

Before Mehtab S. Gill & Augustine George Masih JJ.

ASI RAM PARTAP,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. No. 13095 of 2007

23rd September, 2008

Constitution of India, 1950—Arts. 226 & 311(2)(b)—Punjab Police Rules, 1934—Rls. 16.28 & 16.29—Dismissal from service—DGP exercising powers of review reducing order of dismissal & imposing punishment of stoppage of four annual increments with cumulative effect—Appeal filed by petitioner dismissed by Government holding that second appeal not maintainable—Whether an appeal preferred by an official before Government against order passed by DGP is maintainable—Held, yes—Appeal filed by petitioners against order of DGP is first appeal—Petition allowed, Government directed to decide appeal filed by petitioner in accordance with law.

Held, that a perusal of Rule 16.29 would clearly indicate that one appeal against the order for stoppage of increments has been specifically provided under Rule 16.29(1) & (2) of the 1934 Rules. The Director General of Police, Haryana has vide his order dated 15th October, 2006 exercising his powers of review under Rule 16.28 of the 1934 Rules for the first time passed an order against the petitioners as in the departmental enquiry the petitioners were exonerated, which report was accepted by the Superintendent of Police, Ambala. So, there was no occasion/reason for the petitioners to file appeal. It is this order dated 15th October, 2006 of the Director General of Police which was appealed against by the petitioners and thus the appeal before the Government was the first appeal. The impugned order dated 3rd January,

2007 passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Home, simply states that there is no provision in the 1934 Rules for filing a second appeal, which is factually incorrect as this is the first appeal filed by the petitioners. It appears that the facts were not brought to the knowledge of respondent No. 1 leading to scuttling of the statutory right of the petitioners. The Appellate Authority is required in law to pass a reasoned speaking order which is missing in these cases as the order dated 3rd January, 2007 is totally non-speaking and thus deserves to be quashed on this ground also. In the light of Rule 16.29 of the 1934 Rules, one appeal has specifically been provided for and the appeal of the petitioners needs to be decided on merits by the Government.

(Paras 7 & 8)

S.S. Dinarpur, Advocate *for the petitioner.*

Harish Rathee, *Sr. DAG Haryana.*

AUGUSTINE GEORGE MASIH, J.

(1) By this order, we propose to dispose of three writ petitions i.e. C.W.P. No. 13095 of 2007, C.W.P. No. 13141 of 2007 and C.W.P. No. 13133 of 2007 as common questions of facts and law are involved.

(2) The brief facts of the case are that ASI Ram Partap, ASI Balbir Singh, Head Constable Prem Singh, Head Constable Rambir and Head Constable Pala Ram were taking the accused Harnek Singh, son of Balbir Singh, who was in their custody and on police remand, to Chandigarh for effecting recovery in a Government vehicle. On their return journey from Chandigarh to Ambala, Harnek Singh jumped from the vehicle and ran away along with his hand-cuffs. The accused was under the control of Head Constable Rambir Singh and Head Constable Pala Ram. A charge-sheet was issued to all the three petitioners as well as Head Constable Pala Ram and Head Constable Rambir. On enquiry all the three petitioners in the above-mentioned three writ petitions, were exonerated and Head Constable Rambir and Head Constable Pala

Ram were incriminated. The Superintendent of Police, Ambala-respondent No. 3 agreeing with the enquiry report inflicted the punishment of dismissal from service of both the delinquent officials. The effect thereof was that the exoneration of all the three petitioners in the three writ petitions stood confirmed. Head Constable Rambir and Head Constable Pala Ram filed two separate appeals before the Inspector General of Police, Ambala Range, Ambala-respondent No. 3 against the order of dismissal who dismissed their appeals on 24th November, 2005. Thereafter, Head Constable Rambir and Head Constable Pala Ram preferred revision petition before the Director General of Police, Haryana-respondent No. 2. Their revision petitions were partly allowed and keeping in view the length of service, a lenient view was taken by respondent No. 2 and the order of dismissal from service was reduced to stoppage of four increments with permanent effect.

(3) While dismissing the revision petition of both the police officials, show cause notices were issued to all the three petitioners. Upon reply being submitted by the petitioners, the Director General of Police-respondent No. 2 imposed punishment of four annual increments with cumulative effect,—*vide* order dated 15th September, 2006 (Annexure P-10).

(4) Aggrieved by the order of the Director General of Police, Haryana-respondent No. 2 passed while exercising his powers under Rule 16.28 of the Punjab Police Rules, as applicable to State of Haryana (hereinafter referred to as 1934 Rules), the petitioners filed first appeal from the original order to the State Government under Rule 16.29 of the 1934 Rules. Respondent No. 1,—*vide* his order dated 3rd January, 2007 (Annexure P-12) dismissed the three appeals preferred by the writ petitioners by passing a speaking order of even date on the ground that this was a second appeal and therefore, not maintainable in accordance with the Punjab Police Rules, 1934, as applicable to State of Haryana.

