



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

Date of Decision: 11.09.2025

1. CWP-276-2023

Dinesh Kumar ...Petitioner

Versus

State of Haryana and Others ...Respondents

2. CWP-17461-2022 (O&M)

Dinesh Kumar ...Petitioner

Versus

State of Haryana and Others ...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sunil Kumar Nehra, Advocate,
Mr. Viren Nehra, Advocate,
Mr. Rahil Mahajan, Advocate,
Mr. Arjun Dosanj, Advocate
Mr. Anuj Chauhan, Advocate and
Ms. Meghna Nehra, Advocate
for the petitioner.

Mr. Suneel Ranga, DAG, Haryana.

JAGMOHAN BANSAL, J. (ORAL)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from **CWP-276-2023**.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of show cause notice dated 27.12.2022 whereby respondent has proposed to

downgrade his ACR for the period 2014-2015.

3. The petitioner was enlisted as Constable on 27.10.2000. He was promoted as Head Constable on 04.05.2012. The respondent initiated departmental proceedings against him alleging misconduct while investigating FIR No.20 dated 17.01.2015 registered under Sections 323, 325 and 506 of IPC and Sections 25, 54 and 59 of Arms Act, 1959 at Police Station Punhana. The Enquiry Officer did not find him guilty, however, Superintendent of Police (SP), Nuh passed show cause notice-cum-disagreement note dated 11.01.2016 whereby petitioner was called upon to show cause as to why he should not be dismissed from service. He filed reply to said show cause notice. The Disciplinary Authority vide order dated 23.03.2016 did not award him proposed penalty, however, he was ordered to be careful in future. The same Authority recorded his ACR. In the ACR for the period from 01.04.2015 to 07.02.2016, he was declared undisciplined, unreliable, immoral, man of doubtful integrity and average employee. He preferred representation against adverse remarks recorded in ACR. The matter came up for consideration before Commissioner of Police, Faridabad who expunged remarks with respect to integrity, reliability and character. Adverse remarks with respect to discipline and general remained intact. It is apt to mention here that petitioner besides filing representation against adverse remarks preferred appeal against order of warning. The said appeal was dismissed vide order dated 18.05.2017 by Commissioner of Police, Faridabad.

The petitioner claimed promotion to the post of Assistant Sub Inspector (ASI). The authorities formed preliminary opinion that petitioner's ACR of 2014-15 ought to be downgraded. The matter came

up for consideration before Director General of Police (**DGP**), Haryana who sought report from Additional Director General of Police, (**ADGP**), South Range, Rewari. The ADGP, South Range, Rewari vide report dated 19.09.2022 intimated DGP, Haryana that Commissioner of Police, Faridabad while considering representation against adverse remarks recorded in ACR for the period 2015-2016 had considered misconduct committed by petitioner during 2014-2015, thus, at this stage, ACR of the petitioner cannot be downgraded for the year 2014-2015. Communication dated 19.09.2022 was based upon letter dated 02.09.2022 of Deputy Commissioner of Police, Headquarter, Faridabad. DGP, Haryana vide communication dated 03.11.2022 intimated ADGP, South Range, Rewari that he should decide the matter at his own level after seeking opinion of District Attorney (**DA**). The ADGP, South Range, Rewari sought opinion of DA who in his report dated 09.08.2022 opined that Commissioner of Police, Faridabad has already considered misconduct of the petitioner committed during 2014-2015, thus, his ACR at this stage for the period 2014-2015 cannot be downgraded. Despite opinion of Commissioner of Police, Faridabad and Assistant District Attorney (**ADA**), SP, Nuh issued show cause notice dated 27.12.2022 calling upon the petitioner to show cause as to why his ACR for the period 2014-2015 should not be downgraded as per Government instructions dated 20.06.2003 and 22.10.2001.

