

Date of decision: 01.10.2024

...RESPONDENTS

MANOJ KUMAR
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I attest to the accuracy and
integrity of this document



3. The respondents vide order dated 28.06.1999 (Annexure P-1) forfeited petitioner's two years' service for the purpose of increments. He preferred an appeal before Appellate Authority which travelling beyond the prayer of the appellant-petitioner passed order dated 17.03.2000 whereby punishment of forfeiture of two years' service was substituted by dismissal from service. The petitioner preferred revision before Inspector General of Police who vide order dated 15.11.2000 (Annexure P-4) dismissed his revision. The petitioner preferred second revision before DGP who vide order dated 16.10.2002 set-aside appellate orders and ordered to reinstate him, however, held that petitioner shall not be entitled to pecuniary benefits during the period of his dismissal from service.

4. The petitioner in the intervening period had filed CWP-15234-2001 assailing order of Appellate Authority whereby punishment of forfeiture of two years' service was converted into dismissal from service.

5. This Court, vide order dated 01.05.2003 (Annexure P-7) disposed of aforesaid writ petition with a direction to the respondent to pass an appropriate order with respect to other benefits of the petitioner. The respondent vide order dated 30.07.2003 (Annexure P-8) held that the petitioner is not entitled to pecuniary benefits for the period he remained dismissed from service because he has not challenged order dated 16.10.2002 passed by DGP whereby he was reinstated and denied pecuniary benefits during the period of his dismissal.

6. The petitioner came to be acquitted vide judgment dated 27.01.2010 passed by Chief Judicial Magistrate, Amritsar. In view of his acquittal, he filed an appeal before DGP claiming back wages. The DGP vide order dated



18.03.2013 dismissed his claim on the ground that he was reinstated vide order dated 16.10.2002 and in the said order it was specifically held that he would not be entitled to back wages. The said order was never challenged, however, the petitioner again started making representations to the authorities. The Commissioner of Police, Amritsar vide order dated 13.10.2023 (Annexure P-12) rejected claim of the petitioner on the ground that order dated 16.10.2002 passed by DGP was not challenged.

7. Mr. K.K. Thakur, Advocate submits that petitioner was acquitted in 2010 and as per Rules applicable to officials of Punjab Police, the respondents were bound to reconsider claim of petitioner *qua* back wages. The respondents have mechanically dismissed claim of the petitioner.

8. I have heard counsel for the parties and with their able assistance perused the record.

9. While adjudicating petitions of officers of the Punjab Police, I have noticed that police officers are filing incessant appeals/revisions against punishment orders before higher Authorities and these Authorities without examining their jurisdiction under Punjab Police Rules are entertaining. Sometimes representation is treated as appeal and sometimes revision. There are specific provisions under Punjab Police Rules governing First Appeal and thereafter Revision. There is no provision which permits filing of second appeal or second revision. The officers at the helm of the affairs as per their whims and fancies are entertaining representations in the name of appeal or revision and passing orders. This practice needs to be stopped.

10. In the case in hand, the petitioner was subjected to higher penalty by Appellate Authority than imposed by adjudicating Authority. The Appellate



Authority may or may not be competent to enhance quantum of punishment. This is not subject matter of instant petition, thus, no observation is made. The petitioner preferred revision against order passed by First Appellate Authority. He preferred first revision before IGP and second before DGP. Rule 16.29 permitting an aggrieved officer to file appeal and Rule 16.32 permitting to file revision are reproduced as below:-

“16.29 Right of appeal (1) Appeals shall lie only against orders of dismissal or reduction or stoppage of increment or forfeiture of approved service for increment.

(2) There shall be one appeal only from the original order, and the order of the appellate authority shall be final.

(3) A copy of the original order appealable shall be supplied to the person concerned free of cost.

(4) Any persons wishing to appeal under sub-rule (1) may apply to the Superintendent for a copy of the complete record, or any portion thereof. Such copies shall not be given during the pendency of the original proceedings for the facilitating of cross-examination or the preparation of the defence. Copies of the record of preliminary enquiries [rule 16.24 (viii)] shall not be given for purposes of appeal.

