

(1991) 11 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3119 of 1989

Constable Brij Pal Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 29-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Police Rules, 1934 — Rule 16.24(1), 16.38

Citation : (1992) 101 PLR 340

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : H.S. Gill, for the Appellant; Jaswant Singh, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—The petitioner, a constable of police, is aggrieved by the order dated June 11, 1988, of the Director General of Police of Haryana, by which his five future increments have been stopped. A few facts may be noticed.

2. On August 24, 1984, Sub-Inspector Rameshwar Parsad and Assistant Sub Inspector Sukhbir Singh conducted raid on the house of one Dharam Pal in connection with FIR No. 602 of 1984. It is alleged that at that time, the petitioner was present in the house of Dharam Pal. After the raid, on application was submitted by ASI Sukhbir Singh alleging that the petitioner, who was present in the house of Dharam Pal had obstructed the raiding party from doing the search. After a preliminary enquiry, the matter was placed before the Superintendent of Police, who vide his order dated October, 8, 1984, directed as under :-

"Constable Brij Paul No. 1192 be dealt with departmentally for his lapse. R. D. E. (Regular Departmental Enquiry) will be drawn by D. I. (District Inspector), who should complete it expeditiously."

3. Thereafter, the District Inspector of Police served a summary of allegations on

the petitioner on October 13, 1984. After recording the evidence, a charge-sheet dated January 1, 1985, which had been duly approved by the Superintendent of Police, Karnal, was served on the petitioner on, January 9, 1985. After completion of all formalities, the Superintendent of Police, vide his order dated May 26, 1986, imposed the punishment of "stoppage of two future increments with permanent effect-----" against the petitioner. A copy of this order has been produced on record as Annexure P-3. The appeal filed by the petitioner against the order of the Superintendent of Police was rejected on November 7, 1986, by the Deputy Inspector General of Police. The petitioner then filed a mercy petition before the Director General of Police. It appears that on examination of the matter, it was felt that the misconduct committed by the petitioner called for severer punishment. The Director General of Police accordingly issued a show cause notice to the petitioner calling upon him to explain as to why a penalty of dismissal from service be not imposed on him. The petitioner submitted his reply. Vide order dated June 11, 1988, the punishment, as originally imposed viz. stoppage of two future increments with permanent effect, was enhanced to the stoppage of five future increments. Aggrieved by this order, the petitioner has approached this Court through the present petition.

4. The order has been challenged primarily on three grounds. It has been, inter alia, averred that the action was violative of Rule 16.38 of the Punjab Police Rules, 1934, Volume II. It has also been averred that the pleas raised by the petitioner had not been considered by the authorities before passing the impugned orders. The "proceedings have also been challenged on the ground that the charge-sheet is framed by the District Inspector and not. by the punishing authority. It has been suggested that the provisions of Rule 16.28 are beyond the making power conferred u/s 7 of the Punjab Police Act, 1861.

5. A written statement has been filed on behalf of the respondents, wherein the claim made by the petitioner has been controverted.

6. Mr. Gill has submitted that the petitioner was accused of obstructing a police party during the raid and of having illicit relations with the wife of Dharam Pal. The learned counsel submits that this amounted to offences" punishable under Sections 176, 217 and 497 of the Indian Penal Code. Accordingly, the learned counsel submits that it was incumbent on the Superintendent of Police to refer the matter to the District Magistrate, as required under Rule 16.38 of the Punjab Police Rules. He has further contended that the pleas raised by the petitioner in his reply to the show-cause notice had not been considered. The validity of the order has also been challenged on the ground that the charge-sheet had to be framed by the Superintendent of Police, who was the punishing authority, and since it had been actually framed by the District Inspector, the action is vitiated. The validity of Rule 16.28 of the Punjab Police Rules has also been challenged.

7. I have heard the learned counsel for the parties.

8. It is appropriate to notice only clause (1) of Rule 16.38 of the Punjab Police

Rules. It reads as under :-

"16.38(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates as the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having Ist Class-powers".