4. Learned counsel representing the petitioner submits that SP, Nuh downgraded petitioner's ACR for the period 2015-2016 as he was awarded punishment of warning on 23.03.2016. There is no occasion to downgrade his ACR for the period 2014-2015. The petitioner is entitled

to promotion because he was awarded punishment of warning which is not a statutory punishment. The statutory punishment is censure and even currency of censure is six months. Integrity of the petitioner was declared doubtful in the ACR of 2015-2016 and Competent Authority has expunged remarks with respect to integrity and reliability, thus, he cannot be treated as man of doubtful integrity.

With respect to **CWP 17461-2022**, Mr. Nehra submits that Disciplinary Authority recorded disagreement note and called upon the petitioner to show cause as to why punishment of dismissal from service should not be inflicted. The petitioner was not supplied reasons for disagreement and was not granted opportunity of hearing. The petitioner was straightaway supplied disagreement note with show cause notice proposing punishment. The procedure adopted by respondent was in gross violation of judgment of Hon'ble Supreme Court in ***Punjab National Bank Vs. Kunj Behari Misra 1998(7) SCC 84***.

5. *Per contra*, learned State counsel submits that as per Government Instructions, ACR is required to be downgraded for the period during which alleged offence was committed. The petitioner was guilty of accepting bribe. He was subjected to punishment of warning. There was specific allegation of doubtful integrity. The petitioner has been issued show cause notice proposing downgrading of ACR. No order till date has been passed, thus, writ petition is premature. He is man of doubtful integrity, thus, he cannot be promoted. The Authorities have to consider ACR of 10 years. As per government instructions, if punishment is awarded, the Competent Authority is duty bound to downgrade ACR. The petitioner was found guilty of corruption, thus, his ACR for the

relevant period needs to be downgraded. The instructions are not under challenge.

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

7. The conceded position emerging from the record is that petitioner was served chargesheet dated 10.11.2015 alleging misconduct. He was exonerated by Enquiry Officer. The Disciplinary Authority recorded disagreement note dated 11.01.2016 and issued him show cause notice proposing punishment of dismissal from service. In the show cause notice, there was proposal of dismissal from service, however, he was awarded simple warning. His ACR for the period from April' 2015 to February' 2016 was downgraded. Adverse remarks in his ACR were recorded. He was declared man of doubtful integrity. He preferred representation before Competent Authority which expunged adverse remarks *qua* integrity, reliability and moral character. The respondent has issued show cause notice proposing downgrading of ACR for the period 2014-2015. The petitioner is assailing show cause notice and till date, no order has been passed. He is not assailing instructions issued by State Government which are foundation of impugned show cause notice.

8. Case of respondent is based upon instructions dated 22.10.2001 issued by State Government. The instructions dated 22.10.2001 are reproduced as below:

“Subject: Down-grading of A.C.R.s regarding.

I am directed to invite your attention to the instructions contained in Haryana Government Letter. 2/46/88-2GSI, dated 17th May, 1989 on the subject noted above which inter alia provide that if an employee has been awarded a punishment for an act of omission or

commission during a particular period, his ACR of that year (i.e. the year in which the act of omission or commission took place) may be suitably down-graded. It was also clarified that the extent of downgrading will be decided by the authority passing final orders in promotion cases etc. and will depend on the nature of charges proved against an individual and not merely on the amount of punishment awarded.

Clarifications were issued further vide Government instructions issued vide letter No. 2/46/88 2GSI, dated 15th May, 1990 that no fresh separate show cause notice is required to be issued for down grading of A.C.R. and the orders of downgrading of A.C.R. may be passed simultaneously while issuing orders of punishment. However, in cases where punishment orders have already been issued in which no mention about downgrading of ACR has been made. Then in such cases, for down-grading of A.C.R., another show-cause notice may be issued in view of the punishment already awarded.

It was also required that a copy of the orders downgrading of ACR should be placed in the ACR file of the employee concerned and a mention thereof may also be made in the ACR of that particular year. Instructions were issued vide letter No. 2/46/88 2GSI, dated 6th January, 1992 also that A.C.R. if once down-graded, the previous grading ceases to exist and the new grading will be taken into account for all the cases where A.C.R's. are taken into consideration.

