

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

**CWP No.13633 of 2017
Reserved on: July 20, 2022
Date of decision: August 26, 2022**

VIRENDER SHARMA

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. V. K. Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

Respondent No.4 in person.

JAISHREE THAKUR, J.

1. This is a petition that has been filed seeking issuance of an appropriate writ, order or direction, especially in the nature of certiorari for setting aside the order dated 26.04.2017 (Annexure P-11) passed by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh, whereby he has directed respondent No.2-Director General of Police, Haryana to review the orders passed by the Punishing Authority/Appellate Authority under Punjab Police Rules, 1934 (henceforth called the Rules of 1934), as applicable to State of Haryana and to impose a suitable major penalty on the petitioner and further to transfer him from the post of Station House Officer, if he is still occupying that assignment.

2. In brief, the facts are that the petitioner herein was appointed as Sub-Inspector in Haryana Police on 15.09.2003 and joined on the said post in district Yamuna Nagar. Thereafter, he was posted as Station House Officer, Police Station, Sector-14, Panchkula. During his tenure, on 31.05.2012, FIR No.73, under Sections 323, 332, 353 and 506 of the IPC was registered against Sh.Om Uppal-respondent No.4. Sh.Om Uppal-respondent No.4 filed representations dated 31.05.2012 and 22.10.2012 (Annexures P-1 and P-2 respectively) to the Deputy Commissioner of Police, Panchkula for initiating departmental disciplinary action against the petitioner herein alleging that the petitioner had abused him, and along with other police officials had beaten him and put him in the lock-up till 8.00 p.m. The complainant also alleged that a false FIR had been registered against him. In fact, his car had been towed away and when he went to retrieve the car, he was told to pay a sum of Rs 500/- for which, he demanded a receipt which was denied and thereafter, he was subjected to abuse and kept in illegal custody. On the basis of said representations, the Deputy Commissioner of Police, Panchkula appointed Sh. Rahul Dev, HPS, Assistant Commissioner of Police, Ambala Cantt. as Inquiry Officer. The inquiry was conducted and when it reached the final stage, the Inquiry Officer was changed by the competent authority on 30.03.2014 and inquiry was marked to Sh. Anil Kumar, HPS, Assistant Commissioner of Police, Barara. He considered the previous proceedings of the inquiry and concluded the report. He finally submitted the inquiry report dated 31.03.2014 (Annexure P-3) to the competent authority. As per the said inquiry report, the allegations allegedly levelled by the complainant-Om Uppal were found to be false, but the Inquiry Officer found that the petitioner was negligent in handling the situation, which could have been avoided and qua this aspect, he found the

petitioner guilty. The competent authority i.e. the Deputy Commissioner of Police, Ambala after considering the inquiry report, passed a detailed order dated 30.04.2014 (Annexure P-4) and exonerated the petitioner from all the allegations levelled by the complainant as well as from the charges of negligence and misbehavior. The complainant not being satisfied, filed an appeal/representation dated 04.06.2014 (Annexure P-5) to respondent No.2-Director General of Police, Haryana seeking reconsideration of the abovesaid order passed by the Deputy Commissioner of Police, Ambala. Similar request was made to the Additional Chief Secretary to Government Haryana, Home Department, who forwarded the same to the Director General of Police, Haryana (Annexure P-6) with a direction to enquire into the matter again. On receipt of aforesaid communications i.e. Annexures P-5 and P-6, the Director General of Police, Haryana sought a report from the Commissioner of Police, Ambala, Panchkula on the complaints. The matter was referred to Mr. C. S. Rao, IPS, I.G., Administration, who vide order dated 28.07.2015 (Annexure P-7) recommended review of the departmental inquiry as per provisions mentioned under Rule 16.28 of the Rules of 1934. On this account, the matter was again considered by the Commissioner of Police, Ambala, Panchkula and he vide order dated 14.10.2015, found no reason to disagree with the punishing authority's order and exonerated the petitioner and the same was communicated to the Hon'ble Chief Minister's office and Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh by the Director General of Police, Haryana vide communication dated 23.10.2015 (Annexure P-8). Complainant again filed representation to the Commissioner of Police, Ambala-Panchkula and the Commissioner of Police, Ambala-Panchkula wrote a letter to the Director General of Police, Haryana vide letter dated 11.02.2016

