



RSA-1981-2024 (O&M)

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

(128)

RSA-1981-2024 (O&M)

DATE OF DECISION:- 20.08.2024

HEAD CONSTABLE RAVINDER KUMAR**...APPELLANT****VERSUS****STATE OF HARYANA AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Sumit Sangwan, Advocate
for the appellant.

SUVIR SEHGAL, J. (Oral)

1. Plaintiff-appellant is in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court, whereby the findings of the Trial Court have been reversed and the suit filed by him was dismissed.
2. Pleaded case of the plaintiff-appellant, who was working as a Head Constable, was that he was named as an accused in FIR No.46 dated 16.03.2012, Ex.P-6, lodged under Section 302, 342 read with Section 34, IPC on account of custodial death of a prisoner. After investigation, a cancellation report dated 03.10.2012, Ex.P-7, was submitted to the Court, but on the opinion given by the DSP, Charkhi Dadri, plaintiff was placed under suspension on 13.03.2012 and disciplinary proceedings were initiated. Adverse remarks, Ex.P-5, were recorded in his Annual Confidential Report for the



period 07.11.2011 to 31.03.2012. An inquiry officer was appointed, who found the plaintiff to be innocent and submitted a report. Disagreeing with the report, Superintendent of Police, Bhiwani found him guilty of the charges and a show cause notice, Ex.P-31, was issued to him proposing punishment of stoppage of two increments with permanent effect. He submitted his reply and by order dated 29.03.2013, Ex.P-2, punishment of censure was imposed. Plaintiff filed a representation before the Inspector General of Police, Hisar, who rejected it vide order dated 17.07.2013, Ex.P-4. Challenging the disagreement note, punishment order as well as the adverse remarks recorded in his ACR, plaintiff filed a suit for declaration.

3. Upon notice, suit was contested by the defendant-respondents by filing a written statement, wherein various preliminary objections were taken. It was submitted that the FIR was registered against the plaintiff due to his negligence and carelessness. A stand was taken that the departmental inquiry was conducted in compliance of the principles of natural justice and the punishment was imposed as per the rules. Plaintiff did not file any replication and issues were framed on the basis of the pleadings of the parties, who led evidence in support of their respective case. After hearing the counsel for the parties, by judgment dated 21.08.2017, Trial Court partly decreed the suit and held that the disagreement note and the censure order were illegal, null and void. Defendants were directed to regularize the suspension period of the plaintiff and grant him all



consequential benefits. Defendants filed an appeal before the learned District Judge, Bhiwani, which was accepted by judgment dated 16.05.2024, resulting in the institution of the present appeal by the plaintiff-appellant.

4. Counsel for the appellant has contended that before initiating a departmental inquiry, sanction of the Magistrate was mandatory under Rule 16.38 of the Punjab Police Rules, 1934 (for short “the Rules”). He has placed reliance upon a judgment of this Court in ***State of Haryana Versus Ex. HC. Anant Ram, 2015 (4) S.C.T. 572*** to contend that as the obligatory rule has not been complied with, the entire process of holding an inquiry was vitiated and the punishment order deserves to be set aside. He has urged that the learned District Judge has failed to appreciate the relevant rule.
5. I have heard counsel for the appellant and considered the submissions made by him.
6. The sole question that arises for consideration before this Court is that whether prior to initiating a departmental inquiry, sanction of the Magistrate is necessary under Rule 16.38 of the Rules.
7. This question has been answered by a Co-ordinate Bench of this Court in ***Constable Pale Ram Versus State of Haryana (CWP-24413-2012)***, decided on 14.12.2012. While noticing the relevant Rule, this Court has held as under:-

“Reliance upon Rule 16.38 of the 1934 Rules again for challenging the impugned order is misplaced. Rule 16.38 of the 1934 Rules reads as follows:-



“Rule 16.38

a) Criminal offences by police officers and strictures by courts-procedure regarding-

1) Where a preliminary enquiry of investigation into a complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.”

This Rule again would not be applicable to the case in hand for the reason 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.”



8. This judgment has been affirmed by a Division Bench of this Court in LPA-263-2013, which was dismissed on 28.05.2013. Another Co-ordinate Bench of this Court in ***EHC Dhan Singh and others Versus State of Haryana and others, 2019 (1) P.L.R. 81*** has held that once FIR is registered, no prior sanction of the District Magistrate is required before initiating a departmental inquiry. As per Rule 16.38 of the Rules, it is only at the stage of the complaint where the sanction of the Magistrate is required. Repelling the argument raised by the counsel for the appellant, who had placed reliance upon ***Anant Ram's*** case (supra), this Court held that the judgment is not applicable to the facts of the present case as in ***Anant Ram's*** case, FIR had not been registered and as per Rule 16.38, *ibid*, it was only at the stage of the complaint when the sanction of the District Magistrate was held to be necessary.
9. The admitted position in the present case is that a criminal case was registered against the plaintiff-appellant, although, after investigation, a cancellation report was filed. The mere filing of the cancellation report would not make it mandatory to get a prior sanction of the Magistrate before commencing the departmental proceedings. It was because of the criminal case that the disciplinary proceedings were initiated against the plaintiff, which have culminated in the passing of the censure order. The judgment in ***Pale Ram's*** case (supra) is squarely applicable to the facts of the present case. There is no illegality or infirmity in the judgment passed by the Lower Appellate Court.



10. Appeal being devoid of merit, is dismissed with no order as to cost.
11. Pending applications are also disposed of.

(SUVIR SEHGAL)
JUDGE

20.08.2024
kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No