



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

CWP-876-2025

Date of Decision: 16.01.2025

HARI RAM

..... Petitioner

Versus

STATE OF HARYANA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Vijay Kumar, Advocate and
Mr. R.K. Khera, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. AG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside:-

(i) Inquiry Report dated 17.08.2018 whereby inquiry officer held the petitioner guilty for indiscipline and gross negligence;

(ii) Order dated 26.07.2019 (Annexure P-6) whereby penalty of stoppage of two annual increments was awarded;

(iii) Order dated 18.02.2020 (Annexure P-9) whereby Appellate Authority enhanced quantum of punishment and

(iv) Order dated 08.04.2022 (Annexure P-13) whereby his revision has been dismissed.



2. The petitioner is part of Haryana Police Force. He developed illicit relations with a lady who later on lodged FIR No.21 dated 14.03.2017, under Sections 376 and 323 of IPC against him. She was pregnant from him. On account of his said act, the departmental initiated departmental proceedings besides pending trial arising out of aforesaid FIR. The trial Court vide judgment dated 06.05.2019 (Annexure P-7) acquitted him on the ground that there was consensual relation between accused and prosecutrix. It is apt to notice here that it was not disputed that petitioner had illicit relations with prosecutrix. Both were married still developed illicit relations. The Disciplinary Authority vide order dated 26.07.2019 (Annexure P-6), after noticing judgment of acquittal awarded punishment of stoppage of two annual increments without cumulative effect. The petitioner preferred an appeal before Appellate Authority which vide order dated 18.02.2020 not only dismissed his appeal but also enhanced the quantum of punishment. As per appellate order, the petitioner is liable to punishment of stoppage of two annual increments with permanent effect; meaning thereby the Appellate Authority made order of forfeiture of two increments from temporary to permanent. The petitioner unsuccessfully preferred revision before DGP.

3. Mr. Vijay Kumar, counsel for the petitioner submits that Appellate Authority had no power to enhance quantum of punishment, thus, impugned order of Appellate Authority is bad in the eye of law.

4. Notice of Motion.

5. Mr. Raman Sharma, Addl. AG, Haryana who on advance notice is present in Court, accepts notice on behalf of the respondent-State and waives service.



6. With consent of learned counsel for the parties, the case is taken up for final disposal.

7. Learned State counsel submits that petitioner was acquitted by trial Court, however, there is no dispute to the effect that petitioner was involved in an immoral act. He is part of disciplined Police Force, thus, authorities have rightly awarded him punishment.

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

9. The petitioner preferred appeal under Rule 16.29 of Punjab Police Rules, 1934 (for short '1934 Rules'). The Appellate Authority has to pass order in terms of Rule 16.31 of 1934 Rules. The relevant extracts of Rule 16.29 and 16.31 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. xxx xxxx xxx xxxx

7. xxx xxxx xxx xxx

16.31. Orders on appeals. - *Every order passed in appeal shall contain the reasons therefor. A copy of every appellate order and the reason therefor shall be given free of cost to the appellant.*

10. From the perusal of Rule 16.29 and Rule 16.31 of 1934 Rules, it is evident that there is no provision which empowers Appellate Authority to enhance quantum of penalty imposed by original authority. In the case in hand, appellate order dated 18.02.2020 (Annexure P-9) has been passed by Appellate Authority and it has been passed in terms of Punjab Police Rules, 1934. Arguments of learned counsel for the respondents do not disclose power of Appellate Authority to enhance penalty, thus, penalty has been enhanced without jurisdiction. It is a settled proposition of law that Appellate Authority can enhance penalty if there is specific provision and in the absence of provision, Appellate Authority cannot enhance penalty. A Division Bench of this Court in ***M/s Nirvair Singh Vs. Financial Commissioner Taxation, Punjab Civil Secretariate-1 Punjab 2019 (20) GSTL 349*** has adverted with this issue and has held that Appellate Authority cannot enhance penalty in the absence of specific power. The relevant extracts of the judgment read as:

“6. Section 14 of the Punjab Excise Act reads as under:-



"14. Appeal- An appeal shall lie from an original or appellate order of any excise officer in such cases or classes of cases and to such authority as the [State] Government shall by notification declare."

7. Section 14 does not confer a power upon the appellate authority to pass an order more burdensome than the order appealed against. It does not entitle the appellate authority to enhance the penalty. Our attention was not invited to any other provision of the Act that indicated such a power either. Absent a power to the contrary conferred by a statute, an appellate authority cannot grant a relief in favour of the respondent. It can either confirm the order appealed against or set it aside. It can also modify the order, but not to the further detriment of the appellant except as to an order for costs.

Where the Legislature intends conferring a power upon an appellate or revisional authority to enhance the relief in favour of the respondent, it does so specifically. For instance, [Sections 128 and 128-A](#) of the Customs Act, 1962 (in short the [Customs Act](#)) confer such a power. Sub-section (3) of [Section 128-A](#) of the Customs Act confers the power upon the Commissioner (Appeals) to enhance the penalty. This is evident from the first proviso to sub-section (3) of [Section 128-A](#) which stipulates that an order enhancing any penalty or fine in lieu of confiscation shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed enhancement. The word "modifying" in the opening part of sub-section (3), therefore, includes an order enhancing the penalty and it is for this reason that the first proviso requires an order enhancing the penalty not to be passed



unless the appellant has been given a reasonable opportunity of showing cause against the same. The Punjab Excise Act does not confer such a power upon the appellate authority. The impugned order enhancing the penalty was, therefore, without jurisdiction.

8. The petition is, therefore, allowed to the extent of quashing the imposition of penalty of Rs 4 lacs. It is clarified that this order does not operate against or in respect of the sum of Rs 1 lac paid by the petitioner pursuant to the stay order dated 18.05.2016.”

11. The afore-cited judgment is squarely applicable to the case in hand, thus, impugned order dated 18.02.2020 (Annexure P-9) is hereby set aside to the extent of enhancement of punishment. The petitioner is not disputing quantum of penalty imposed by adjudicating authority, thus, this Court does not express any opinion *qua* said penalty.

12. The petition stands disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

16.01.2025
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No