

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

CWP-7604-2021

Date of Decision:11.01.2024

ASI/LR KULDEEP SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Inderjit Sharma, Advocate for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 15.03.2021 (Annexure P-1) whereby DGP, Punjab has ordered to dismiss the petitioner from service.

2. The petitioner, on 20.02.1991, joined Punjab Police as Constable. The petitioner was promoted from the post of Constable to Head Constable and thereafter Assistant Sub Inspector. The petitioner, on account of being absent from duty, three times was subjected to punishment. The first punishment was awarded vide order dated 27.12.2001 passed by SSP, Tarn Taran whereby one year approved service for increment was forfeited. The petitioner unsuccessfully preferred appeal before DIG, Border, Range, Amritsar. The petitioner second time vide order dated 27.09.2004 was subjected to punishment of forfeiture of 2 years' approved service for increment. The said punishment was reduced to 1 year forfeiture of service for increment vide

order dated 22.08.2014 passed by IGP, Border Range, Amritsar. The petitioner for the third time was subjected to punishment of forfeiture of 3 years' of approved service for increment vide order dated 11.10.2004 passed by SSP, Tarn Taran. The appeal filed against said order was dismissed vide order dated 26.06.2009 passed by DIG, Border Range, Amritsar.

3. The petitioner filed three revision-cum-mercy petitions before Director General of Police, Punjab, Chandigarh against aforesaid punishment orders. The respondent-DGP while deciding mercy petition of the petitioner, issued show cause notice dated 22.10.2020 (Annexure P-11) calling upon the petitioner to show cause as to why he should not be dismissed from service. The notice was issued in terms of power conferred by Rule 16.28 of Punjab Police Rules, 1934 (for short 'the Rules'). The petitioner filed reply to show cause notice and respondent-DGP ordered to dismiss the petitioner from service. The impugned order dated 15.03.2021 was communicated by IGP on behalf of DGP.

4. Learned counsel for the petitioner submits that as per Rule 16.2 of the Rules, a Police Officer can be dismissed from service for gravest act of misconduct. The petitioner was subjected to punishment on account of absence from duty. The act of petitioner does not fall within the ambit of gravest misconduct. The petitioner preferred revision-cum-mercy petition before DGP who in terms of Rules 16.28 of the Rules, dismissed the petitioner from service. Rule 16.28 of the Rules confers power of review upon Inspector General/Deputy Inspector General/Senior Superintendent of Police and said power is not conferred upon DGP. The petitioner had filed revision-cum-mercy petition and

while adjudicating said petition, it was not just and fair on the part of DGP to exercise power of review under Rule 16.28 of the Rules.

5. Learned State Counsel submits that an employee can be dismissed from service even for single act and in the case in hand, the petitioner was subjected to punishment three times, thus, there was repeated misconduct on the part of petitioner which compelled DGP to dismiss him from service.

6. On being asked, learned State counsel expressed his inability to controvert the fact that power under Rule 16.28 of the Rules has been conferred upon IG/DIG/SSP whereas the impugned order has been passed by DGP. He further failed to controvert the fact that DGP has exercised power while adjudicating mercy petition of the petitioner.

7. I have heard the arguments of learned counsel for the parties and with their able assistance perused the record.

8. The impugned order deserves to be set aside on more than one count.

(i) The respondent-DGP has passed impugned order in exercise of power conferred by Rule 16.28 of the Rules. Rule 16.28 of Punjab Police Rules 1934 reads as:

“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. [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 purpose 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.”

From the perusal of above quoted rule, it is quite evident that power of review under Rule 16.28 has been conferred upon Inspector General/Deputy Inspector General/Senior Superintendent of Police whereas impugned order has been passed by DGP. It is settled proposition of law that an authority which is not empowered with a specific power cannot exercise the said power. The DGP acting beyond his jurisdiction has passed the impugned order. The said power can be exercised by IG/DIG/SSP. It is apt to notice here that the impugned order has been communicated by DIG though it has been passed by DGP and this fact has been categorically noted in the impugned order. For the sake of clarity the operative portion of the impugned order reads as:

“2. ASI/L.R. Kuldeep Singh No.1010/Gurdaspur (Old No.3023/Tarn Taran) has filed appeals against above-stated orders before this Office which were carefully perused and he was granted opportunity of personal hearing. Previous service record of the appellant was scrutinized and it has been found that the applicant is habitual of remaining absent from duty. The act and conduct of the applicant being

responsible member of disciplined force and being conversant of the rules, is absolutely condemnable and punishable. Therefore, show cause notice dated 09.09.2020 for dismissal from service was issued to the applicant by this Office and he was granted 10 days time to file written reply. He filed written reply in this regard which was carefully perused but in the explanation furnished by him, no such fact was disclosed from which his innocence could be proved.

3. Keeping in view these facts, reviewing the above order passed by SSP, Tarn Taran, under P.P.R. 16.28, Director General of Police, Punjab has ordered to dismiss from service ASI/LR Kuldeep Singh No.1010/Gurdaspur (Old 3023/Tarn Taran).

