

2025:PHHC:017408-DB



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

LPA No.1296 of 2019 (O&M)

Reserved on : 13.01.2025

Date of Pronouncement: 06.02.2025

Shri Ram EASI No.854/FBD

...Appellant

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Argued by:- Dr. Suresh Kumar Redhu, Advocate
for the appellant.

Mr. Vivek Chauhan, Addl. A.G., Haryana
for the respondents.

Meenakshi I. Mehta, J.

By way of the instant intra-Court appeal, the appellant-writ petitioner (here-in-after to be referred as 'the appellant') has laid challenge to the judgment passed by learned Single Judge on 04.07.2019, dismissing ***CWP No.13358 of 2019***, preferred by him for seeking the issuance of a writ in the nature of certiorari for quashing the Inquiry Report dated 05.03.2014, the order passed on 14.07.2014 to award him the punishment of stoppage of two annual increments with permanent effect, the order dated 08.03.2016 regarding modification of the above-referred punishment by reducing the same to the stoppage of his one annual increment with permanent effect, the order passed on 27.04.2016 qua the rejection of the revision-petition,



the letters dated 24.02.2014 and 18.05.2015 regarding the recording of adverse remarks in his Annual Confidential Reports {for short 'ACR(s)'}, the order passed on 24.11.2016 for rejecting his representation against the afore-said adverse remarks in his ACR(s), the letter dated 24.12.2016, as issued to inform him that his representation had been filed and the Notice issued on 03.04.2019 to the effect that he would stand retired on attaining the age of 55 years, with the further prayer for issuing a writ in the nature of mandamus, for directing the respondents to retain him in the service beyond the age of 55 years, till the date of his superannuation, with all the consequential benefits including his promotion as the officiating Assistant Sub Inspector and officiating Sub Inspector with effect from the date when the officials, junior to him, had been so promoted.

2. Shorn and short of unnecessary details, the facts, culminating in the filing of the present appeal, are that the appellant had filed the above-mentioned CWP, while averring that on 25.11.1987, he was recruited as a Constable in the Haryana Police and was promoted as the officiating Head Constable on 13.07.2004 and had, further, been promoted to the rank of the Exemptee Assistant Sub Inspector in the year 2009. He was also awarded 24 Commendation Certificates and thus, he had an unblemished service record to his credit but vide the order dated 12.07.2013, respondent No.4-Deputy Commissioner of Police, Head Quarters, Faridabad, ordered for conducting a departmental inquiry against him, in respect of the allegations of his having registered a false case under Sections 148, 149, 323, 506 & 307 IPC and Section 25 of the Arms Act vide FIR No.125 dated 12.08.2012 and having



not returned the sum of Rs.1130/-, recovered during the personal search of the accused as conducted at the time of arresting him. The Inquiry Officer did not properly appreciate the evidence, brought on the record during the inquiry proceedings and vide the Report dated 05.03.2014 (Annexure P-1), he had wrongly held him (appellant) guilty for the delay of three months on his part in sending the country made pistol (*Katta*), as recovered during the investigation of the afore-said case, to the FSL for the examination thereof. Then, respondent No.4 issued the Show Cause Notice dated 26.05.2014 (Annexure P-4) to him, proposing the punishment of his dismissal from service. The appellant submitted his Reply (Annexure P-5) to the above-referred Notice wherein he denied all the allegations levelled against him. However, consequent upon the transfer of the then Deputy Commissioner of Police, i.e the Punishing Authority, a fresh Show Cause Notice dated 16.06.2014 (Annexure P-6) was issued to him by the new incumbent and he again submitted his Reply (Annexure P-7) to the same.

3. Thereafter, vide the Order dated 14.07.2014 (Annexure P-8) as passed by respondent No.4, the appellant was awarded the punishment of the stoppage of his two future annual increments with permanent effect and he (appellant) moved a Representation/Appeal (Annexure P-9) against the same to respondent No.3-Commissioner of Police, Faridabad who recorded his Disagreement Note in respect of the punishment awarded to him (appellant) vide Order Annexure P-8 and issued Show Cause Notice dated 22.09.2014 (Annexure P-10-Colly) to him (appellant), proposing therein the punishment of stoppage of his five future annual increments with permanent effect and