(Annexure P-9) that the departmental inquiry against the petitioner has been reviewed earlier by him and reply has been sent to your office vide letter dated 14.10.2015. Complainant again filed several representations against the petitioner to the Commissioner of Police, Ambala-Panchkula and on this, Commissioner of Police, Ambala-Panchkula informed the Director General of Police, Haryana vide letter dated 10.06.2016 (Annexure P-10) that no interference in the orders as passed of exonerating the petitioner is required. Complainant also filed a complaint before the Haryana Human Rights Commission, Chandigarh, which was dismissed vide order dated 22.08.2016 (Annexure P-13). Complainant then filed CWP No.21896 of 2016 in this Court against order dated 22.08.2016 and this Court vide order dated 21.10.2016, disposed of the writ petition directing Financial Commissioner and Principal Secretary to Government of Haryana, Department of Home, Haryana to decide his legal notice within a period of three months from the date of receipt of legal notice, in accordance with law. The complainant filed representation before the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh and the same was disposed of vide order dated 26.04.2017 (Annexure P-11), whereby respondent No.2-Director General of Punjab, Haryana was directed to review the orders as passed by the Punishing Authority/Appellate Authority under Punjab Police Rules, 1934, as applicable to State of Haryana and to impose a suitable major penalty on the petitioner and further to transfer him from the post of Station House Officer, if he was still occupying that assignment. The petitioner herein filed an application bearing CM-8324-CWP-2017 for recalling the order passed by this Court in CWP No.21896 of 2016. The said application was dismissed by this Court on 02.06.2017 on the ground that the order dated 21.10.2016, passed by this Court

in CWP No.21896 of 2016, already stands complied with, by order dated 26.04.2017 passed by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh. Aggrieved against the order dated 26.04.2017 (Annexure P-11), the instant writ petition has been filed.

3. Mr. V. K. Jindal, learned Senior Advocate assisted by Mr. Gopal Soni, Advocate for the petitioner herein would contend that the orders passed by the disciplinary authority have attained finality and the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh could not have passed the order dated 26.04.2017 (Annexure P-11) against the petitioner. He submits that the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh was not competent to reopen the matter as Rule 16.28 of the Rules of 1934, does not permit the authorities/State to review the matter time and again. It is submitted that the matter was reviewed twice and concluded by the authorities and that too in the year 2015. He would contend that the impugned order is against the principles of natural justice as no notice or opportunity of personal hearing was ever granted to the petitioner herein by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh. He further submits that in service matters, which is *inter se* between the employer and employee, the complainant or the third party cannot approach this Court under Article 226 of the Constitution of India or cannot approach the departmental authorities in appeal or review and on that account, complainant-Om Uppal had no *locus standi* to approach the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh. He would rely upon the judgment passed by this Court in **“Mehtab Singh versus State of Haryana and Others, 2007 (1) S.C.T. 709”**, wherein it has been settled that if by exercise of jurisdiction under Article 226 an order is quashed on the ground

of breach of natural justice resulting into restoration of another wrong or illegal order, the Court will refuse to exercise of its extra-ordinary jurisdiction. He further submits that the impugned order suffers from malice and is violative of Article 14 and Article 16 of the Constitution of India.

4. Mr. Tapan Yadav, DAG, Haryana, learned State counsel would submit that after receipt of the impugned order passed by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh, the service record of the petitioner herein was called for further proceedings but in the meantime, the petitioner filed the instant writ petition and this Court stayed further proceedings in the instant matter vide order dated 04.07.2017 and as such, no further action has yet been initiated. He submits that there is no infirmity in the order as passed by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh and the instant writ petition is premature and is liable to be dismissed being devoid of any merit.

