
(2013) 07 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 9412 of 2013 (O and M)

Ajaib Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 15, 15(3)

Citation : (2013) 172 PLR 287

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Manish Kumar Singla, for the Appellant; Sudeepti Sharma, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.

CM No. 8695 of 2013

1. Application dismissed as not pressed.

CWP No. 9412 of 2013

Brief facts of the case are that the petitioner joined as Constable with Punjab Police in the year 1979. He was promoted as Head Constable in the year 1992 and further promoted as Assistant Sub Inspector of Police in the year 2011. The petitioner stands retired from service having attained the age of superannuation on 31.01.2013. It is pleaded that the petitioner was the Investigating Officer pertaining to FIR No. 78 dated 04.10.2012 and after having confined the accused mentioned in the FIR in lock-up on 07.10.2012 and after duty hours, went to his residence. However, the accused mentioned in the FIR ran away from the lock-up on the intervening night of 7/8.10.2012. Accordingly, an FIR No. 266 dated 08.10.2012 was registered against the accused as well as against the Officers, who were on duty. That apart, a Departmental Enquiry was also initiated against

the petitioner and two other police employees namely Jarnail Singh, Incharge CIA Staff and Gian Singh, Constable. In such Departmental Enquiry, an enquiry report was furnished on 30.11.2012 at Annexure-P1, wherein findings were returned in favour of the petitioner and it was recorded that he had gone to the private residence after duty hours and the accused in FIR no. 78 dated 04.10.2012 had escaped from the lock-up during the duty hours of certain other employees. As such, it was recorded by the Enquiry Officer that the allegations in the nature of negligence towards duty work, going to the house before finishing his duty, allowing the accused and their relatives to meet each other etc., have been found to be false. Acting upon such enquiry findings, the Senior Superintendent of Police, Patiala vide order dated 14.01.2013 directed that the petitioner along with other officials namely Jarnail Singh and Gian Singh to be reinstated from the date of their suspension.

2. The present writ petition has been filed impugning the order dated 23.02.2013 passed by the Inspector General of Police, Zonal-1, Punjab, Patiala at Annexure-P3, whereby a de-novo Departmental Enquiry has been directed against the petitioner and such enquiry has been handed over to a different Enquiry Officer that is Sh. Inder Mohan Singh, SSP, Roop Nagar.

3. Counsel for the parties have been heard at length.

4. A perusal of the impugned order would reveal that the de-novo Departmental Enquiry has been ordered by the Inspector General of Police, Patiala having invoked the powers under Punjab Police Rules 16.28.

5. As such, the short question that arises for consideration is that once a specific Article of Charge and Enquiry having already been conducted and findings having been returned, whether it is open for the Inspector General of Police to direct a de-novo Departmental Enquiry on the same Article of Charge under Rule 16.28?

6. Rule 16.28 reads in the following terms:

16.28-Powers to review proceedings.

(1) The Inspector-General a Deputy Inspector-General and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify, or annul the same, or make further investigation or direct such to be made before passing orders.

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement or not. The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why this punishment should not be enhanced.

7. A bare reading of the provision would make it apparent that the Inspector General of Police is vested with the power to confirm, enhance, modify or annul the order passed by the Subordinate Officer. If he is not satisfied with the manner and conduct of the enquiry or the orders passed by such Subordinate Officer the Inspector General of Police could make further investigation in the matter himself or direct such investigation to be made by some Subordinate Officer prior to passing of the final order. However, having set-aside the order of his subordinate, a de novo enquiry could not have been ordered. The language of the provision is unambiguous and clear. No power can be derived from Punjab Police Rules 16.28, whereby a second enquiry can be directed.

8. Such issue has already been considered by this Court in *Joginder Singh Vs. The State of Punjab and Others*, wherein while considering the power conferred under Rule 16.28 of Punjab Police Rules, it has been held in the following terms:-