the appellant submitted his Reply dated 07.10.2014 (Annexure P-11) thereto. Again, due to the transfer of the then Commissioner of Police, Faridabad, his successor issued/served a fresh Disagreement Note-cum-Show Cause Notice dated 14.01.2015 (Annexure P-12) to the appellant and he filed his Reply (Annexure P-13) to the same. Then, vide Order dated 08.03.2016 (Annexure P-14), respondent No.3 reduced the punishment, as already awarded to the appellant, to the stoppage of his one future annual increment with permanent effect and filed the Show Cause Notice, as issued earlier qua the proposal of the punishment of the stoppage of his five future annual increments. The appellant moved a Representation (Annexure P-15) to respondent No.2-the Director General of Police, against Order Annexure P-14 but vide the Order dated 27.04.2016 (Annexure P-16), the same was rejected.

4. The appellant had, further, averred in the afore-mentioned CWP that respondent No.4 recorded adverse remarks in his ACRs for the periods from 07.08.2013 to 28.01.2014 and 11.06.2014 to 22.11.2014 and conveyed the same to him vide the Memos (Annexures P-17 and P-19) as issued on 24.02.2014 and 18.05.2015 respectively. The Representations, filed by the appellant for seeking the expunction of the above-said adverse remarks, were rejected by respondent No.3 vide the Order dated 24.11.2016 (Annexure P-20). The Appeal/Representation (Annexure P-21), preferred by the appellant to respondent No.2 had also been filed, as conveyed to him vide the letter issued on 24.12.2016 (Annexure P-22). Thereafter, respondent No.4 issued Notice dated 03.04.2019, i.e Annexure P-24, (actually the order for retiring the appellant on his attaining the age of 55 years while giving



him three months' notice and here-in-after to be referred as 'the Order'), to the appellant on the basis of the remarks, recorded in his ACR for the period 2013-14, regarding 'his being Below Average/his integrity being doubtful'. Learned Single Judge has dismissed the afore-said CWP vide the impugned judgment, as already discussed in the opening para of this judgment.

5. We have heard learned counsel for the appellant as well as learned State counsel for the respondents in the instant appeal and have also perused the file thoroughly.

6. Learned counsel for the appellant has contended that as per the findings recorded by the Inquiry Officer in his Report Annexure P-1, only the allegation about the delay of more than three (03) months on the part of the appellant in sending the country made pistol, as recovered during the investigation of the above-mentioned case, to the FSL, had been proved against him (appellant) and even the afore-said findings had been recorded without any cogent and clinching material/evidence on the record, to prove the above-described allegation and thus, Order Annexure P-14, awarding the punishment of stoppage of one future annual increment of the appellant with permanent effect and the Order Annexure P-16, passed for rejecting the Representation, as moved by him against Order Annexure P-14, are not sustainable. He has further contended that the adverse remarks, as recorded by respondent No.4 in the ACR(s) of the appellant for the period 2013-14 regarding his grading as 'Below Average and his integrity being doubtful', which were conveyed to him vide Memos Annexures P-17 and P-19, are also erroneous as these have been recorded on the basis of the allegation



qua the registration of the afore-referred false FIR/case by him whereas in his Report Annexure P-1, the Inquiry Officer has nowhere reported that the above-said allegation stood proved against him (appellant) and hence, the afore-referred adverse remarks deserve to be expunged and resultantly, the Order Annexure P-24, issued for retiring the appellant on his attaining the age of 55 years, on the ground of the above-said adverse remarks, is also liable to be quashed but learned Single Judge has not considered the afore-discussed crucial and material aspects of the matter in the correct perspective and has wrongly dismissed the above-mentioned CWP and it being so, the impugned judgment deserves to be set-aside.

7. Per-contra, learned State counsel has argued that the appellant had committed grave misconduct while discharging his official duty, by registering the afore-said false criminal case and thus, it is explicit that the Competent Authorities had rightly held him guilty vide the Inquiry Report Annexure P-1 and had awarded the punishment to him vide Order Annexure P-14 and had correctly recorded the above-referred adverse remarks in his ACR(s) and had passed Order Annexure P-24 to retire him at the age of 55 years and therefore, the present appeal is liable to be dismissed.