2. *It has been observed by the State Government that the aforementioned Government instructions are not being complied with. It has been noticed in a number of cases that the A.C.R's of the employees concerned have not been down-graded as a sequel to the punishment awarded to them. Resultantly, the employee concerned in such cases are being considered for promotion / retention in service etc. on the basis of overall assessment based on the original gradation of A.C.Rs. The Government has viewed*

this lapse on the parts of the defaulting departments

I have, therefore, been desired to reiterate the aforementioned Government instructions for being adhered to meticulously. Accordingly, it is requested that orders of downgrading of A.C.R. (s) should be passed simultaneously while issuing orders of punishment and a copy thereof should be placed in the A.C.R. file of the employee concerned besides mentioning about the downgrading in the A.C.R. of that particular year. However, in cases where punishment orders have already been issued in which no mention about the downgrading has been made, another show-cause notice may be issued for downgrading the A.C.R.(s). The extent of downgrading will be decided by the competent authority for final orders in punishment/promotion cases etc.

In future, it may be ensured that fresh assessments of A.C.R.s are taken into account while dealing with the cases of retention in service beyond 50/55 years/prompt cases/cases of efficiency bar and any other cases where A.C.R's are to be taken into consideration. These instructions may kindly be noted for compliance in future and should also be brought to the notice of all concerned for necessary compliance."

9. The aforesaid instructions were further clarified vide memo dated 20.06.2003 which reads as:

"Dated, Chandigarh, the 20th June, 2003.

Subject: Writing of Confidential Reports-Entry regarding doubtful integrity.

Sir,

I am directed to invite your attention to Haryana Government instructions contained in letter No.2/46/88-2 G.S.I, dated 17th May, 1989 and No-2/19/2001-2 G.S.I. dated 22.10.2001 on the subject noted above which inter alia provide that if an employee, has been awarded a punishment for an act of omission or commission during a particular period, his ACR of that

year (i.e. the year in which the act of omission or commission took place) may be (not legible) downgraded. A point has been raised by some of the Departments for clarification as to whether entry regarding doubtful integrity can be made simultaneously while down-grading the ACR of any employee as a sequel to the punishment awarded to him.

It is clarified here that entry regarding integrity is normally recorded at the time of writing of the ACR. However, if any employee has been awarded a punishment in the disciplinary case pending against him and he is believed to be corrupt/dishonest on the basis of findings of the disciplinary action/charges proved against him, entry regarding doubtful integrity may be made simultaneously. In his ACR of that year in which the act of omission and commission took place while down-grading his ACR as a sequel to the punishment awarded to him but in conformity with the Government instructions issued vide letter No.61/20/85-S(I), dated 12 December, 1985.

It is also clarified that a single show cause notice should be given to the delinquent employee regarding award of the proposed punishment down- grading of ACR as a sequel to the punishment as well as for entry regarding doubtful integrity on the basis of charges proved against him. However, in cases. where punishment orders have already been issued in which no mention about the down-grading of ACR and entry regarding doubtful integrity has been made then in such cases, another show-cause notice may be issued for the purpose.

2. These instructions may be brought to the notice of all concerned for their information and compliance.”

10. From the perusal of above cited instructions, it is evident that if a Government Employee is awarded punishment, his ACR should be downgraded. In the normal course, ACR should be downgraded

simultaneously with order of punishment. In case ACR is not downgraded simultaneously with order of punishment, it should be downgraded later on, however, after issuing show cause notice.