5. Sh. Om Uppal, Respondent No.4, who is present in person, would submit that the petitioner herein has failed to point out any defect in decision making process of the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh. He submits that on the one hand, the petitioner herein is alleging that the Writ Court does not have the jurisdiction to question the decision of the disciplinary authorities as the orders have attained finality and on the other hand, he himself approached this Court to set aside the impugned order passed by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh. He would submit that the instant petition is liable to be dismissed being totally misconceived as the petitioner has sought to assail the action of the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh alleging it to be without jurisdiction,

whereas the authority has passed the impugned order on the directions of this Court, in accordance with law.

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

7. The basic question that arises for consideration is whether the impugned order could be passed without affording due opportunity of hearing to the petitioner ? Whether the said authority can direct that suitable major penalty be awarded to the petitioner, who was unheard ? Another question that arises for determination is whether an order passed under Rule 16.28 of Punjab Police Rules, 1934 can be reviewed again ?

8. The facts as stated are admitted to the extent that the complainant filed representations to the Deputy Commissioner of Police, Panchkula to take action against the petitioner on the allegations that the petitioner and other police officials had mistreated him, subjected him to a false FIR, beaten him and kept him in illegal detention in the lockup, till such time when his family members came and got him released. The petitioner faced departmental proceedings and the Inquiry Officer came to the conclusion that the petitioner had misbehaved with the complainant and he was held guilty of being negligent, irresponsible and indisciplined. However, he was exonerated by the punishing authority i.e. the Deputy Commissioner of Police, Ambala. The complainant, who was dissatisfied with the orders passed by the punishing authority, made a representation dated 04.06.2014 (Annexure P-5) to the Director General of Police, Haryana and the matter was recommended for review as per Rule 16.28 of the Rules of 1934 vide order dated 28.07.2015 (Annexure P-7). The Commissioner of Police, Ambala-Panchkula vide his order dated 14.10.2015 reviewed the order dated 30.04.2014 and found no reason to

disagree with the punishing authority's order, which was then communicated on 11.02.2016 to respondent No.2-Director General of Police, Haryana. The complainant then approached the High Court vide CWP No.21896 of 2016 asking for his legal notice to be decided, wherein he laid challenge to the exoneration of the petitioner. The said Civil Writ Petition was disposed of on 21.10.2016, with a direction to the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Home, Haryana to decide the legal notice by passing an appropriate order thereon, strictly in accordance with law and without being influenced by the earlier proceedings and result thereof. The Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh gave an opportunity of personal hearing to the petitioner in CWP No.21896 of 2016 i.e. respondent No.4 herein and by his order dated 26.04.2017 concluded '*that the Director General of Police, Haryana being the competent authority under PPR 16.28, is directed to review the orders of punishing authority and appellate authority. While reviewing the said orders, the Director General of Police, Haryana shall consider the allegations proved in the departmental Inquiry Report and shall pass orders of imposing suitable major penalty upon Inspector Virender Singh and suitable minor penalty upon other officials as the primary responsibility vests with the SHO for the incident to have occurred.*' The petitioner herein in the meantime, had instituted an application in the Civil Writ Petition No. 21896 of 2016 to recall the order dated 21.10.2016. However, the application for recalling the order was dismissed on 02.06.2017 as the matter was concluded by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh on 26.04.2017.

9. The principle of giving a person fair hearing before passing any adverse order is well settled. Once an order had been passed in favour of the petitioner in CWP No.21896 of 2016 i.e. respondent No.4 herein, it would have been incumbent upon the Respondents-State to call upon the petitioner herein, to answer to the allegations made against him before passing any adverse order. It would appear that notice was not issued to the petitioner herein by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh before passing of the impugned order. The principles of natural justice, as such, could not have been brushed aside and the rule of *audi alteram partem* could not have been openly violated, as has been blatantly done in the present case. The law as settled to the rule of *audi alteram partem* has been developed in the judgments of the Supreme Court in *A. K. Kraipak Vs. Union Of India, (1962) 2 SCC 262*; *Ridge Vs. Baldwin, 1964 AC 40*; *Sayeedur Rehman Vs. State Of Bihar, (1973) 3 SCC 333*; *State Of Orrisa Vs. Dr. (Miss) Binapani Dei, 1976 AIR (SC) 1269*; *Maneka Gandhi Vs. Union Of India, (1978) 1 SCC 248* and *Mohinder Singh Gill Vs. Chief Election Commissioner, (1978) 1 SCC 405*. The law laid down in all these judgments has been consistently followed by the Supreme Court in catena of judgments. Recently in the case of *Kanachur Islamic Education Trust (R) vs. Union of India, 2017 (15) SCC 702*, it has been held in para 19 :-