8. As regards the challenge laid by the appellant to the Inquiry Report Annexure P-1, the Order Annexure P-8 regarding the stoppage of his two future annual increments with permanent effect, the Order Annexure P-14 as passed for awarding him the punishment of stoppage of one future annual increment with permanent effect and Order Annexure P-16 qua the rejection of his Representation, we have carefully gone through the afore-



mentioned Inquiry Report as well as the Orders passed by the Disciplinary Authority and the Appellate Authority and have noticed that the Inquiry Officer had neither found the appellant to be guilty of registering the false criminal case nor had held the allegation of having not returned the above-referred amount of Rs.1,130/-, to have been proved against him and rather, the only delinquency, which he (Inquiry Officer) has reported to be proved against the appellant, is the laxity on his (appellant's) part, in not sending the afore-said country made pistol, as stated to have been recovered during the investigation of the above-referred case, to the FSL for its examination, within a reasonable time as it had been so sent there after a period of more than three months and this delinquency had resulted in the imposition of the punishment of stoppage of his two annual increments with permanent effect, vide Order Annexure P-8 which had been reduced by the Appellate Authority to stoppage of his one future annual increment with permanent effect, vide the Order Annexure P-14.

9. The scope of interference in the departmental/disciplinary proceedings is very limited. In **Union of India vs P.Gunasekaran 2015(2) SCC 610**, Hon'ble the Supreme Court has laid down various guidelines as to when the High Court may exercise its jurisdiction under Article 226 of the Constitution, in the matters pertaining to disciplinary proceedings and has also discussed the circumstances wherein it (High Court) shall not interfere in the same and has observed as under:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an



appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the inquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the inquiry is held by a competent authority;*
- (b) the inquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the inquiry, in case*



the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience.”

The afore-cited verdict has, later-on, been approved by a three Judges' Bench of the Apex Court in **Central Industrial Security Force & others vs Abrar Ali, 2017(4) SCC 507**. In view of the above-discussed position of law, we find ourselves unable to interfere with the findings recorded by the Inquiry Officer in his Report Annexure P-1 and the Order Annexure P-14, passed by the Appellate Authority for stopping one future annual increment of the appellant with permanent effect and also the Order Annexure P-16, regarding the rejection of the Representation, moved by him to respondent No.2 and the same are, therefore, upheld. It will not be out of place to mention here that in view of the Order Annexure P-14 as passed by the Appellate Authority qua the reduction in punishment, Order Annexure P-8, passed by the Punishing Authority, pales into insignificance.

10. So far as the prayer made by the appellant for expunging the adverse remarks in his afore-referred ACR(s), as conveyed to him vide the Memos Annexures P-17 & P-19 and to set-aside the Order Annexure P-20 passed by respondent No.3 regarding the rejection of his Representation and the letter Annexure P-22, issued to inform him about the filing of the



Representation moved by him to respondent No.2 and the Order Annexure P-24 in respect of his retirement at the age of 55 years, is concerned, it is pertinent to refer to the Memos Annexure P-17 & P-19 as had been issued to him and the same read as under:-

“ *Annexure P-17*

*OFFICE OF THE DEPUTY COMMISSIONER OF
POLICE, HQRS, FARIDABAD*

No. 255/ST dated Faridabad 24.2.14

Subject:- Conveying of Adverse Remarks

Memo

*The following defects have been reflected in
your confidential report for the period from 07.08.13 to
28.1.14*

- | | |
|---------------------------|--|
| <i>1. Integrity</i> | <i>Doubtful</i> |
| <i>2. General Remarks</i> | <i>Registered false case while
posted in PS.</i> |

*You are advised to remove these defects, in
future.*

E/ASI Shri Ram No.854/FBD

Sd-

*Deputy Commissioner of Police
Hqrs, Faridabad.*

Annexure P-19

*OFFICE OF THE DEPUTY COMMISSIONER OF
POLICE, HQRS, FARIDABAD*

No. 532/ST dated Faridabad 18.5.15

Subject:- Conveying of Adverse Remarks

Memo

*The following defects have been reflected in
your confidential report for the period from 11.06.14 to
22.11.14*

- | | |
|----------------------|---------------------|
| <i>1. Discipline</i> | <i>Indiscipline</i> |
|----------------------|---------------------|



2. General Remarks An Average EASI

Note:- Two annual increment stopped W.P.E. on 14.07.14 for registered a false case FIR No.125 dated 12.08.2012 u/s 148/149/323/307/506 & 25/54/59 Arms Act PS Sadar B. Garh.

You are advised to remove these defects, in future.