11. In the case in hand, the petitioner was subjected to punishment of warning. The said punishment is not a statutory punishment. Rule 16.1 of Punjab Police Rules, 1934 (as applicable to State of Haryana) (in short 'PPR') contemplates different punishments which includes censure, however, warning is not among the punishments enlisted in the said Rule. There is no remedy of appeal against order of warning still petitioner preferred an appeal which was dismissed on the ground of maintainability. There was no further challenge to order of warning, thus, it attained finality. Order of warning was passed on 23.03.2016. The Authority passing order of warning and competent to record ACR was same i.e. Superintendent of Police. The said Authority recorded adverse remarks in petitioner's ACR for the period from April' 2015 to February' 2016. From the record, it appears that adverse remarks were recorded on 13.07.2016. The petitioner preferred a representation against adverse remarks. The Competent Authority expunged adverse remarks *qua* integrity, reliability and moral character. The order passed by Competent Authority-Commissioner of Police, Faridabad was never challenged by either party, thus, has attained finality.

12. The respondent relying upon instructions dated 22.10.2001 and 20.06.2003 wants to downgrade ACR of the petitioner for the period 2014-2015. As per respondent, ACR should be downgraded because petitioner was awarded punishment of warning. As per PPR, punishment of warning is not a statutory punishment though it may have colour and

contour as per Civil Service Rules. The petitioner is governed by PPR and there are specific provisions with respect to misconduct. The petitioner was ordered to be careful in future. The said order was challenged by petitioner, however, Appellate Authority dismissed his appeal on the ground of maintainability. There was no further challenge, thus, it attained finality.

The undisputed fact emerges that petitioner was subjected to warning by order dated 23.03.2016. On account of his act and conduct, the Authority which passed order of warning recorded adverse remarks in the petitioner's ACR for the period from April' 2015 to February' 2016. It is apt to notice here that show cause notice proposing punishment of dismissal from service was issued by an Officer who was different, though of same rank, from Officer who awarded punishment of warning, and adverse remarks in the ACR for the period 2015-2016 were recorded by the Officer who issued show cause notice. The adverse remarks with respect to integrity, character and reliability were expunged by Commissioner of Police, Faridabad. From the perusal of communication dated 19.09.2022 of ADGP, South Range, Rewari, it comes out that Deputy Commissioner of Police, Headquarter, Faridabad vide letter dated 02.09.2022 intimated to ADGP, South Range, Rewari that Commissioner of Police, Faridabad while expunging adverse remarks from the ACR for the period from April' 2015 to February' 2016 has considered misconduct committed during 2014-2015, therefore, ACR for the period 2014-2015 cannot be downgraded. The communication dated 02.09.2022 of Deputy Commissioner of Police, Faridabad as noted in communication dated 19.09.2022 of ADPG, South Range, Rewari is reproduced as below:

“XXX XXX XXX XXX

the then Commissioner of Police, Faridabad has already considered the representation against the adverse remarks recorded in the ACR of HC Dinesh Kumar for the period from 01.04.2015 to 07.02.2016 including misconduct committed by him during the year 2014-15, therefore, at this stage ACR of the above official cannot be downgraded for the year 2014-15"

13. On the direction of DGP, Haryana opinion of Office of District Attorney was sought. ADA vide communication dated 09.08.2022 opined that matter has already been considered by Commissioner of Police, Faridabad, thus, ACR for the period 2014-2015 cannot be downgraded. The relevant extracts of opinion of ADA read as:

“Keeping in view of the above, I am of the opinion that the then Commissioner of Police, Faridabad has already considered the representation of HC Dinesh including misconduct committed by him during the year 2014-2015, therefore, at this stage ACR of HC Dinesh Kumar cannot be downgraded for the year 2014-2015. “

14. Despite aforesaid letters/opinions, SP, Nuh issued impugned show cause notice dated 27.12.2022. From the perusal of show cause notice, it is evident that show cause notice has been issued on the directions of ADGP, South Range, Rewari who has asked SP, Nuh to look into the matter as per instructions dated 22.10.2001 of State Government.

