Before S. S. Sandhawalia, C.J. and M. M. Punchhi, J.

RAM PHAL—*Petitioner*

versus

STATE OF HARYANA and others—*Respondents.*

Civil Writ Petition No. 1598 *of* 1977

May 28, 1980.

Punjab Police Rules 1934—*Rule* 16.38(1) & (2)—*Complaint made against a police officer to the Superintendent of Police—Such complaint not immediately forwarded to the District Magistrate—Belated compliance of rule* 16.38(1)—*Effect of—Significance of the word 'immediate'—Stated—'Complaint'—Meaning of—Superintendent of Police—Whether to conduct any enquiry before forwarding the complaint to District Magistrate—Superintendent of Police suggesting the delinquent officer to be proceeded against departmentally—Such suggestion—Whether encroaches upon the discretion of the District Magistrate—Departmental enquiry thereby ordered—Whether vitiated.*

Held, that the compliance of rule 16.38(1) of the Punjab Police Rules, 1934 is mandatory and is primarily for public interest and that public interest would also include the interest of the delinquent officer and the complainant; and the police force in general and the general public. The very purpose of sub-rule (1) would be defeated if the despatch of the information is withheld by the Superintendent of Police at his end altogether or for a time which cannot be called 'reasonable'. Cases can arise in which delay in despatch of information may become inevitable. Delay may be caused at the stage antecedent to the complaint actually coming into the hands of the Superintendent of Police and on the other hand the delay in its release from his hands. The antecedent delay is not within the sphere of the rule. The rule operates only from the moment when the complaint is perused by the Superintendent of Police enjoining upon him to set his objectivity in motion towards the 'fleeting scrutiny'. The time requisite for the purpose would vary from case to case but beforehand there may arise hurdles; inherent, man made or red taped, preventing quick placing of the complaint in the hands of the Superintendent of Police within or without his office. To obviate such a situation the Superintendent of Police is expected to employ his own administrative skill but once the complaint is in his hands, the time clock switches on. If he detains the complaint for a period more than necessary, he has to run the risk of encroaching upon public interest either by delaying the 'fleeting scrutiny' and/or the immediate despatch of its information to the District Magistrate. His

action must *ex facie* reflect satisfaction that it entailed no delay and if, there was, it was not so unreasonable as would be inconsistent with the object of the rule. It would also have to reflect that no harm had been done or caused due to the belated compliance of rule 16.38 (1) and unless it can be shown that it occasioned failure of justice, the proceedings shall not stand vitiated. (Paras 10 and 12).

Held, that the word 'complaint' in sub-rule (1) of rule 16.38 cannot be restricted to a formal complaint and must be held to include any allegation of misconduct of a particular kind referred to under this rule. Unless the word 'complaint' is defined in the police rules, it will carry with it such a large import that the delinquent police officer may attract an accusing finger either from within the department itself or from an outside agency. On receipt of such information the Superintendent of Police has the power only to a 'fleeting scrutiny' of the complaint to see whether it falls squarely within sub-rule (1) and to obviate the possibility of its being fake or a playful or malicious hoax. He has no power to embark upon an inquiry, however, short termed to ascertain as to the truthfulness of the complaint or as to satisfy himself on merits. The said officer cannot withhold the complaint to be forwarded to the District Magistrate and if he is permitted to embark upon an inquiry call it preliminary, questioning the veracity of the complaint or any 'factual enquiry', clear violation of the latter portion of the sub-rule will follow as the investigation to be ultimately ordered by the District Magistrate has only that object in view. The word 'indicates' used in the rule means pointedness, quite distinct from establishment. The time requisite for the achievement of the aforementioned object is the only time with the Superintendent of Police to link the receipt of the complaint and the despatch of its information to the District Magistrate and what will be that time gap would depend on the facts and circumstances of each case. (Para 11).

Held, that it is obvious that amongst the District Officers noticed under the Indian Police Act and the Punjab Police Rules, the District Magistrate is the superior most. The suggestions by the Superintendent of Police to the District Magistrate (an officer superior in rank) cannot be equated with 'dictate' or a suggestion 'meaningful or otherwise'. Rule 16.38 (2) enjoins objectivity of the functions of the District Magistrate again in the larger public interest. It is another matter if that objectivity could be pointed out as utterly lacking or there was no application of the mind. Since Rule 16.38 (2) (2) postulates judicial prosecution to be the normal course and departmental action to be an exception, it enjoins giving of the reasons by the District Magistrate, if the normal course is to be deviated from. As such, a mere suggestion by the Superintendent of Police to the District Magistrate to follow a particular course would not vitiate the departmental enquiry conducted against a delinquent official. (Para 20).