Such application shall bear a court-fee stamp of the value of two annas, unless the applicant is in Jail, and shall be accompanied by a deposit of the copying fees chargeable under the scale in force in the civil courts of the district.

(5) The copy of such record shall be given with as little delay as possible, and the Superintendent shall certify to its correctness and to the date on which it was given to the applicant.



6. The appellate authority in cases of reduction and dismissal is as indicated in the following table:-

<i>Officer by whom original order of punishment is framed</i>	<i>Appellate authority</i>
<i>Deputy Superintendent (Administrative) Government Railway Police, Deputy Superintendent, in charge of Railway Police Sub-Division.</i>	<i>Assistant Inspector-General Government Railway Police.</i>
<i>Superintendent of Police, Senior Assistant Superintendent of Police, Lahore, Officer-in-Charge of Recruits Training Centre, Deputy Superintendent of Police, Punjab Armed Police, Lahaul and Spiti.</i>	<i>Deputy Inspector-General of Police and Assistant Inspector-General, Provincial Additional Police (designated as Commandant Provincial Additional Police).</i>
<i>Deputy Inspector-General of Police, Assistant Inspector-General Government Railway Police, Assistant Inspector General, Provincial Additional Police (designated as Commandant, Provincial Additional Police), Assistant Inspector General of Police (Traffic)</i>	<i>Inspector-General of Police.</i>

(7) Appeals against reduction shall be presented through the Superintendent of Police of the district in which the appellant is serving; but in the case of officers serving directly under a Deputy Inspector-General of Police appeals shall be forwarded through



such Deputy Inspector-General of Police. Appeals against dismissal shall be forwarded direct to the appellate authority.

16.32. Revision. *An officer whose appeal has been rejected is prohibited from applying for a fresh scrutiny of the evidence. Such officer may, however, apply, within a month of the date of dispatch of appellate orders to him, to the authority next above the prescribed appellate authority for revision on grounds of material irregularity in the proceedings or on production of fresh evidence, and may submit to the same authority a plea for mercy: provided that no application for the revision of an order by the Inspector-General will be entertained. An officer whose appeal has been heard by the Inspector General may, however, submit to the Inspector-General a plea for mercy or may apply to the Inspector-General for a review of his appellate order only on the ground that fresh evidence has become available since the appellate order has been pronounced. This rule does not affect the provisions of rule 16.28. Such application or plea must be in English.”*

From the reading of above-quoted rules and other Rules of 1934 Rules, I am unable to find out any provision which permits DGP to entertain Second Revision. The DGP entertained second revision and set-aside order passed by Revisionary Authority.

11. The petitioner enjoyed benefits arising out of said order which was never challenged. The petitioner did not challenge said order but made multiple representations and appeals before Authorities claiming back wages. The claim of petitioner *qua* back wages was rejected at the first instance by SSP on 30.07.2003 and thereafter by DGP vide order dated 18.03.2013. The petitioner did not challenge even these orders but kept on making representations. SSP passed order on 13.10.2023. It is apt to notice that the order dated 18.03.2013 was passed after his acquittal.

12. The petitioner was reinstated because of order passed by DGP. The petitioner enjoyed fruits arising out of said order but wants to eschew benefit denied. It is a settled proposition of law that a person cannot eschew part of a document or instrument or order which is unfavourable to him while claiming benefit of favourable part. It amounts to approbation and reprobation. The order dated 16.10.2002 passed by DGP was unknown to law. The said order has not been disputed by respondents and at this stage, it would not be appropriate to examine veracity of said order. Similarly, it would not be just and fair to set-aside part of said order which is unfavourable to the petitioner. He at this stage is claiming that he has been acquitted in the criminal trial, thus, he should be paid salary of the period of dismissal from service. He has ignored the fact that he was reinstated without awaiting outcome of criminal proceedings. He even did not challenge order dated 30.07.2003 passed by SSP and 18.03.2013 passed by DGP. At this belated stage, he wants to eschew unfavourable part of order dated 16.10.2002, though, he has already enjoyed favourable part. There seems no reason to set-aside part of order dated 16.10.2002 passed by DGP or orders dated 30.07.2003 and 18.03.2013 passed by respondents.

13. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

01.10.2024
manoj

[JAGMOHAN BANSAL]

JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No