writ petitions are liable to be dismissed.

7. I have heard learned counsel for the parties and have also perused the pleadings of the case.

8. The primary contention as raised by learned counsel for the petitioners is that Rule 16.38 of the Punjab Police Rules, 1934 has not been complied with by the department while dismissing the petitioners from service. It is submitted that initiating regular departmental enquiry against the petitioners without taking concurrence of the District Magistrate as per Rule 16.38 of the Punjab Police Rules, 1934 would tantamount to non-compliance of the Rule, which Rule has been held to be **mandatory**. The relevant Rule is reproduced for ready reference:-

"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.

(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.

X-X-X-X-X-X-X

9. On the strict interpretation of Rule 16.38 of the Punjab Police Rules, 1934, the Superintendent of Police, on receiving any complaint regarding commission by a police officer of a criminal offence in connection with his official relations with the public, shall immediately inform the District Magistrate of such complaint. The District Magistrate, then, will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Executive Magistrate. Therefore, the wording used in this Rule is about a *complaint* made against a delinquent police officer in relation to the official duty, meaning thereby, receipt of a complaint would be *sine qua non* for information to be immediately furnished to the District Magistrate, who would then decide whether the investigation shall be conducted by a police officer, or made over to a selected Executive Magistrate.

10. The question that arises here is would Rule 16.38 of the Punjab Police Rules, 1934 be applicable in cases where FIR has already been registered against a police officer, which pertains to the commission of a criminal offence ? The answer would be in negative. The words as used in Rule 16.38 of the Punjab Police Rules, 1934 are “*of any complaint received by the Superintendent of Police*” and the said Rule does not pertain to a situation, when an FIR already stands registered. In a somewhat similar situation, the Delhi High Court in “**Daulat Ram vs. Union of India, 1971 (2) SLR 502**” while dealing with Rule 16.38 of the Punjab Police Rules, 1934, as applicable to Delhi, has held as under:-

“The word "complaint" is not defined in the Rules. It must therefore, be understood in its general sense to mean any accusation, allegation or information of the commission of an offence or misconduct against the police officer concerned. Such an accusation, allegation or information may be in writing or it may be oral. It may be couched in the form of a petition by a member of the public or a note by a departmental officer or a confidential report by a superior police officer or information given by any person whether official or non-official.”

11. Therefore, for the applicability of the aforesaid Rule, there must be a complaint, either in writing or oral, made to the Superintendent of Police, who must furnish the details of the complaint immediately to the District Magistrate. But when criminal prosecution by way of registration of an First Information Report had already been registered, the occasion for seeking sanction of the District Magistrate before initiation of departmental proceeding would not arise.

12. This Court in “**Constable Pale Ram vs. State of Haryana and others in CWP No. 24413 of 2012**”, held that “*the said Rule comes into operation in case the punishing authority i.e. the Superintendent of Police instead of proceeding against the delinquent employee for judicial prosecution decides not to proceed for the same purpose and instead decides to take action departmentally. It is in this situation that the concurrence of the District Magistrate has to be obtained. Present is a case where judicial prosecution had followed the registration of an FIR against the petitioner. Apart from proceeding against the petitioner on the criminal side in the judicial proceedings, the Superintendent of Police has proceeded against him departmentally as well. In such a situation, the concurrence of the District Magistrate is not mandated under this Rule.*”

13. The judgment rendered in Constable Pale Ram's case (supra) has been subsequently followed in “**EHG Dhan Singh vs. State of Haryana, 2019 (1) PLR 81**”, wherein it has been held that “*once the F.I.R is registered, no prior sanction of the District Magistrate is required before initiating a departmental inquiry. As per Rule 16.38 of Rules 1934, it is only at the stage of the complaint when the sanction of District Magistrate is required.*” The judgment in Constable Pale Ram's case (supra) has also been followed by this Court in **Ishwar Singh vs. State of Haryana and others, passed in CWP No. 8085 of 2013**, decided on 23.04.2014.

14. In another judgment passed by this Court in “**Constable Surinder Singh versus Haryana State, 2014 (13) S.C.T. 778**”, it has been held that “*where the criminal prosecution has been launched in respect of conduct of a police official, the departmental proceedings need not have the concurrence of the District Magistrate. The concurrence of the District Magistrate is necessary only if the criminal proceedings are not launched against a police official.*”

15. Though the aforesaid judgments deal with application of Rule 16.38 of the Punjab Police Rules, 1934 as applicable to Haryana, yet the same are applicable to the cases under its application to Punjab as is the case in hand, being '*pari materia*'.

16. The case law as relied upon by learned counsel for the petitioners is distinguishable and not applicable to the facts of the present case, since as noted, an FIR already stood registered. The ratio as laid down by the Supreme Court in Ram Kishan's case (supra) does not contemplate a situation where FIR already stood registered, whereas the judgment rendered in Raj Kumar's case (supra) stands overruled in “**State of Punjab vs. Raj Kumar, 1988(1) RCR (Criminal) 639**” by the Supreme Court.

17. In the present case, FIR No.0012 dated 04.10.2017 (Annexure P-1) stood registered. It is only due to registration of the said FIR under the Prevention of Corruption Act and Indian Penal Code against the petitioner and his arrest under the said FIR that he was suspended with effect from 04.10.2017 vide order dated 24.10.2017 and Deputy Superintendent of Police, City-2, Patiala was appointed as an Inquiry Officer to conduct departmental inquiry against him. Therefore, Rule 16.38 of the Punjab Police Rules, 1934 would not be applicable on the facts of the instant case.

18. Similar have been the circumstances in the cases of petitioners in other three writ petitions.

19. Consequently, all the four writ petitions are hereby dismissed being devoid of merits.

August 26, 2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*