Nand Singh vs. *Superintendent of Police and another,* 1964 Current Law Journal 146,

Gobind Singh vs. *D.I.G. of Police and another,* 1964 Current Law Journal 150,

Walaiti Ram Softa vs. *State of Punjab and another,* 1965 Current Law Journal 1,

Avtar Singh Uppal vs. *The Inspector General of Police & others* 1966 Current Law Journal 318,

Bhajan Singh vs. *Bahal Singh,* 1967 S.L.R. 601.

OVERRULED.

Petition Under Art. 226 of the Constitution of India, praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents:—

(*i*) *to produce the complete records of the case;*

(*ii*) *the orders at Anns. 'P-4', 'P-7', 'P-8', and 'P-9' appended with the writ petition be quashed ;*

(*iii*) *it be declared that the petitioner shall be deemed to have continued in service and is entitled to all the consequential reliefs in the nature of arrears of salary, seniority etc.;*

(*iv*) *this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case ;*

(*v*) *the costs of this petition may also be awarded to the petitioner.*

J. L. Gupta, Advocate, *for the Petitioner.*

Naubat Singh, Sr. Deputy Advocate General, Haryana, *for the Respondent.*

JUDGMENT

Madan Mohan Punchhi, J.

(1) Whether belated compliance of Rule 16.38 (1) of the Punjab Police Rules (for short "Rules") would necessarily vitiate departmental proceedings, against a delinquent police officer, is a question

of primary importance, which arises in this petition under Article 226 of the Constitution. As is plain, the word "immediate" is the key word of opening employed in sub-rule (1). This word, in the context in which it has been used, has engaged our earnest attention to discover its true meaning, significance and amplitude towards the interpretation of the said sub-rule. But besides the said question, there have been other questions of secondary importance as well.

(2) Shorn of all details, the case of the petitioner Ram Phal was that he had a varied career as an employee in different capacities before he sought and obtained the post of an Assistant Sub-Inspector Police in the State of Haryana on March 31, 1971. While posted at Police Station, Radaur in District Kurukshetra in the year 1975, one Shri Lachhman Singh submitted a complaint against him alleging that the petitioner had accepted an illegal gratification of Rs. 550. The complaint was received by the Superintendent of Police, Kurukshetra, the fourth respondent, on September 8, 1975. He forwarded the complaint to the District Magistrate, Kurukshetra,—*vide* memo. No. 1965-P, dated September 24, 1975, copy of which is Annexure P-1 to the petition, after a span of 16 days. Such course was obligatory under rule 16.38(1) which is appropriate to be quated at this juncture:—

> "16.38(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates 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 1st class powers".

(3) *Vide* order, dated 16th October, 1975, Annexure P-2, the District Magistrate, Kurukshetra ordered investigation to be conducted by a Police Officer to be deputed by the fourth respondent. In his return, the fourth respondent has explained the interregnum of 16 days, from the date of the receipt of the complaint to the despatch of the information to the District Magistrate to have been employed for conducting a factual inquiry on the complaint by marking it to the Deputy Superintendent of Police Headquarters, on whose report compliance of the aforementioned rule was done by the Superintendent of Police,—*vide* despatch letter, Annexure P-1.

(4) As a sequel to the investigation authorised by the District Magistrate, Kurukshetra, one Shri Ved Parkash, Deputy Superintendent of Police, Kaithal, was deputed to conduct a preliminary investigation. The statements of witnesses recorded by the Inquiry Officer as well as the finding submitted by him were then sent to the District Magistrate on January 6, 1976—*vide* Annexure P-3 for according necessary permission under rule 16.38 (2) of the Rules, suggesting initiation of departmental proceedings against the petitioner. On January 15, 1976—*vide* order, Annexure P-4, the District Magistrate, after going through the report of the Inquiry Officer and other relevant papers, and keeping in view the facts, opined that it would not be advisable to prosecute the petitioner in a Court of law. He further opined that to meet the ends of justice, it was necessary to initiate departmental proceedings against the petitioner, and accordingly, exercising his deviatory choice, under sub-rule (2) of the aforesaid rule ordered launching of departmental proceedings against the petitioner. Resultantly, a regular inquiry was conducted and the petitioner was found guilty of the charge of accepting Rs. 550 as bribe. The requisite show cause notice, Annexure P-5, was given to the petitioner on June 26, 1976 to which he submitted a reply on August 31, 1976, Annexure P-6. On consideration of his reply and other material, an order of dismissal, dated September 30, 1976 (Annexure P-7) was passed by Superintendent of Police, Karnal which was confirmed in appeal by the Deputy Inspector-General of Police, Ambala Range, on January 9, 1977 (Annexure P-8), and was found not worth interfering with in revision by the Inspector-General of Police by his order, dated April 25, 1977 (Annexure P-9). This is how the matter was brought before us to challenge the entire proceedings culminating in the dismissal of the petitioner.