15. The respondent-SP, Nuh recorded adverse remarks in the ACR for the period 2015-2016. The respondent is not disputing the fact that adverse remarks were recorded on account of departmental proceedings initiated against the petitioner. The respondent is claiming that adverse remarks as per government instructions should be recorded

in the ACR of 2014-2015. As per instructions, adverse remarks should be recorded simultaneous to punishment by Disciplinary Authority. In case punishment order is passed, however, adverse remarks are not recorded in ACR, the Authorities are supposed to issue show cause notice and thereafter record adverse remarks in the relevant ACR. In view of instructions and as per stand of respondent, adverse remarks could be recorded in one ACR on the basis of alleged incident. The respondent as per its understanding recorded adverse remarks in the ACR of 2015-2016. The adverse remarks were not expunged *in toto*. The Commissioner of Police, Faridabad expunged partial adverse remarks and kept remaining intact, meaning thereby, partial ACR of petitioner remained adverse. Once an adverse ACR for a particular period on the basis of alleged misconduct was recorded, there was no occasion for respondent to propose adverse remarks in the previous ACR on the sole ground that adverse remarks should have been recorded in the previous ACR instead of subsequent ACR. As per instructions, firstly, the Authority was supposed to record adverse remarks parallel to disciplinary proceedings and in case of failure, adverse remarks could be recorded after issuing show cause notice. The Competent Authority recorded adverse remarks almost parallel to disciplinary proceedings. The Competent Authority as per its wisdom recorded adverse remarks in the ACR in hand i.e. ACR of 2015-2016. At that point of time, adverse remarks could be recorded in the ACR of 2014-2015 after issuing show cause notice. The Authority as per its wisdom recorded adverse remarks in the ACR of 2015-2016 and did not downgrade ACR of 2014-2015.

In view of instructions relied upon by respondents, the

competent authority could downgrade one ACR which said authority did. The respondent by recording adverse remarks in the ACR of 2015-16 complied with mandate of instructions. There is no occasion to downgrade ACR of 2014-15, thus, impugned show cause notice is not sustainable. It is apt to mention here that principle of *res judicata* is not *stricto sensu* applicable to departmental proceedings, however, departmental authorities while acting as quasi-judicial authorities are bound to notice said principle.

16. The impugned show cause notice has been issued after six years from the date of recording adverse remarks in the ACR of 2015-16. The instructions issued by State Government were available at the time of passing order of warning as well as recording adverse remarks in the ACR of 2015-2016. In the instructions, no period has been prescribed, however, Authorities were supposed to upgrade ACR within reasonable period especially when adverse remarks were recorded in the ACR of 2015-2016. Issuance of show cause notice after six years from the date of passing order of punishment as well as recording adverse remarks in the current ACR cannot be called as notice issued within reasonable period of limitation. In the absence of period prescribed in the rules and instructions, the Authorities were bound to act within reasonable period of limitation. Thus, impugned notice is bad in view of principle of reasonable period of limitation evolved by Hon'ble Supreme Court in plethora of judgments.

17. The respondent has raised question of maintainability on the ground that petition is premature. The impugned show cause notice is barred by reasonable period of limitation. It is settled proposition of law

that question of limitation is a question of jurisdiction and writ petition is maintainable where question of jurisdiction is involved. It is further apt to notice that show cause notice has been issued by SP, Nuh on the direction of ADGP. Being subordinate, he was bound to follow instructions of superior officer. This seems to be another reason to entertain writ petition.

18. The petitioner though not vehemently yet politely has raised issue of validity of disagreement note cum show cause notice. His claim is based upon judgment of Hon'ble Supreme Court in ***Kunj Behari Misra (supra)***. The Apex Court has adverted to Regulation 7 of Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 (for short 'PNB Regulations'). Interpreting Regulation 7(2) of PNB Regulations, the Court held that whenever Disciplinary Authority disagrees with the Inquiry Authority or any article of charge, it must record its tentative reasons for such disagreement and give the delinquent officer opportunity to represent before it records its findings. The report of Inquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The relevant extracts of the judgments of the Apex Court are reproduced as under:-

