

K.S. Sidhu, Advocate with Kirandeep Kaur, Advocate, *for the petitioner.*

Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

(1) The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 16.08.2023 (Annexure P-6) whereby DIG, Faridkot Range, Faridkot (Punjab) has ordered to conduct De-novo departmental enquiry.

(2) The petitioner joined Punjab Police on 04.02.1990 as Assistant Sub-Inspector. He was promoted to the post of Sub-Inspector on 12.10.2001. He got further promotion of Inspector w.e.f 01.01.2010. The service of the petitioner was recognized by 20 Commendation Certificates as well as cash award. The petitioner on attaining the age of superannuation retired on 05.12.2019. The petitioner in November 2017 joined as SHO, Police Station City South Moga. An FIR No.181 dated 10.09.2017 under Sections 22 and 29 of NDPS Act, 1985 was registered at Police Station City South, Moga. Accused in the aforesaid FIR came to be released on regular bail on account of non filing of challan within prescribed period. SSP, Moga on account of non filing of challan which resulted into release of accused in terms of Section 167 (2) of Cr.P.C, initiated departmental enquiry against the petitioner. A complete procedure of departmental enquiry was followed and petitioner was exonerated vide order dated 26.09.2018 (Annexure P-5) passed by SSP, Moga. The respondent by impugned order dated 16.08.2023 has ordered to conduct De-novo departmental enquiry. The said order has been passed in exercise of power conferred by Section 16.28 of Punjab Police Rules, 1934 (for short '1934 Rules').

(3) Mr. K.S. Sidhu, Advocate, learned counsel for the petitioner submits that respondent has no authority to conduct De-novo departmental enquiry because Rule 16.28 does not permit re-enquiry. The petitioner was exonerated vide order dated 26.09.2018 and impugned order has been passed on 16.08.2023. The petitioner retired on 05.12.2019, thus, impugned order has been passed almost after 5 years from the date of order exonerating the petitioner and 4 years from the date of retirement of the petitioner. As per Rule 2.2 of Punjab Civil Service Rules, departmental proceedings cannot be initiated after 4 years from the date of alleged incident, if an employee has already retired.

(4) Learned State counsel submits that it is not a case of fresh enquiry whereas it is a case of De-novo departmental enquiry, thus, protection of Rule 2.2 is not available to the petitioner. The impugned order has been passed by DIG who is superior to Disciplinary Authority and as per Rule 16.28, DIG is competent to review order of SSP and direct for De-novo departmental enquiry.

(5) Notice of motion.

(6) Mr. Aman Dhir, DAG, Punjab accepts notice on behalf of the respondent-State and waives service.

(7) With the consent of both sides, the matter is taken up for final disposal.

(8) I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

(9) The conceded position emerging from record is that the petitioner joined Police Force in 1990 and he joined Police Station, Moga as SHO in November' 2017. An FIR No.181 dated 10.09.2017 under Sections 22 and 29 of NDPS Act, 1985 was pending against an accused. The said accused was extended concession of regular bail on account of non-filing of challan within period prescribed under Section 36-A of NDPS Act, 1985. Jurisdictional SSP initiated departmental proceedings against the petitioner alleging that accused has been released on bail on account of dereliction of duty on part of the petitioner. The departmental enquiry culminated in exoneration of the petitioner. The order of exoneration was passed on 26.09.2018 and petitioner retired on 05.12.2019. The respondent has passed impugned order on 16.08.2023. The said order has been passed in exercise of power conferred by Rule 16.28 of 1934 Rules. The reviewing authority has directed to conduct De-novo departmental enquiry.

(10) The entire dispute is centered around the interpretation of Rule 16.28 of 1934 Rules, thus, it is inevitable to look at the said rule which is reproduced as below:

“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.** [The State Government may also call for the records and review the awards made by the Inspector General of Police, Punjab or by any other authority subordinate to him.]

(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 purpose 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 his punishment should not be enhanced.”

(11) From the perusal of above quoted rule, it comes out that Inspector General/Deputy Inspector General and Senior Superintendent of Police, may call record of awards made by their subordinates. These officers may confirm, enhance, modify or annul the order passed by their subordinates. They before passing order of confirmation or enhancement or modification or annulment may make further investigation or direct to be made before passing orders. The rule does not permit to conduct De-novo departmental enquiry. The higher authority is competent to annul the order passed by his subordinate and before annulling the same, he may conduct further investigation or direct to be conducted, however, higher authority has no right to annul the order passed by his subordinate and thereafter order to conduct De-novo departmental enquiry.