(5) It is by now well settled that sub-rules (1) and (2) of rule 16.38 are mandatory. In *Jagan Nath* v. *The Senior Superintendent of Police, Ferozepur*, (1), Grover J. held that the provisions of rule 16.38 (1) and (2) were mandatory and that departmental inquiry held without following its provisions was illegal. This view met with approval by a Division Bench of this Court in *Chanan Shah Bakshi* v. *Delhi Administration* (2). The aforesaid two decisions were based on the decision of the Supreme Court in *State of Uttar Pradesh* v. *Babu Ram Upadhya* (3). However, when the Delhi

(1) A.I.R. 1962 Pb. 38.

(2) L.P.A. 68-D of 1961 decided on 23rd January, 1963.

(3) A.I.R. 1961 S.C. 751.

Administration took the matter against Chanan Shah in appeal to the Supreme Court, their Lordships did not consider it necessary to decide in that case whether the provisions of rule 16.38 were mandatory or directory. On the assumption that the rule was directory, they found, in that case, lack of even substantial compliance with its provisions. The judgment in *Chanan Shah's case* (supra) was affirmed on the aforesaid terms by the Supreme Court in *Delhi Administration* v. *Chanan Shah* (3-A). In the meanwhile, a Full Bench of this Court again noted compliance of both the subrules to be mandatory in *Nand Nandan Sarup* v. *The District Magistrate, Patiala and others* (4). In another case, a Division Bench of this Court in *Union of India* v. *Ram Kishan* (5), held on reference, that the provisions of the said rule were mandatory in nature. But when the matter was taken to the Supreme Court in appeal, this time their Lordships affirmed the view of this Court holding rule 16.38 to be mandatory in nature in *Union of India* v. *Ram Kishan* (6). Compliance of the salutary provisions of rule 16.38 (1) and (2) is essential for the sustenance of departmental inquiry against a delinquent police officer. In that context, it is noteworthy that the aforementioned cases brought to this Court were cases of non-compliance of the mandatory rovisions of either sub-rule (1) or sub-rule (2) or both of rule 16.38 except *Chanan Shah's case* (supra) which was affirmed by the Supreme Court on a different ground. In the instant case, there is no grouse that there has been non-compliance of either of the two provisions of rule 16.38, but what has been vehemently contended by the learned counsel for the petitioner was that there was belated compliance of rule 16.38(1) and not valid compliance of rule 16.38(2).

(6) Now for compliance statutorily required, we must examine the weight of the word "immediate" employed in sub-rule (1) of rule 16.38. On behalf of the petitioner, it was contended that the word "immediate" must be given its ordinary dictionary meaning inasmuch as it should be construed to be "as immediate as possible". On the other hand, the learned Senior Deputy Advocate-General, Haryana contended that the said word is akin to the word "forthwith" and must be construed to mean "within a reasonable time" after the happening of the event wherefrom the word "immediate" operates. He also added that the word "immediate" in the context cannot have

(3A) 1959 (3) S.C.R. 653.

(4) 1966 P.L.R. 747.

(5) R.S.A. 256-D of 1962 decided on 4th March, 1964.

(6) 1972 S.L.R. 11.

synonymity with "simultaneous" and necessarily has to bear the burden of a time gap, however short, between the receipt of the complaint by the Superintendent of Police and its intimation to be despatched to the District Magistrate.

(7) In Venkataramaiya's Law Lexicon 1971 edition, the word "immediate" has been explained thus:—

> "The word 'immediate' means allowing a reasonable time for doing it. The test is, whether under the circumstances, there was such unreasonable delay as would be inconsistent with what is meant by immediate."

In Aiyer's Law Terms and Phrases 1973 edition, the word "immediately" has been explained to mean:—

> 'Same as forthwith: when used in statutes 'immediately' means 'within a reasonable time'."

In the 12th edition of Maxwall on the interpretation of Statutes, it has been stated thus:—

> "Sometimes a statute requires an act to be done 'forthwith' or 'immediately'. 'forthwith' Harman L.J. has said, is not a precise time and, provided that no harm is done, 'forthwith' means any reasonable time thereafter..... It may involve action within days: it may not involve action for years." (Emphasis supplied).

(8) In *Queen-Empress* v. *Jammu and another* (7), it was held that the word, "immediate" must be held to be equivalent "within a reasonable time" and what is reasonable time must be determined on the facts of each case.