On a perusal of the above provision, I am of the opinion that the Superintendent of police is required to send information to the District Magistrate only when a criminal offence has been committed by a police officer "in connection with his official relations with the public". In the present case, there is nothing on record to show that the petitioner was accused of having committed an offence in connection with his official relations with the public. In fact, neither the summary of allegations nor the enquiry proceedings were attached with the writ petition. However, the original record was summoned by me (photo copies retained on record) and I have perused it. On perusal of the record, it transpires that the original complaint made by ASI Sukhbir Singh only suggested that the petitioner had obstructed the raiding, party during the raid on the house of Dharam Pal. It was during the preliminary enquiry, that some evidence came on the record to show that the petitioner had certain connection with the wife of Dharam Pal. The proceedings were initiated in the present case on the basis of a complaint submitted by ASI Sukhbir Singh, and on the complaint itself did not disclose the commission of a criminal offence by the petitioner in connection with the official relations with the public. Accordingly, in my view the Superintendent of Police was not required to send any information regarding the complaint to the District Magistrate.

9. Further, a perusal of Rule 16.24(1) (ii) of the Punjab Police Rules shows that "when the allegations are such as can form the basis of a criminal charge the Superintendent shall decide" whether the accused shall be tried departmentally first and judicially thereafter. A harmonious reading of Rule 16.24 (ii) and 16.38 shows" that the Superintendent of Police is not required to send information to the District Magistrate regarding any and every criminal offence committed by a police officer. It is in this context, that the use of the expression "in connection with his official relations with the public" becomes significant. Unless this requirement of Rule 16.38 is satisfied no reference to the District Magistrate is required. A police officer when accused of criminal offence, can be dealt with departmentally and can also be prosecuted in a criminal Court. Rule 16.24 (3) (ii) as mentioned above, empowers the Superintendent of Police to take decision in this behalf In this view of the matter, I am unable to accept the contention of Mr. Gill that a reference to the District Magistrate was required.

10. It has been then contended that pleas raised by the petitioner have not been considered by the Director General of Police before passing the impugned order. This contention is belied by the order itself. The Director General of Police has

written a comprehensive order, wherein the various contentions, including the one relating to Rule 16.38, have been duly considered. Furthermore, the charge levelled against the petitioner had been substantiated during the enquiry and superintendent of police had by a detailed order thought it fit to impose the punishment of stoppage of two future increments on the petitioner. The view of the Superintendent of Police was duly affirmed by the appellate authority viz the Deputy Inspector General of Police. The Director General of Police has affirmed those findings and also dealt with the pleas raised by the petitioner. The contention raised in this connection is rejected.

11. Mr. Gill has then contended that the proceedings are vitiated as the charge was framed by the District Inspector of Police, I am unable to accept even this contention also. Firstly, the original file has been produced before me which shows that the charge-sheet had been duly approved by the Superintendent of Police. Secondly, the action taken by the Superintendent of Police is strictly in conformity with the provisions of Rule 16.24 (1) (ii) of the Punjab Police Rules. Accordingly, the contention is wholly without merit.

12. Lastly, it has been contended that the provision of Rule 16.28 are beyond the Rule making powers conferred u/s 7 of the Punjab Police Act. Reliance in support of this contention has been placed on a judgment of the Mysore High Court in H.D. Kolkar v. The State of Mysore by its Chief Secretary, Vidhana Soudha Bangalore, 1968 S. L. R 668, For the consideration of this submission, it is apt to notice the provisions of Sections 7 of the Punjab Police Act and Rule 16.28 of the Punjab Police Rules, These read as under : -

"Section 7.-Punishment , of subordinate ranks of the police force in disciplinary case-The appointing authority or an officer not lower in rank than the appointing authority, shall be competent to inflict all punishments on the members of the subordinate ranks of the police force in disciplinary cases."

Rule 16.28 of Punjab Police Rules :

(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".

13. Section 7, aforementioned, authorises the appointing authority or an officer not lower in rank than the appointing authority to inflict all punishments on the members of the subordinate ranks of the police force in disciplinary cases. Rule 16.28, aforementioned, empowers the Inspector-General, a Deputy Inspector-General and a Superintendent of Police to 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, as may be considered appropriate. It confers a power to enhance a punishment. In my view the provisions of Rule 16.28 do not infringe the provisions of Section 7 in any manner whatsoever. No provision of the aforesaid Rule, confers the powers on

any officer lower in rank than the Appointing Authority to inflict any punishment or enhance a punishment nor it is shown to be in any way beyond the rule making powers of the authorities. The decision in the case mentioned above also is clearly distinguishable as the Court had found the rule to be beyond the rule making power conferred by Section 28(2)(c) of the Bombay Police Act, 1951, which had fallen for consideration. Such is not position here.

14. I, thus, find no merit in this petition which is dismissed. In the circumstances of the case, the parties are left to bear their own costs.