“10. XXXX XXXX XXXX XXXX

“7. *Action on the inquiry report:*

(1) The Disciplinary Authority, if it is not itself the inquiry Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the inquiry Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

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18. Under Regulation 6, the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair

and inequitable that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the disciplinary authority before the final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

18.1 In the case of Police officials, enquiries are conducted in terms of Rule 16.24 of PPR. The complete procedure has been described in Rule 16.24 of PPR. The said rule for the ready reference is reproduced as below:-

“16.24. Procedure in departmental enquiries.-(1)

The following procedure shall be followed in departmental enquiries –

- (i) The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry. That officer shall record and read out to the accused officer a statement summarizing the alleged misconduct in such a way as to give full notice of the circumstances in regard to which evidence is to be recorded. A copy of the statement will also be supplied to the accused officer free of charge.*
- (ii) If the accused police officer at this stage admits the misconduct alleged against him, the officer conducting the enquiry may proceed forthwith to frame a charge, record the accused officer's plea and any statement he may wish to make in extenuation and to record a final order, if it is within his power to do so, or a finding to be forwarded to an officer empowered to decide the case. When the allegations are such as can form the basis of a criminal charge, the Superintendent shall decide at this stage, whether the accused shall be tried departmentally first and judicially thereafter.*
- (iii) If the accused police officer does not admit the misconduct, the officer conducting the enquiry shall proceed to record such evidence, oral and documentary, in proof of the accusation, as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such*

officer, be procured without undue delay and expense or inconvenience, if he considers such statement necessary, and provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a magistrate, and is signed by the person making it. This statement shall also be read out to the accused officer and he shall be given an opportunity to take notes. The accused shall be bound to answer any questions which the enquiring officer may see fit to put to him with a view to elucidating the facts referred to in statements or documents brought on the record as herein provided.

- (iv) When the evidence in support of the allegations has been recorded the enquiring officer shall, (a) if he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him, or recommend his discharge to the Superintendent, or other officer, who may be so empowered, or (b) proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.*
- (v) The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, in no case exceeding forty eight hours, to prepare a list of such witnesses, together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witnesses whose evidence he considers will be irrelevant or unnecessary in regard to the specific charge framed. He shall record the statements of those defence witnesses whom he decides to admit in the presence of the accused, who shall be allowed to address questions to them, the answers to which shall be recorded; provided that the enquiring officer may cause to be*

recorded by any other police officer superior in rank to the accused the statement of any such witness whose presence cannot be secured without undue delay or inconvenience, and may bring such statement on to the record. The accused may file documentary evidence and may for this purpose be allowed access to such files and papers, except such as form part of the record of the confidential office of the Superintendent of Police, as the enquiring officer deems fit. The supply of copies of documents to the accused shall be subject to the ordinary rules regarding copying fees.

(vi) *At the conclusion of the defence evidence, or, if the enquiring officer so directs, at any earlier stage following the framing of a charge, the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time, not exceeding one week, for its preparation, but shall be bound to make an oral statement in answer to all questions which the enquiring officer may see fit to put to him, arising out of the charge, the recorded evidence, or his own written statement.*

(vii) *The enquiring officer shall proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into considerations the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked to convey to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by the defaulter shall be*

taken into account by the officer before passing orders in the case.

(viii) Nothing in the foregoing rule shall debar a Superintendent of Police from making or causing to be made a preliminary investigation into the conduct of a suspected officer. Such an enquiry is not infrequently necessary to ascertain the nature and degree of misconduct which is to be formally enquired into. The suspected police officer may or may not be present at such preliminary enquiry, as ordered by the Superintendent of Police or other gazetted officer initiating the investigation, but shall not cross-examine witnesses. The file of such a preliminary investigation shall form no part of the formal departmental record, but statements therefrom may be brought to the formal record when the witnesses are no longer available in the circumstances detailed in clause (iii) above. All statements recorded during a preliminary investigation should be signed by the person making them and attested by the officer recording them.