(9) In *Chanan Shah (Bakshi)'s case* (supra), this Court while spelling out the intention of the rule makers of rule 16.38 of the Rules, while examining the correctness of the decision of Grover, J. in *Jagan Nath* v. *Senior Superintendent of Police, Ferozepur, and others* (8), held as under:—

> "There can be no quarrel with this decision. Although the learned Judge appears to have proceeded on the assumption that the provisions of the whole of rule 16.38 are

(7) I.L.R. Vol. XII 1889 Madras Series.

(8) A.I.R. 1962 Pb. 38.

mainly intended for the protection of police officers, whereas in my opinion if the provisions of the two sub-rules are perused, it will be seen that the main object of them is not to so much to protect police officers from either prosecution or departmental enquiry as to protect the public interests and to assure that if a police officer is guilty of any crime in his relations with the public the matter is not hushed up. This can be the only object of the first part of the rule which provides for immediate information to be sent to the District Magistrate of any complaint alleging the commission of an offence by a police officer in connection with his official relations with the public. It also appears to be the object of the next part which calls on the District Magistrate to decide whether the police themselves can be allowed to investigate such charge, or whether an investigation should be made by a Magistrate independently of the Police."

(10) The emphasis on the mandatory compliance of rule 16.38(1) is primarily for public interest. It appears to us that public interest would also include the interest of the delinquent officer and the complainant; and of the police force in general and the general public. The very purpose of sub-rule (1) would be defeated if the despatch of the information is withheld by the Superintendent of Police at his end altogether or for a time which cannot be called 'reasonable'. Equally the information which is required to be before the District Magistrate forthwith cannot render the function of the Superintendent of Police to a mere receipt-cum-despatch clerk. The Superintendent of Police has a definite function to perform under sub-rule (1), and what is that function we propose to clarify.

(11) In *Chanan Shah (Bakshi)'s case* (supra), it was held that the word 'complaint' in sub-rule (1) cannot be restricted to a formal complaint and must be held to include any allegation of misconduct of a particular kind referred to under this rule. That was also the view of Delhi High Court in *Daulat Ram* v. *Union of India* (9). The said Court elaborated the word 'complaint' to be understood in its general sense to mean any accusation, allegation or information of the commission of an offence or misconduct against the police officer concerned which may be in writing or be oral, or be couched in the

(9) 1971 (2) S.L.R. 502.

form of a petition by a member of the public, or a note by a departmental officer, or a confidential report by a superior police officer, or any information given by any person whether official or non-official. Unless the word 'complaint' is defined in the Police Rules, it will carry with it such a large import, that the delinquent police officer may attract an accusing finger either from within the department itself or from an outside agency. On receipt of such information, the Superintendent of Police has the power only, and if we may coin the expression to a 'fleeting scrutiny' of the complaint to see whether it falls squarely within the sub-rule (1) and obviate the possibility of it being fake or a playful or malicious hoax. He has no power to embark upon an enquiry, however, short-termed, to ascertain as to truthfulness of the complaint or as to satisfy himself on merits. It was fairly conceded by the learned Senior Deputy Advocate General, Haryana, that keeping apart whether the Suprintendent of Police has the power to make such preliminary inquiry or not, he definitely cannot withhold the complaint to be forwarded to the District Magistrate. And if the Superintendent of Police is to be permitted to embark upon an inquiry, call it preliminary, questioning the veracity of the complaint or any 'factual inquiry', clear violation of the latter portion of the sub-rule will follow, as the investigation to be ultimately ordered by the District Magistrate has only that object in view. The rule enjoins the investigation to commence by the orders of the District Magistrate through either of the two agencies of his choice. He may permit the police to investigate the complaint like complaints of an ordinary nature or may get the investigation conducted by a Magistrate. In the absence of this order, no investigation under sub-rule (1) is permissible. When a complaint against the police officer pertains to the commission of an offence in connection with his official relations with the public, the 'fleeting scrutiny' would envelope only a cool glance over the complaint to detect indication, if the act complained of was an offence, and that too in connection with the delinquent officer's relations with the public. The word 'indicates' used in the rule means pointedness, quite distinct from establishment. The time requisite for the achievement of the aforementioned objects is the only time with the Superintendent of Police to link the receipt of the complaint, and the despatch of its information to the District Magistrate, and what will be that time gap would depend on the facts and circumstances of each case.