E/ASI Shri Ram No.854/FBD

*Sd-
Deputy Commissioner of Police
Hqrs, Faridabad.”*

11. From the above-quoted contents, it becomes crystal clear that as per Memo Annexure P-17, the integrity of the appellant was recorded to be doubtful on account of his having registered the false case and as shown in Memo Annexure P-19, he had been graded as an Average/indisciplined EASI, by specifically noting that his two annual increments were stopped with permanent effect for registering the afore-said false FIR but in his Report Annexure P-1, the Inquiry Officer has nowhere held the appellant to be guilty of doing so, as observed earlier and has, rather, reported that the Charge had already been framed in the above-mentioned case and therefore, it was not the subject matter to be commented upon. Further, Annexure P-2 is the copy of the Charge framed against the accused in the afore-referred case and Annexure P-3 is the copy of the order passed by this Court on 26.03.2014, dismissing CRR Nos.2035 and 3632 of 2013, as preferred by the accused for seeking the quashing of Charge Annexure P-2 and in such circumstances, there could be no valid reason or ground for recording the above-said adverse remarks in the ACR(s) of the appellant.

12. To add to it, a perusal of Annexure P-25 (Colly), i.e the copies of the Confidential Service Reports/Record of the appellant for the period



from 18.06.2004 to 31.03.2018, supplied to him under the RTI Act, reveals that except the afore-detailed adverse remarks, he has earned Good/Very Good grading in his ACRs throughout during this period. Thus, it becomes explicit that the ACRs of the appellant have consistently been good/very good prior to the year 2013-14 and even thereafter, till his retirement. To cap it all, the appellant had, undisputedly, joined the Haryana Police as a Constable and had been promoted as the Head Constable and thereafter, as the EASI. It has been held by Hon'ble the Supreme Court in **M. S. Bindra vs Union of India, 1998(7) SCC 310** that *"the judicial scrutiny of the order imposing premature compulsory retirement is permissible if the order is either arbitrary or mala-fide or it is based on no evidence and while evaluating the material, the authority should not altogether ignore the reputation in which the officer was held till recently."* These observations are fully applicable to the instant case and accordingly, we are satisfied that the entry of the above-said adverse remarks in the ACR(s) of the appellant, was clearly arbitrary and unjustified one. We, therefore, expunge the afore-referred adverse remarks recorded in his ACR for the period 2013-14 and set-aside the Orders Annexures P-20 & P-22, passed regarding the rejection/filing of the Representations, preferred by him for seeking the expunction of the said adverse remarks. As a necessary corollary thereto, the Order dated 03.04.2019 (Annexure P-24), which has been passed on the sole ground/basis of the above-mentioned adverse remarks, also stands quashed and the appellant is held entitled to be deemed to have continued to serve till his having attained the actual age of superannuation which is stated to have been fixed as 58 years.



13. Now, the question arises as to whether, consequent upon the setting-aside/quashing of Order Annexure P-24 regarding his compulsory retirement, the appellant would be entitled to the actual pay and allowances also and to answer the same, it would be relevant to refer to the verdict as handed down by the Apex Court in **J.N. Srivastava vs Union of India & another, 1998(9) SCC 559**, which reads as under:-

“It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India, 1987 Supp SCC 228. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26-12-1989 and when the retirement came into effect on 31-1-1990, the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26-12-1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31-1-1990. The net result of this order is that



the appellant will have to be treated to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31-1-1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest."

In the light of the afore-quoted observations, it is held that the appellant would be entitled to all the consequential benefits, including the permissible retiral benefits and actual salary for the period during which he was not allowed to perform his duties till he attained the actual age of superannuation. His salary shall be calculated accordingly and the benefits, which have already been given to him while treating him as having been



retired in pursuance of the Order dated 03.04.2019 (Annexure P-24), shall be deducted from the above-said recalculated benefits. This exercise shall be conducted and concluded within a period of three months henceforth, failing which the appellant would be entitled to receive the interest @ 9% per annum.

14. As a sequel to the fore-going discussion, the impugned judgment, as rendered by learned Single Judge is, hereby, partly set-aside to the afore-mentioned extent and resultantly, the Letters Patent Appeal in hand also stands partly allowed accordingly.

15. All the pending application(s), if any, shall stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

06.02.2025
neetu/vs

Whether speaking/reasoned: Yes
Whether Reportable: Yes