“Reasonable opportunity of hearing which is synonymous to 'fair hearing', it is not longer res integra is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure. The rule of 'fair hearing' requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to 'fair hearing' casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any

remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.”

10. Consequently, this Court is of the opinion that the impugned order is not sustainable and deserves to be set aside, as the basic rule of *audi alteram partem* has not been followed by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh while directing the Director General of Police, Haryana to impose major penalty upon the petitioner by reviewing the departmental proceedings under Rule 16.28 of the Rules of 1934.

11. Another factor that would persuade this Court to set aside the impugned order is that the authority while passing the order has concluded that the departmental proceedings are to be reviewed while simultaneously directing the Director General of Police, Haryana to the extent that “*while reviewing the said orders, the Director-General of Police, Haryana shall consider the allegations proved in the departmental Inquiry Report and shall pass orders of imposing suitable major penalty upon Inspector Virender Singh.*” By such a direction, the petitioner has been condemned unheard and already found guilty as charged, with a punishment of major penalty imposed. With such a direction, any review of the orders of the Disciplinary Authority and the Appellate Authority would be a farce and a foregone conclusion.

12. The power to review is specified under Rule 16.28 of the Rules of 1934 as applicable to the State of Haryana. The same are reproduced here for ready reference:

“16.28 (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 his punishment should not be enhanced. ”

13. It is well settled that the power to review an order is not an inherent power and it must be conferred by law either specifically or by necessary implication. In other words, it can be said that the power of review is not available to an authority unless, it is conferred by Statute. The Supreme Court has reiterated this proposition in a catena of decisions and, in **Kalabharati Advertising vs. Hemant Vimalnath Narichania and Others, 2010(9)SCC 437,** the Supreme Court has observed that in the absence of any provision under an Act or the Rules, a review of an earlier order was impermissible as review is the creation of the Statute and that the jurisdiction of review can only be derived from a Statute and not otherwise. Under Rule 16.28 of the Rules of 1934, the power of review is provided and it can be exercised either by the Inspector-General, the Deputy Inspector General, or the Superintendent of Police, who 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 orders of the Punishing Authority exonerating the petitioner have already been reviewed by the Commissioner of Police, Ambala-Panchkula on the direction of the Director General of Police, Haryana and the Commissioner of Police, Ambala-Panchkula came to the conclusion that there was no infirmity in the order. There is no provision under

the Rules of 1934, which would permit a second review of the proceedings, as has been directed vide the impugned order. The order of the punishing authority had already been upheld in review proceeding, and there was no provision for second review of the proceedings which stood culminated. This Court is of the opinion that any direction to review the matter afresh by invoking Rule 16.28 of the Rules of 1934, is not sustainable in law and is thus liable to be set aside. The respondents-State has not been able to point out any such provision in the Rules of 1934 that would permit a review of an order that already stood reviewed.

14. The argument as raised by the petitioner that the complainant cannot ask for the petitioner to be punished departmentally, as it is matter between the employer and employee, is not being addressed in this writ petition and is being left open, as the order dated 26.04.2017 (Annexure P-11) as passed by the Additional Chief Secretary, Government of Haryana, Home Department, Chandigarh is being set at naught on other legal grounds.

15. The contention of respondent No.4 that the petitioner has not been able to point out any infirmity in the impugned order, is without any basis in view of the observations made in the foregoing paras, and hence rejected.

16. As a sequel, the instant writ petition is allowed and the impugned order dated 26.04.2017 (Annexure P-11) is set aside.

August 26, 2022
Chetan Thakur

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*