(12) We may yet point out that cases can arise in which delay in despatch of the information may become inevitable. We can

visualise two spheres of its occurrence. Delay at the stage antecedent to the complaint actually coming into the hands of Superintendent of Police and on the other hand delay in its release from his hands. The antecedent delay is not within the sphere of the rule. The rule operates only from the moment when the complaint is perused by the Superintendent of Police enjoining upon him to set his objectivity in motion towards the 'fleeting scrutiny'. The time requisite for the purpose would vary from case to case but before-hand there may arise hurdles; inherent, man-made or red-taped, preventing quick placing of the complaint in the hands of the Superintendent of Police within or without his office. To obviate such a situation, the Superintendent of Police is expected to employ his own administrative skill and we can be no guide for his house to be kept in order. But once the complaint is in his hands, the time clock switches on. If he detains the complaint for a period more than necessary, he has to run the risk of encroaching upon public interests either by delaying the 'fleeting scrutiny' and/or the immediate despatch of its information to the District Magistrate. His action must *ex facie* reflect satisfaction that it entailed no delay, and if there was any, it was not so unreasonable as would be inconsistent with the object of the rule. It would also have to reflect that no harm had been done or caused due to the delayed despatch in the light of Harman L.J.'s quotation in Maxwall earlier.

(13) We have also pondered over the possibility of the complaint being withheld by the Superintendent of Police, or some agency in his office, to shield the delinquent officer and permit deliberate violation of the compliance of rule 16.38 so as to thwart public interest. We have no doubt that the mischief contemplated would not, and should not, be allowed to be committed and in any case when pointed out neither will the law abstain from its legal course nor will this Court, in an appropriate case, desist from granting appropriate relief in the matter, or will glance it over mutely, and let the rule become self-defeating. Despite the fear expressed, we must notice the virtue of the rule: it is, that it is there, existent and available.

(14) Now coming to the case in hand, the return of the fourth respondent is that he spent time in getting conducted an inquiry into the written complaint received on September 8, 1975 and the information of the complaint was despatched to the District Magistrate on September 24, 1975. The conducting of a factual inquiry at that stage was obviously overstepping authority and

beyond the spirit of rule 16.38(1). That factual enquiry does not seem to satisfy the tests of the 'fleeting scrutiny' which alone is enjoined by the rule as meaningfully understood by us. Undoubtedly, the District Magistrate has a role to play in the field being the head of the police administration of the district and he alone is the sole judge to choose the non-partisan agency from whom he would get the investigation conducted when a police man is arraigned as a criminal. He cannot be made to give up or delay his choice. Whether such time employed by the Superintendent of Police was unreasonable and inconsistent with the object of the rule, or had caused or done any harm for which we must exercise our jurisdiction under Article 226 of the Constitution, would be dealt with by us at a later stage in the judgment along with another context.

(15) Now it would be advisable to advert to the other two contentions raised by the learned counsel for the petitioner. They arise, suggestedly, within the ambit of rule 16.38(2). It is reproduced below:—

> "When investigation of such a complaint establishes a *prima facie* case, a judicial prosecution shall normally follow: the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed."

It was contended that after the preliminary investigation was conducted, the Superintendent of Police on January 1, 1976,—*vide* Annexure P. 3, forwarded the requisite file and papers to the District Magistrate conveying establishment of *prima facie* case against the petitioner. It was further mentioned therein that the matter was being referred to the District Magistrate for granting necessary permission under rule 16.38(2) for initiating the departmental proceedings against the petitioner. It was contended that the Superintendent of Police had no authority to make suggestion for initiating departmental proceedings, and by doing, he has not only encroached upon the discretion of the District Magistrate, but has also influenced the working of his mind. To support the view, reliance was sought on four Single Bench decisions of this Court in

(i) *Nand Singh* v. *Superintendent of Police and another* (10) (ii) *Gobind Singh* v. *D.I.G. of Police and another* (11), (iii) *Walaiti Ram Softa* v. *The State of Punjab and another* (12), and *Avtar Singh Uppal* v. *The Inspector-General of Police, Chandigarh and others* (13).

(16) In *Nand Singh's case* (supra), Harbans Singh, J., as the Ex-Chief Justice then was, observed as under:—

> "Apart from the District Magistrate applying his mind independently to the facts of the case, as enclosed by the investigation and exercising his independent discretion as to why the normal course was not to be followed and the petitioner was to be tried departmentally, the Superintendent of Police in his so-called "self-contained memorandum" had definitely made a suggestion that the petitioner should be proceeded against departmentally in the first instance and after the departmental inquiry was completed, he may be proceeded against in a Court of Law. All that the District Magistrate did was to write the word "allowed" on his memorandum. He *gave no reasons* for holding a departmental inquiry in preference to a judicial trial in a Court of Law, and, under the rules, he is bound to give these reasons. The position taken up by the Superintendent of Police that no separate reason need be given is untenable" (Emphasis supplied by us).

