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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 02.04.2025

Sham Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Sahil Soi, Advocate for the petitioner

Mr. Aman Dhir, Deputy Advocate General, 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 28.01.2025 (Annexure P-10) whereby respondent has enhanced punishment awarded by Disciplinary Authority.

2. The petitioner joined Punjab Police as Constable on 19.05.1989. He, from time to time, came to be promoted. In 2020, he was holding local rank of Assistant Sub-Inspector. He, while posted at Police Post Sun City Turn, Police Station Mohkampura, District Amritsar, in the course of his official duty stopped one vehicle which was being driven by a minor. He checked storage box of the two-wheeler and found two condoms. Father of the minor child reached there and scolded his son. After 2-3 days, child committed suicide. The Department initiated proceedings against the petitioner which culminated in forfeiture of two increments with permanent effect. He unsuccessfully preferred appeal before the Appellate Authority.

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He further preferred appeal before the Government which came up for consideration before Home Secretary. The petitioner was seeking setting aside of forfeiture of two increments, however, Home Secretary without issuing him any notice, vide impugned order dated 28.01.2025 enhanced punishment awarded by Disciplinary Authority. The punishment of forfeiture of two increments has been substituted by reduction in rank. He has been reduced to rank of Constable. It is apt to mention here that at the time of passing impugned order, the petitioner was holding substantive rank of Head Constable and local rank of Assistant Sub-Inspector.

3. Mr. Sahil Soi, Advocate submits that it was appeal of the petitioner before Government, thus, there was no occasion to enhance the quantum of punishment. There is no provision which empowers the Government to enhance punishment while adjudicating an appeal. The petitioner was not even served show cause notice, thus, impugned order is bad in the eye of law. He would be satisfied if impugned order is set aside and order of Appellate Authority-Director General of Police, Punjab (for short 'DGP') is restored.

4. Notice of motion.

5. Mr. Aman Dhir, Deputy Advocate General, Punjab, who on advance notice is present in Court, accepts notice on behalf of respondent-State.

6. With the consent of both sides, the matter is taken up for final adjudication.

7. Learned State counsel submits that State Government has power to review order of DGP under Rule 16.28 of Punjab Police Rules,



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1934 (for short 'PPR'). The Home Secretary has passed impugned order while exercising power under Rule 16.28 of PPR. There is power to enhance punishment awarded by authorities below. This power could be exercised even while adjudicating appeal of the petitioner.

8. On being confronted with Sub-Rule (3) of Rule 16.28 of PPR, learned State counsel conceded that impugned order was passed without issuing notice to the petitioner proposing higher punishment.

9. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

10. The State Government in terms of Rule 16.28 of PPR has power to call for the records and review the awards made by Inspector General of Police (for short 'IGP') or any other authority subordinate to him. As conceded by both sides, at present, Head of Police Force is DGP, thus, expression IGP used in PPR needs to be substituted with DGP. The Reviewing Authority has power to enhance the punishment awarded by Authorities below. For ready reference, Rule 16.28 of PPR 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



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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 his punishment should not be enhanced.”

11. From the reading of aforesaid rule, it is quite evident that punishment can be enhanced while exercising power of review and said power can be exercised after granting opportunity of hearing as well as issuing show cause notice. In the case in hand, the respondent has enhanced punishment awarded by Authorities below while adjudicating appeal filed by petitioner.

12. It is a settled proposition of law that Appellate Authority can enhance penalty if there is specific provision and in the absence of provision, Appellate Authority cannot enhance penalty. A Division Bench of this Court in *M/s Nirvair Singh v. Financial Commissioner Taxation, Punjab Civil Secretariate-1 Punjab 2019 (20) GSTL 349*, has adverted with this issue and has held that Appellate Authority cannot enhance penalty in the absence of specific power. The relevant extracts of the judgment read as:-

“6. Section 14 of the Punjab Excise Act reads as under:-

“14. Appeal- An appeal shall lie from an original or appellate order of any excise officer in such cases or classes of cases and to such authority as the [State] Government shall by notification declare.”

7. Section 14 does not confer a power upon the appellate authority to pass an order more burdensome than the order appealed against. It does not entitle the appellate



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authority to enhance the penalty. Our attention was not invited to any other provision of the Act that indicated such a power either. Absent a power to the contrary conferred by a statute, an appellate authority cannot grant a relief in favour of the respondent. It can either confirm the order appealed against or set it aside. It can also modify the order, but not to the further detriment of the appellant except as to an order for costs.

Where the Legislature intends conferring a power upon an appellate or revisional authority to enhance the relief in favour of the respondent, it does so specifically. For instance, Sections 128 and 128-A of the Customs Act, 1962 (in short the Customs Act) confer such a power. Sub-section (3) of Section 128-A of the Customs Act confers the power upon the Commissioner (Appeals) to enhance the penalty. This is evident from the first proviso to sub-section (3) of Section 128-A which stipulates that an order enhancing any penalty or fine in lieu of confiscation shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed enhancement. The word "modifying" in the opening part of sub-section (3), therefore, includes an order enhancing the penalty and it is for this reason that the first proviso requires an order enhancing the penalty not to be passed unless the appellant has been given a reasonable opportunity of showing cause against the same. The Punjab Excise Act does not confer such a power upon the appellate authority. The impugned order enhancing the penalty was, therefore, without jurisdiction.

8. The petition is, therefore, allowed to the extent of quashing the imposition of penalty of Rs 4 lacs. It is clarified that this order does not operate against or in respect of the sum of Rs 1 lac paid by the petitioner pursuant to the stay order dated 18.05.2016."

13. The stand of respondent that power has been exercised under Rule 16.28 of PPR is misconceived because respondent has passed impugned order while adjudicating appeal of the petitioner. The said power



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could be exercised by issuing show cause notice and initiating separate process under Rule 16.28 of PPR.

14. Apart from afore-stated grounds, the impugned order deserves to be set aside on merits. The petitioner committed alleged misconduct while discharging his official duties. He was awarded punishment of forfeiture of two increments for the alleged misconduct. The petitioner had not illegally or unofficially detained vehicle of a minor child. It was father of the child who scolded him. The petitioner could not be held responsible for the unfortunate incident to the extent that his rank is reduced from Assistant Sub-Inspector (Local Rank) to Constable. The petitioner has conceded that he would be satisfied if order of DGP is restored. If findings of Home Secretary are upheld, no police official would be able to take action against erring persons.

15. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. Impugned order dated 28.01.2025 (Annexure P-10) is hereby set aside and order of DGP (Annexure P-8) stands restored.

(JAGMOHAN BANSAL)
JUDGE

02.04.2025
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No