REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 392 OF 2008

VINOD KUMAR ….... APPELLANT(S)

VERSUS

STATE OF HARYANA & ORS. ….....RESPONDENT(S)

WITH

CIVIL APPEAL Nos. 393 of 2008; 396 of 2008; 405 of 2008; 395 of 2008; 400 of 2008; 402 of 2008; 1811 of 2008; 1721 of 2008; 592 of 2009; 459 of 2008;
SLP(C)No. 5080 of 2008;
C.A. 9455/2013 (@SLP(C)No. 3932 of 2008)
C.A. 9456/2013 (@SLP(C)No. 32653 of 2011)

J U D G M E N T

A.K. SIKRI, J.

1. Though all these appeals were directed to be heard together, during the course of hearing, it transpired that on facts all these cases are not identical or of similar nature. At the same time these appeals can be categorized in three groups. These appeals have arisen from the judgments of Punjab and Haryana High Court. First judgment in point is dated 4.4.2007, which is the main judgment, passed by the High Court in batch of writ petitions with CWP No. 9805 of 2006 as the lead case. Appeal in the said case is C.A. No.

392 of 2008. Therefore, we propose to start from this appeal so that the veracity or the legality of the main judgment is discussed. Some of other appeals fall in this group and discussions in other groups of appeals would also flow from this case. In this manner, we would be in a position to proceed systematically and coherently.

Ist Group Cases

C.A. No. 392 of 2008

2. The appellant in this appeal was recruited into the police service in the State of Haryana as a Constable in the year 1971. He got promotion to higher ranks from time to time and became Inspector of Police in the year 2002. During the course of his employment, an adverse entry was recorded in his Annual Confidential Report (hereinafter to be referred as 'ACR') for the period 11.10.1989 to 31.3.1990. Though the exact report was not placed on record either before the High Court or this Court, it is a common case of the parties that the ACR for this period related to adverse comments on his "integrity". It was acknowledged by the appellant's counsel before the High Court that the said adverse remarks pertained to his character and antecedents.

3. These remarks were recorded by the then Superintendent of Police, Hisar Range, Hisar. As he wanted these remarks to be expunged, the appellant made a representation to the Deputy Inspector-General of Police, Hisar. His representation was rejected on 26.5.1993. Initially, there was a stoic silence

on the part of the appellant who did not pursue the matter further for quite some time. However, he woke up from slumber and after almost 9 years, he made another representation to the Director General of Police, Haryana. This was accepted by the DGP vide orders dated 15.7.2002 and the aforesaid remarks were expunged. The operative part of the order of the DGP, Haryana, in this behalf, is as under:-

> "Mercy Petition of ASI Vinod Kumar NO. 345/SR5S (now SI No. 56/H) against the adverse remarks in the matter of integrity recorded his ACR for the period from 14.11.89 to 31.3.1990, has been considered on the basis of available record. The departmental enquiry was conducted on the charges of carelessness and indiscipline in which he was awarded a punishment of censure. No advice/ warning was awarded to him in the matter of integrity. But the reporting officer has doubted his integrity. Thus, the adverse remarks are uncalled for and without any basis and will not stand scrutiny of the judiciary. The mercy petition is accepted and adverse remarks are expunged in the interest of principles of natural justice. The representationist may be informed accordingly."

4. As would be seen in almost all these appeals before us, the DGP had expunged adverse remarks of many such police officials during this period namely from 1999-2002. After the change of regime when new Director General of Police took over the charge, he noticed this phenomena where the adverse remarks were expunged after substantial lapse of time and/ or for no valid reasons and in some cases even after all the departmental remedies had been exhausted by those officials, unsuccessfully. The new DGP, therefore, issued Instructions dated 9.6.2005 to all Range Inspector General of Police,

Railways and Technical Services, Haryana and the Inspector General of Haryana Armed Police, Madhuban. In these Instructions, it was stated that he had come across some old cases where remarks related to integrity were expunged after obtaining fresh representations, despite the fact that their earlier representation/ mercy petition/ memorial/ writ petitions had been rejected/ dismissed by the competent authority/ State Government or Courts. Many such cases were even accepted after a lapse of 10/ 12 years. Opinion of the Legal Remembrancer, Haryana was taken who had opined out that in such cases expunction of remarks of the concerned employees was wrongful and the adverse remarks recorded earlier should be reconstructed, after issuing show-cause notice to these officials. Vide these Instructions, the DGP ordered a review of all such cases.

5. Show cause notice was issued to the appellant. He submitted his reply dated 22.5.2006. After considering the same, DGP, Haryana passed the orders dated 21.6.2006 restoring/ reconstructing the earlier adverse remarks and recalled orders dated 15.7.2002 of the DGP, Haryana vide which the aforesaid remarks were expunged.