(17) In *Gobind Singh's case* (supra), P. C. Pandit J. observed as follows:—

> "The Superintendent of Police then wrote to the District Magistrate that the preliminary inquiries against the petitioner revealed that a criminal offence had been committed by him in connection with his official relations with the public and the inordinate delay so far caused would render it difficult to establish and substantiate the guilt

(10) 1964 Current Law Journal (Pb.) 146.
(11) 1964 Current Law Journal (Pb.) 150.
(12) 1965 Current Law Journal (Pb.) 1.
(13) 1966 Current Law Journal (Pb.) 318.

against the defaulter in a Court of Law. It was, therefore, proposed by him to deal with the petitioner departmentally and permission of the District Magistrate as required under Rule 16.38 for so proceeding against him was solicited. The District Magistrate then accorded the necessary permission as recommended by the Superintendent of Police without recording any reasons for the same. It would, thus, be clear that no action under sub-rule (1) of Rule 16.38 was taken. Further, the report of the Superintendent of Police suggesting that departmental proceedings be held against the petitioner and the order of the District Magistrate according the necessary sanction *without giving reasons* therefore contravened the provisions of sub-rule (2) of this Rule." (Emphasis supplied by us).

(18) In Walaiti Ram Softa's case (supra), Shamsher Bahadur J., while following the dictum in Nand Singh's case and Gobind Singh's case, observed as follows:—

"It may be added that under Rule 16.38(2) what is required is that "when investigation of such a complaint establishes a *prima facie* case, a judicial prosecution shall normally follow, the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. "In the instant case, Rule 16.38 has been breached in two essential aspects. In the first place the Superintendent of Police has himself made a suggestion of a departmental inquiry, and secondly the District Magistrate has conveyed his acceptance of the suggestion through someone else *without assigning his own reasons* for this course of action." (Emphasis supplied by us).

(19) In Avtar Singh Uppal's case (supra), Narula J., as the ex-Chief Justice then was, after holding that there was non-compliance of rule 16.38(1) of the Rules, while dealing with the matter under rule 16.38(2), observed as follows:—

"Lastly, Mr. Pannu has relied on an unreported judgment of a Division Bench of this Court (A. N. Bhandari C.J. and Daulat, J.) in *Bua Dass Kaushal* v. *Inspector-General of Police* (14), wherein it was held that if a

(14) L.P.A. 169 of 1957, dated 19th August, 1958.

report is made to the District Magistrate with a recommendation that the appellants' case should be dealt with departmentally and the District Magistrate agreed with the same by merely signing his name below the recommendation of the Superintendent of Police, it amounted to a valid order under rule 16.38(2) as that is the usual method of transacting departmental business.

Though all the decisions of this Court given by various learned Judges sitting in a Single Bench have not been very consistent with the said earlier view it is not necessary to refer this matter to a larger Bench because in this case the departmental proceedings pending against the petitioner are being set aside not only on the ground of a suggestion having been made to the District Magistrate to permit departmental proceedings but even otherwise."

(20) It is patent from the emphasis supplied by us in the first three cases, the decision largely hinged on the basis that no reasons had been supplied by the District Magistrate in deviating the cause towards departmental inquiry from the normalcy of a judicial prosecution. In the fourth case, the proceedings were quashed on the basis of those being violative of rule 16.38(1) primarily but there was a mere passing reference to the suggestion of the Superintendent of Police to the District Magistrate also. In all the aforesaid four cases, the ultimate decision did not solely rest on the consideration that the said suggestion made by the Superintendent of Police to the District Magistrate itself rendered fatal all further proceedings. But if it is taken, that the aforesaid four cases have laid down, that a suggestion by the Superintendent of Police to the District Magistrate to adopt a particular course is by itself, fatal, then to us it appears that to that limited extent the view of the law expressed therein is not sound and we express our inability to agree with the same. To that limited extent, the view is over-ruled. It is obvious that amongst the district officers, noticed under the Indian Police Act and the Punjab Police Rules, the District Magistrate is the superior most. The suggestions by the Superintendent of Police to the District Magistrate (an officer superior in rank) cannot be equated with 'dictate' or a suggestion 'meaningful or otherwise'. Rule 16.38(2) enjoins objectivity to the functions of the District Magistrate, again in the larger public interest. It is another matter if that objectivity could be pointed out as utterly lacking or there was no application

of the mind. Since, Rule 16.38(2) postulates judicial prosecution to be the normal course and departmental action to be an exception, it enjoins giving of reasons by the District Magistrate, if the normal course is to be deviated from.