(12) This Court in *Joginder Singh versus State of Punjab and others*¹ has considered an identical issue and held that Competent Authority cannot order for De-novo departmental enquiry. The relevant extracts of the judgment read as:

“5. 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 authorized 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

¹ 1983 SCC OnLine (P&H) 562

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 *Shri Krishan Lal Seth versus Shrimati Pritam Kumari*, 1961 P.L.R. 865, 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."

Since a doubt was expressed about the correctness of this decision, the matter was re-examined by another Division Bench in *Raghu Nath Jalota versus Ramesh Duggal and another*, AIR 1980 Punjab and Haryana 188 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."

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 *Dwarka chand versus State of Rajasthan*, AIR 1958 Rajasthan 38, was that if there was

norule 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 Yadava'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.”

(13) Following the aforesaid judgment, this Court in *SI Talwinderjit Singh versus Deputy Inspector General, Police Ferozepur Range, Ferozepur & others in CWP No.4974 of 2002* and *‘Suresh Chand versus State of Haryana and others’²* has formed the same opinion.

(14) In the case in hand, the impugned order has been passed by DIG and he has reviewed order passed by SSP. A Competent Authority has reviewed order passed by his subordinate. The respondent has not annulled the order passed by SSP but has directed for De-novo departmental enquiry. The impugned order comes in the teeth of aforesaid judgments passed by this Court. The impugned order deserves to be set aside on this sole ground.

(15) There is another nuance of the matter which needs to be adverted. No limitation period has been prescribed under Rule 16.28 of the 1934 Rules, however, it is settled proposition of law that where no limitation period is prescribed, authorities are bound to act within reasonable period. The reasonable period depends upon facts and circumstances of each case. There is no hard and fast or straitjacket formula. Under Rule 2.2 of Punjab Civil Service Rules, a period of 4 years has been prescribed for initiating departmental proceedings against a retired employee. To adjudicate the issue, it would be apposite to notice Rule 2.2 of Punjab Civil Services Rules which is reproduced as below:

² 2022 SCC OnLine (P&H) 763

“(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specific period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental judicial proceedings, the pensioner is found guilty of grave misconduct or negligence, during his service including service rendered on re-employment after retirement.

Provided that:-

1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

i) shall not be instituted save with the sanction of the Government.

ii) Shall not be in respect of any event which took place more than four years before such institution; and

iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceeding in which an order of dismissal from service could be made in relation to the officer during his service.

3) No such judicial proceedings, if not instituted while the officer was in service, whether before this retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution;

Explanation:-For the purpose of this rule-

a) a departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such

date;and;

(b) a judicial proceeding shall be deemed to be instituted-

(i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made;and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the court.”

(16) As per Rule 2.2 of Punjab Civil Service Rules, 4 years are counted from the date of cause of action. In the case in hand, the cause of action which led to departmental enquiry was non filing of challan within period contemplated by Section 36-A (4) of NDPS Act, 1985. The said period expired in March' 2018, thus, original cause of action arose in March' 2018. This is a case of De-novo enquiry, thus, Rule 2.2 is not directly applicable, however, period contemplated in the said rule can be considered for the purpose of determining period under Rule 16.28 of 1934 Rules. The respondent in exercise of power under Rule 16.28 has reviewed order dated 16.09.2018. The petitioner retired in December' 2019. This Court is of the opinion that power under Rule 16.28 should be exercised within 3 years unless and until there are exceptional circumstances. Taking cue from Rule 2.2 of Punjab Civil Service Rules, this Court finds that power of review in the present case must be exercised within 4 years from the date of order passed by subordinate. The SSP had passed order on 26.09.2018 and it should have been reviewed by 25.09.2022 whereas respondent has passed impugned order on 16.08.2023, thus, this Court is of the opinion that impugned order is barred by doctrine of reasonable period of limitation.

(17) In the wake of above discussion and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 16.08.2023 (Annexure P-6) passed by DIG, Faridkot is hereby set aside.
