

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

**CWP No.18557 of 2021 (O&M)
Date of decision : 21.03.2023**

Harmeet Singh

..... Petitioner

versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Amit Kumar Walia, Advocate for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Prayer is for issuance of writ in the nature of Certiorari for quashing the impugned order dated 15.01.2021 (Annexure P-6) whereby in the appeal preferred by the petitioner, the appellate authority by resorting to Rule 16.28 of the Punjab Police Rules, 1934 (for short 'the 1934 Act') has enhanced the punishment from stoppage of one annual grade increment without cumulative effect to forfeiture of two annual grade increments with cumulative effect.

Learned counsel for the petitioner submits that the provision resorted to i.e. Rule 16.28 of the 1934 Act itself provides for the procedure to be followed in case where the officer proposes to enhance the award. In the absence of compliance thereof, the impugned order cannot be sustained. He relies upon *Ex-ASI Dharambir Singh Vs. State of Haryana, (1997) 1 SCT 560*, *SI Sangat Singh Vs. State of Punjab, (2002) 6 SLR 279* and *Krishan Vs. State of Haryana & ors., (2013) 4 SCT 651*.

Per contra, learned State counsel submits that the appellate

authority was well within its power to review the order of punishment and enhanced the same. However, he is not in a position to controvert the factual assertions made on the basis of record filed by the counsel for the petitioner that the same has been reviewed without complying Rule 16.28 (3).

I have heard learned counsel for the parties and have gone through the records of the case.

The only issue that arises before this Court is :-

Has the appellate authority passed impugned order Annexure P-6 in conformity with the bare provision?

In order to answer the same it would be apt to peruse provisions contained in Rule 16.28 which reads as under :-

"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 his punishment should not be enhanced."

A bare perusal of the provision is explicitly clear and is unambiguous in its mandate, wherever the officer proposes to enhance an award, before passing final order, he is required to give delinquent an opportunity of showing cause either personally or in writing as to why his punishment should not be enhanced. The provision itself stems out from the principles of natural justice which has its roots in Article 14 of the Constitution of India and is based

on the principles of fairness. It is required to ensure that a delinquent has a right to defend himself and he should not be condemned unheard. The import of the provision is no more *res-integra* and has been interpreted by a Division Bench of this Court in the case of ***SI Sangat Singh's case supra*** wherein the Division Bench held as under :-

“8. A perusal of the above provision would show that in a case where the authority wants to enhance a penalty, it has to give the defaulter an opportunity of showing cause "either personally or in writing" before it passes the final order. In the present case, the opportunity was not given. The rule embodies an elementary principle of fairness. It ensures compliance with the elementary principles of natural justice. The purpose is to ensure that the employee is heard before an order to his prejudice is passed. In the present case, there was a complete violation of the provisions contained in the rule. Thus, the order is contrary to the provisions of Rule 16.28. It cannot be sustained.”

In view of the aforesaid law and the admitted factual position that no opportunity to show cause either personally or in writing was given to the petitioner before enhancing the punishment, this Court finds that the impugned order Annexure P-6 cannot be sustained and resultantly, the same is ordered to be set aside. The matter is remanded back to the appellate authority to decide the case afresh in accordance with law.

Petition stands disposed off.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

21.03.2023

Pooja sharma-I

Whether speaking/reasoned

Whether Reportable :

Yes

No