(21) The next contention of the petitioner is that the District Magistrate neither did apply his mind to the matter nor give any reasons to prefer the exception of initiating departmental proceedings. But if Annexure P-4 is to be read, it is abundantly clear that the District Magistrate went through the report of the Inquiry Officer and other papers placed before him and keeping in view the facts, found it inadvisable to prosecute the petitioner in a Court of law. Yet, to further ends of justice, he considered it necessary to initiate departmental proceedings against him. In the nature of things if judicial prosecution was ruled out, the only other course open to the District Magistrate was to initiate departmental proceedings against the petitioner. There was no escape from it, the reason being self-evident. The order is thus not bereft of reasons as required under rule 16.38(2), which can safely be held as substantially complied with.

(22) Lastly, reliance was placed by both the counsel for the parties on the Full Bench decision of this Court in *Raj Kumar* v. *The State of Punjab* (15), to demolish each other's respective contentions. Whereas the counsel for the petitioner sought aid from the Single Bench decision of this Court in *Avtar Singh Uppal's case* (supra) noted therein, wherein full effect was given to the word "immediate" appearing in rule 16.38(1) of the Rules, and delayed conveyance of information for over three months was considered to be fatal to the inquiry, the learned Senior Deputy Advocate-General, Haryana appearing for the respondents contended that despite their Lordships of the Full Bench so holding, they have permitted a course to the State, after quashing the charge in a criminal prosecution, by opening a fresh avenue to the prosecution, to present a fresh report under section 173 of the Code of Criminal Procedure before the learned Special Judge based on an investigation contemplated by rule 16.38(1) of the Rules. In other words, the respondents contended that despite the violation of rule 16.38(1) of the Rules, the State was permitted to comply with the requirements of the Rules, ignoring that more than three years had passed from the

(15) 1976 (1) S.L.R. 5.

date of the complaint and the quashing of the charge by the Full Bench. In the first place the aforesaid Full Bench decision in *Raj Kumar's case* (supra) would have no applicability to the instant case. That was a case of total non-compliance of rule 16.38(1), but the case in hand is a case of obvious compliance, but a belated one. In the second place, their Lordships of the Supreme Court have in *State of Punjab* v. *Gurbux Singh* (16), held that it was erroneous to hold that compliance with rule 16.38 was a condition precedent to the prosecution of a police officer in a Court of law, and that a plain reading of the rule shows that its application is confined to departmental inquiries only. Their Lordships approved the decision of a Division Bench of this Court reported as *Hoshiar Singh* v. *The State of Punjab* (17), holding that it was not incumbent to have a sanction order by the District Magistrate before a police officer was sent up for trial in a Court of law. It seems to us that while the Full Bench of this Court in *Raj Kumar's case* (supra) overruled *Hoshiar Singh's case* (supra), but the Supreme Court has approved *Hoshiar Singh's case;* obviously, at first glance, the Full Bench case in which the criminal prosecution was quashed for the non-compliance of rule 16.38(1) stands overruled by the Supreme Court. And if this is so, what is left for us is to consider independently the correctness of the decision rendered in *Avtar Singh Uppal's case* (supra) by Narula J. as followed by him in *Bhajan Singh* v. *Bahal Singh* (18), the former decision having met approval by the Full Bench in *Raj Kumar's case* (supra).

(23) In *Avtar Singh Uppal's case* (supra), the petitioner approached this Court at a stage when the departmental inquiry against him was pending complaining non-compliance of rule 16.38(1) inasmuch as the information was not given to the District Magistrate immediately. Narula J. observed as follows:—

> "Effect must be given to every word of the statutory rule. Immediate information not having been given to the District Magistrate and in fact no information having been given to him for more than three months, the entire inquiry proceedings against the petitioner are vitiated and rendered null and void on account of the non-compliance with the abovesaid mandatory rule."

(16) Cr. A 114 of 1975 decided on 15th November, 1979.
(17) 1965 P.L.R. 438.
(18) 1967 S.L.R. 601.

The order of reversion of the then petitioner to his substantive rank of Sub-Inspector was quashed in that case and the entire pending investigation and departmental proceedings against him were quashed. Similarly, Narula J., in *Bhajan Singh's case* (supra) while affirming his earlier view in *Avtar Singh Uppal's case* (supra) observed as follows:—

> "I have no reason to differ from the view which I took in *Avtar Singh's case* (supra) about the impact and effect of the word 'immediate' in the opening part of rule 16.38(1) of the Police Rules. Permitting resort to the said rule after such a long time, would in my opinion, amount to ignoring the statutory requirements of the said rule. I, therefore, hold that so much of the order of the Deputy Inspector-General of Police, Ambala Range (Annexure 'I') as directs compliance with the provisions of Police Rule 16.38(1) by placing the matter before the District Magistrate, Rohtak at this stage, is contrary to the provisions of law, and has to be struck down. The order of the appellate authority quashing the order of punishment passed by the Superintendent of Police, Rohtak, is manifestly correct and has to be upheld".