DIG/Administrator

For Director General of Police, Punjab

No. 3533/E-2 (5) Chandigarh Dated 15.03.2021”

A Coordinate Bench of this Court in ***Rajpal Vs. State of Haryana and others, RSA No. 3150 of 2001*** has held that DGP cannot exercise power of review in term of Rule 16.28 of the Rules. The relevant extracts of the judgment reads as:

“There is some weight in the arguments of both the learned counsel. Though the argument of the appellant to the effect that he is innocent cannot be accepted yet the Court can also not turn a blind eye to the fact which are otherwise not disputed. I cannot also be unmindful of the fact that no power of review under Rule 16.28 has been conferred upon the DGP and under that Rule power is restricted either to IG or the State Government. Learned DAG has argued that once the appellant had himself filed revision to the DGP the exercise of power of review under Rule 16.28 cannot be objected. I regret my inability to favour this

argument. In the circumstances of this case, the DGP could best have referred the matter for review to the competent IGP or the State Government but could not pass an order himself. Consequently, I have no hesitation in setting aside the order passed in the revision petition. Now the issue which remains is with regard to the relief which can be granted to the appellant.”

(ii) The respondent has passed order of dismissal. A Police Officer may be dismissed in terms of Rule 16.2 of the Rules. The said rule specifically provides that a Police Officer may be dismissed for gravest act of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. Rule 16.2 of the Punjab Police Rules reads as:

*“16 .2. **Dismissal**-(1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.*

(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed:

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

From the perusal of above quoted rule, it is quite evident that a Police Officer can be dismissed either for gravest act of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

From the perusal of impugned order, it is quite evident that respondent has not even cared to point out whether petitioner has been dismissed for gravest act of misconduct or because of cumulative effect of continued misconduct. The respondent in the impugned order has recorded facts but has not recorded any finding in support of his harsh order of dismissal. The respondent was duty bound to comply with mandate of Rule 16.2 of the Rules. It was duty of the respondent to find out whether the continued misconduct of the petitioner is proving incorrigible and complete unfitness for police force but there is no such finding. The petitioner was in service for more than 30 years. The respondent was further duty bound to consider length of service as well as claim of the petitioner with regard to pension. The respondent has not complied with even a single requisite of Rule 16.2 of the Rules and has mechanically passed impugned order. Thus, the impugned order deserves to be set aside on the ground of non-

compliance of mandate of Rule 16.2 of the Rules.

(iii) The petitioner filed three mercy petitions against punishment orders. The DGP while considering mercy petitions of the petitioner issued show cause notice calling upon him to show cause as to why he should not be dismissed from service. It is not a case of the respondent that an independent proceeding was initiated against the petitioner in exercise of power conferred by Rule 16.28 of the Rules. The petitioner prior to filing revision-cum-mercy petition had filed appeals which were adjudicated by DIG/IGP. The respondent-DGP by impugned order has not only set aside orders of adjudicating authority but also appellate authority. The petitioner preferred mercy petition and while adjudicating said petition, the respondent exercised power of review and ordered to dismiss the petitioner from service. This Court does not find act of respondent just, fair and right in the eye of law as well as equity. The impugned order is grossly dis-proportionate to punishment awarded by adjudicating authority. The procedure adopted by respondent seems to be unknown to law.

9. In the wake of above facts and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 15.03.2021 (Annexure P-1) is hereby set aside.

10. Before parting with this judgment, this Court would hasten to add that Courts neither can legislate nor can ask the legislature to legislate in a particular manner, however, Courts from their experience, gained while dealing with same set of cases, can suggest. Accordingly, the State, in the light of prevailing situation is suggested to re-examine Chapter XVI (Punishment) of Punjab Police Rules, 1934. In the said

Chapter, no post above the rank of IGP has been noticed. For all disciplinary and punishment purposes, IGP has been considered as highest authority whereas at present DGP is highest authority.

The Police Officers after dismissal of appeal by IGP are filing revision-cum-mercy petition before DGP which is not contemplated by rules. As per Rules 16.32 of the Rules, no revision lies against the order of IGP and an aggrieved person may submit mercy or review petition before the same authority i.e. IGP.

As per Rule 16.28, IGP/DIG/SSP can review orders of his subordinate. Power of review is not bestowed on officers senior to Inspector General. Normally, power of review is conferred upon the same authority whereas under Rule 16.28 power of review has been conferred upon an officer senior to officer passing the order. The rule is silent about review of appellate order, thus, the Police Authorities are reviewing even appellate orders. This aspect needs to be clarified.

As per Rule 16.3 read with proviso to Rule 16.2, authorities are supposed to re-consider departmental punishment, if criminal proceedings are dropped. Proviso to Rule 16.2 (2) as well as Rule 16.3 needs to be re-considered because acquittal of a Police Officer in criminal proceedings makes entire exercise of departmental action futile. This Court has already dilated this aspect in **CWP No.15636 of 2022**.

(JAGMOHAN BANSAL)

JUDGE

11.01.2024

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>