(2) (i) Notwithstanding anything contained in sub-rule (1) a Superintendent of Police or any officer of rank higher than Superintendent, may institute, or cause to be instituted, ex parte proceedings in any case in which he is satisfied that the defaulter cannot be found or that in spite of notice to attend the defaulter is deliberately evading service or refusing to attend without due cause.

(ii) The procedure in such ex parte proceedings shall, as far as possible, conform to the procedure laid down in sub-rule (1): Provided that the defaulter shall be deemed –

(a) not to have admitted the allegations contained in the summary of misconduct, and

(b) to have entered a plea of not guilty of the charge:

Provided further that the defaulter, if he subsequently

appears at any stage during the course of the proceedings shall not be entitled to claim de novo proceedings or to recall for cross-examination any witness whose evidence has already been recorded. He shall, however, be fully informed of the evidence which has been led against him and shall be permitted to take notes thereof. He shall also be furnished with a copy of the summary of misconduct and of the charge or charges framed.

(3) Notwithstanding anything contained in these rules, where an officer, empowered to dismiss, remove or reduce in rank the police officer accused of misconduct, is satisfied at any stage during an enquiry that for reasons, to be recorded in writing by that officer, it is not reasonably practicable to hold the enquiry after that stage, he will straight-away award the punishment.

Explanation - *For the purposes of sub-rule (3), initiation of disciplinary proceedings against the police officer on the grounds of,-*

- (i) indulging in spying or smuggling activities;*
- (ii) disrupting the means of transport or of communication;*
- (iii) damaging public property;*
- (iv) creating indiscipline amongst fellow policemen;*
- (v) promoting feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;*
- (vi) going on strike or mass casual leave or resorting to mass abstentions;*
- (vii) spreading disaffection against the Government; and*
- (viii) causing riots and the like;*

shall be sufficient reason for concluding that it is not reasonably practicable to hold the enquiry.”

[Emphasis supplied]

18.2 From the perusal of the above quoted Rule, it is evident that Clause (vii) of Rule 16.24(1) deals with situation post conclusion of inquiry. It provides that Inquiry Officer shall proceed to

pass orders of acquittal or punishment, if empowered to do so or to forward the case with his findings and recommendations to an officer having the necessary powers. There is nothing in the rule which provides that Disciplinary Authority if is different from Inquiry Officer, would record disagreement note and issue notice to delinquent. There is nothing in PPR like Rule 7 in PNB Regulations adverted to in **Kunj Behari Misra (supra)**. The judgment of Hon'ble Supreme Court cannot mechanically be applied to the instant case. The Apex Court interpreting Regulation 7 has principally held that there should be compliance of principles of natural justice.

18.3 From the perusal of disagreement note-cum-show cause notice, it is evident that Disciplinary Authority duly recorded reasons for disagreement and thereafter, called upon the petitioner to show cause as to why punishment should not be awarded to him. He filed detailed reply to show cause notice. The Disciplinary Authority noticing reply of the petitioner passed punishment order.

It is settled proposition of law that Disciplinary Authority is not bound by opinion of Inquiry Officer. The Disciplinary Authority is free to disagree with the report of Inquiry Officer, however, has to record reasons for disagreement. In the instant case, the Disciplinary Authority disagreed with the report of Inquiry Officer and recorded its reasons for disagreement. The petitioner was granted opportunity to file reply to show cause notice as well as granted opportunity of hearing, thus, the order of punishment was passed after complying with the principles of natural justice. Petitioner is fortunate that he was awarded minuscule punishment (simple warning) though in the show cause notice severe

punishment of dismissal from service was proposed.

19. In the wake of above discussion and findings, the instant petitions deserve to be allowed and accordingly ***allowed*** in above terms. The impugned show cause notice dated 27.12.2022 is hereby set aside. The Authorities are directed to consider case of petitioner for promotion in accordance with law.

(JAGMOHAN BANSAL)
JUDGE

11.09.2025
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No