The petitioner in that case had suffered an inquiry and had been reverted to his substantive post of Assistant Sub-Inspector. The petitioner's appeal was pending before the Deputy Inspector-General of Police, Ambala Range. In the meantime, the Superintendent of Police raked up various other inquiries against the petitioner and during the pendency of one such inquiry a warning was administered to the petitioner. It was at that stage that the petitioner came to this Court seeking directions to the Superintendent of Police to withdraw his orders and notices regarding departmental inquiries. During the pendency of the writ petition, the Deputy Inspector-General of Police allowed the appeal of the petitioner for non-compliance of rule 16.38(1) but remitted the case to the Superintendent of Police for complying with rule 16.38(1) by bringing the allegations against the petitioner to the notice of the District Magistrate. It is in this sequence that the aforequoted observations were made by Narula J., and the directions by the Deputy Inspector-General of Police for getting such compliance were struck down.

(24) Now, it would be seen that the petitioners in the aforesaid two cases approached this Court at stages when the matter was

pending at one stage or the other before the departmental authorities, and effort was being or had been made at their end to comply with rule 16.38(1), though belatedly. "The view taken in the aforesaid two decisions with regard to the word "immediate" employed in the said sub-rule appears to us to be too legalistic and not in consonance with the view expressed by us early and now. Thus the view expressed by Narula J. in *Avtar Singh Uppal's case* (supra) and *Bhajan Singh's case* (supra) in relation to the word "immediate" would stand overruled. And in any event, those were cases in which the matter was raised in this Court at comparatively earlier stages or had been raised before the departmental authorities, and thus decisions on their own facts."

(25) Coming to the case in hand, belated compliance of rule 16.38(1) or faulty compliance of rule 16.38(2) appears never to have been raised before the departmental authorities. The reply to the show cause notice (Annexure P. 6), the order of dismissal (Annexure P. 7), the appellate order (Annexure P. 8) and the revisional order (Annexure P. 9) are totally silent as to these pleas. The writ petition has been filed in this Court after the petitioner had participated in the inquiry and availed of his remedies of appeal and revision before the departmental authorities. He submitted to their jurisdiction, perhaps on the expectancy that he would be exonerated. He cannot be permitted to raise these questions now and in particular with regard to the belated compliance of rule 16.38(1) through this petition without pleading as to what injustice has been done to him. The petition is significantly silent as to what evil consequence has visited him by the delay of despatch of the information by the Superintendent of Police to the District Magistrate and the employment of that time by holding a factual inquiry. All what has been pleaded is that the delay infringed the provisions of rule 16.38(1) and vitiates the entire proceeding but no injustice at any level has been pointed out on account of the suggested belated compliance of rule 16.38(1). We cannot rule out the possibility that in the instant case, the Superintendent of Police may have *bona fide* believed that he was entitled to get conducted a short fact finding inquiry before he placed the matter for information to the District Magistrate. It may equally be that the Superintendent of Police considered that he had acted in public interest to sift, the averments in the complaint for reference and facility of disposal at the end of the District Magistrate. We must, at the same time, hasten to add that it should not be taken that we

have accorded explicit approval as to what has been done by the Superintendent of Police, but in the absence of any *mala fide* alleged, we are prone to hold that the explanation offered is not altogether unreasonable which could meet our disapproval outright; more so, when the rule has been wanting in clarity from judicial avenues. We thus do not find this to be a case in which the jurisdiction of the Court under article 226 of the Constitution deserves to be exercised in favour of the petitioner, in the facts and circumstances brought forth, without being made wiser as to any substantial injury to the petitioner or failure of justice having occasioned thereby.

(26) In the light of the above observations, this petition has to fail and is hereby dismissed with no order as to costs.

S. S. Sandhawalia, C. J.—I agree.

N. K. S.

Before D. S. Tewatia, J.

LACHHMAN DASS and another,—*Petitioners.*

versus

MADAN LAL,—*Respondent.*

Civil Revision No. 1491 *of* 1974

July 18, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 13(2) (a) (iii) and 13(4)—Shop with a tenant taken possession of by the Improvement Trust under a development scheme—Shops falling within the area of the scheme demolished and new ones constructed—A new shop allotted to the landlord in lieu of the one from which the tenant was dispossessed—Tenant applying for restoration of possession under section 13(4)—Such application—Whether maintainable—Provisions of section 13(4)—Whether attracted.

Held, that where a tenant has been dispossessed from the building by the Improvement Trust under a development scheme, he cannot be said to have been evicted in execution of any order passed by the Rent Controller and, therefore, his surrendering of possession to the Improvement Trust cannot be treated as his eviction