Judicial or Quasi Judicial authorities or Tribunals draw their power and authority from statutes. They do not have any inherent powers. Right of appeal, review and revision are creatures of statutes. Unless the statutory Rules so provide, the Inspector-General of Police could not entertain the appeal of the petitioner as a necessary corollary. But Rule 16.28 has authorised the Inspector-General of Police and other officers mentioned therein to re-examine the orders passed by their subordinates and confirm, vary or quash them. Rule 16.28 does not in terms or by inevitable implication confer on the Inspector-General of Police any power to order a second inquiry after quashing the award of the Deputy Inspector-General of Police. There is no other provision in the Police Rules or any other statutory Rules applicable to the petitioner conferring powers on the Inspector-General of Police to order a second inquiry. While deciding the appeal, he was performing quasi judicial functions. The contention of Mr. Riar that the power to order second enquiry is inherent in the relationship of Master and servant, cannot be accepted. What to say of ordering a second enquiry, even the power to review his own judgment does not vest with the Inspector-General of Police. A Full Bench of this Court in *Deep Chand and Others Vs. Addl. Director, Consolidation of Holdings and Another*, held that judicial or quasi judicial Tribunal does not possess powers to review its earlier orders unless a statute confers such powers on it. Similarly, the plea of Mr. Riar that Rule 16.28 explicitly grant powers of review to the Inspector-General of Police is equally untenable. In support of his contention he has referred to the Heading of Rule 16.28 which reads "Powers to Review Proceedings".

It is well recognised that the Heading of a statutory provision does not control its meaning. The provision is to be interpreted primarily on the language employed therein. The Heading does not control main provision. At best, it can be taken into account in inferring the main provision if there is some ambiguity therein. So the power to review cannot be spelt from the language of Rule 16.28 merely because it is crowned with a caption "Powers to Review Proceedings". It is also difficult to accept that since all the powers like the powers to confirm, enhance,

modify or annul the awards which are available with the judicial and quasi judicial Tribunal have been conferred on the Inspector-General of Police, it should be accepted that he has also the power to review. This argument can be dismissed out of hand in view of the authoritative pronouncement in Deep Chand's case (supra) that power to review can be conferred only by a statute. It cannot be spelt through some intricate process of induction or deduction. The power to investigate the case or to get it investigated from some subordinate officer cannot be equated with the power to remand the case or order a fresh enquiry. A dispute arose in the context of the East Punjab Urban Rent Restriction Act. u/s 15 of the East Punjab Urban Rent Restriction Act, the appellate Authority has been empowered to make further enquiry either personally or through the Rent Controller if it is dissatisfied with the trial of the eviction application by the rent Controller. Statute does not confer any power of remand. The appellate Authority remanded the case to the Rent Controller for fresh decision. A Division Bench of this Court in Krishan Lal Seth Vs. Pritam Kumari, observed:-

When the appellate authority is somehow or other dissatisfied with the trial of an application for eviction of the tenant, it can make a further enquiry as it thinks fit either personally or through the Rent Controller, but it has no power to set aside an order of the Rent Controller and remand such an application to him for retrial and redecision.

9. Since a doubt was expressed about the correctness of this decision, the matter was re-examined by another Division Bench in Raghu Nath Jalota Vs. Romesh Duggal and Another, and the view taken in 1961 was reaffirmed and it was held that:-

The history of the legislation, its object and purpose and the specific language of Section 15(3) clearly show that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision.

10. It is manifest from this that Appellate Authority while hearing an appeal can either make a further enquiry personally or through the Rent Controller, but cannot set aside the impugned order and then remand the case to the Rent Controller for retrial and re-decision. On the parity of reasoning, Inspector-General of Police could investigate the case himself or get it investigated from some subordinate police officer before passing the final order. But, after quashing the orders of Respondent No. 2, he could not order a fresh enquiry. In fairness to Mr. Riar, I must distinguish some of the judgments cited by him in support of his contention. All that was held in Dwarkachand Vs. State of Rajasthan, was that if there was no rule or law which lays down that an order exonerating a public servant in a departmental enquiry and ordering fresh enquiry, it is not open to a higher authority to order, a fresh departmental enquiry ignoring the result of an earlier enquiry exonerating the public servant. This presumably goes against the contention raised by the learned State counsel. It has been clearly laid down that in the absence of a statutory rule no fresh enquiry can be ordered against public servant who has been exonerated in the first enquiry. The decision of the Mysore

High Court in Vijay Singh Yadav's case (supra) does not help Mr. Riar because the point in issue in that case was not in controversy before that High Court. The only issue raised there was that punishment imposed on a delinquent official on second enquiry amounts to double jeopardy. However, in that case the service rules permitted a second enquiry. This contention was repelled by the Court.

11. Following the dictum laid down by this Court in Joginder Singh's case (supra), I am of the considered view that the instant writ petition deserves acceptance.

12. Accordingly, the writ petition is allowed. The order dated 23.02.2013 (Annexure-P3) is quashed. Writ petition allowed in the aforesaid terms.