(5) The only question which needs to be decided in this matter is whether an appeal preferred by an official before the Government

against the order passed by the Director General of Police, who has exercised his powers of review under Rule 16.28 of the 1934 Rules, as applicable to Haryana is maintainable or not ?

(6) Rule 16.29 of the 1934 Rules provides for an appeal against the orders which reads as under :—

“16.29. Right of appeal.—(1) Appeals shall lie only against orders of dismissal or reduction or stoppage of increment or forfeiture of approved service for increment.

(2) There shall be one appeal only from the original order, and the order of the appellate authority shall be final.

(3) A copy of the original order appealable shall be supplied to the person concerned free of cost.

(4) Any person wishing to appeal under sub-rule (1) may apply to the Superintendent for a copy of the complete record, or any portion thereof. Such copies shall not be given during the pendency of the original proceedings for the facilitating of cross-examination or the preparation of the defence. Copies of the record of preliminary enquiries [rule 16.24 (viii)] shall not be given for purposes of appeal.

Such application shall bear a court-fee stamp of the value of two annas, unless the applicant is in Jail, and shall be accompanied by a deposit of the copying fees chargeable under the scale in force in the civil courts of the district.

(5) The copy of such record shall be given with as little delay as possible, and the Superintendent shall certify to its correctness and to the date on which it was given to the applicant.

(6) The appellant authority in cases of reduction and dismissal is as indicated in the following table :—

Officer by whom original order of punishment in framed	Appellate Authority
Deputy Superintendent (Administrative), The appellant authority in cases of reduction and Government Railway Police, Deputy Superintendent, in charge of Railway Police Sub-Division.	Assistant Inspector-General, Government Railway Police
Superintendent of Police, Senior Assistant Superintendent of Police, Lahore, Officer-in-charge of Recruits Training Centre, Deputy Superintendent of Police, Punjab Armed Police Lahaul and Spiti.	Deputy Inspector-General of Police and Assistant Inspector-General, Provincial Additional Police (designated as Commandant Provincial Additional Police)
Deputy Inspector-General of Police, Assistant Inspector-General, Provincial Additional Police, (designated as Commandant.	Provincial Additional Police, Assistant Inspector-General of Police (Traffic)

(7) Appeals against reduction shall be presented through the Superintendent of Police of the district in which the appellant is serving; but in the case of officers serving directly under a Deputy Inspector-General of Police appeals shall be forwarded through such Deputy Inspector-General of Police. Appeals against dismissal shall be forwarded direct to the appellate authority.”

(7) A perusal of the above Rule would clearly indicate that one appeal against the order for stoppage of increments has been specifically

provided under Rule 16.29(1) & (2) of the 1934 Rules. The Director General of Police, Haryana has,—*vide* his order, dated 15th October, 2006 exercising his powers of review under Rule 16.28 of the 1934 Rules for the first time passed an order against the petitioners as in the departmental enquiry the petitioners were exonerated, which report was accepted by the Superintendent of Police, Ambala. So there was no occasion/reason for the petitioners to file appeal. It is this order, dated 15th October, 2006 of the Director General of Police which was appealed against by the petitioners and thus the appeal before the Government was the first appeal.

(8) The impugned order, dated 3rd January, 2007 (Annexure P-12) passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Home, simply states that there is no provision in the 1934 Rules for filing a second appeal, which is factually incorrect as this is the first appeal filed by the petitioners. It appears that the facts were not brought to the knowledge of the respondent No. 1 leading to scuttling of the statutory right of the petitioners. The Appellate authority is required in law to pass a reasoned speaking order which is missing in these cases as the order, dated 3rd January, 2007 (Annexure P-12 in all these three cases) is totally non-speaking and thus deserves to be quashed on this ground also. In the light of Rule 16.29 of the 1934 Rules, one appeal has specifically been provided for and the appeal of the petitioners needs to be decided on merits by the Government.

(9) In view of the above, these petitions i.e. C.W.P. No. 13095 of 2007, C.W.P. No. 13141 of 2007 and C.W.P. No. 13133 of 2007 are allowed. Order, dated 3rd January, 2007 (Annexure P-12) passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Home, in all the three cases is hereby quashed. A direction is issued to respondent No. 1 to decide the appeal filed by the petitioner in accordance with law within a period of two months from the date of receipt of certified copy of this order by passing a speaking order on merits.

(10) If a request for personal hearing is made by the petitioner, the same may also be considered.

R.N.R.