6. The appellant filed petition challenging the aforesaid Orders dated 21.6.2006. This petition was heard alongwith some other cases where similar orders were passed and vide common judgment dated 4.4.2007, the writ petition of the appellant has been dismissed.

7. Since this is the main judgment giving detailed reasons for dismissing the writ petitions, it would be apt to traverse through the same to find out the grounds of challenge laid by the appellant and other writ petitions before the High Court as well as the reasons given by the High Court while rejecting those submissions.

JUDGMENT OF THE HIGH COURT

8. The argument of the appellant before the High Court was that second representation was permissible having regard to the instructions contained in Standing Order No. 65/ 1998 dated 8.2.1999 issued by the DGP, Haryana. These instructions referred to the earlier policy instructions issued by the State Government dated 28.8.1962 which lays down procedures for the guidance of all departments for entertaining the representations against the adverse remarks. In the Government's Instructions dated 28.8.1962, it was emphasized that in the absence of specified procedure for entertaining the representations against ACR, the authorities had noted that whenever any officer in a key position is transferred, certain government servants think that it is a good opportunity to re-open finally settled cases connected with their conditions of service or disciplinary matters, which may be even several years old. There was also a tendency of sending advance copies of representations to all the higher authorities which was leading to unnecessary work at all levels. At the same time, it was also necessary to ensure a fair

chance of representation to the government employee. Going by these considerations the detailed procedure was laid down in those Instructions dated 28.8.1962. It *inter alia* provided that if a government servant wishes to press his claim or to seek redress of his grievance, the proper course was to address his immediate official superior, or the head of office or such other authority at the lowest level, who is competent to deal with the matter. Once that authority decides the case, one representation be allowed to the next higher authority. When the lowest competent authority is the Government itself, one representation is allowed asking for a review of Government orders. These instructions also categorically stipulate that no further representations are allowed except in those cases where new facts have come to light and representation on such ground would be considered by the original deciding authority. Period of six months is provided for making such a representation. There is also a provision for allowing one memorial which is to be decided at Government level in terms of Instructions dated 12.2.1952. Second memorial is permissible if it furnishes new material grounds requiring re-consideration. Relevant portions of these Instructions, stating the aforesaid position, is extracted below:

> " After Careful consideration the following procedure is laid down for the guidance of all departments:-
>
> > (a) Whenever in any matter connected with his service rights or conditions, a government servant wishes to press his claim or to seek

redress of a grievance, the proper course for him is to address his immediate official superior, or the Head of Office or such other authority at the lowest level, as it competent to deal with the matter. When a case has thus been decided by the lowest competent authority one representation should be allowed to the next higher authority. Where the lowest competent authority is government itself, one representation should be allowed, asking for a review or government orders.

(b) If an official sends up a representation in addition to those permitted under (a) above, on the ground that certain new facts have come to light, that representation will be considered by the origianl deciding authority, who will be competent to withhold it and reject it if finds that in fact no new data has been given which would provide any material grounds for reconsideration."

9. In nut-shell as per Policy Instructions dated 28.8.1962, representations can be made, if it is a case of adverse remarks, in the following manner:

1. Representation to immediate official superior, or the head of office or such other authority at the lowest level who is competent to deal with the matter.

2. If it is rejected by the lowest authority one more representation is allowed to the next higher authority.

OR

If the lowest competent authority is the Government itself then representation by way of review is allowed to the Government.

3. No further representation is to be entertained except on the ground that certain new facts have come to light. If it is found by the competent authority that no new fact has been given he would be competent to reject it.

4. After the representations are made in the manner stated

above, one memorial is allowed which is to be decided at Government level.

5. Second memorial is allowed only on furnishing new material grounds.

10. As already pointed above, Instructions dated 28.8.1962 were referred to in Standing Order No. 65/1998 dated 8.2.1999. In these Instructions, reliance was placed on the earlier Standing Order. It reiterated the tendency to entertain belated representations qua seniority or seeking ante-dated promotion or expunction of adverse remarks in ACR or appeals against punishments after lapse of number of years that too whenever any officer in key position is transferred. It condemned and deprecated this practice in strong words. It also highlighted that entertainment of such representations after long lapse of time is not only in contravention of Rules and settled legal position on the subject but it also creates unnecessary complications/ litigations and unsettles the settled *inter se* relativities. Apart from issuing mandate to the effect that such delayed representations qua seniority, promotion, ACR's etc. be not entertained , following instructions were specifically issued, which are relevant in the context of entertaining representations against ACR:-

1. If any personnel is not satisfied with the decision of the competent authority or next higher authority, he may approach next higher authority to get justice as per settled law within six months.

2. No competent authority shall consider any representation against an order, if the order against which the personnel is aggrieved is more than 5 years old.

11. It was argued before the High Court, which was the submission before us as well, that these instructions were applicable only in those cases which were not covered or governed by the Punishment and Appeal Rules. It was argued that a representation was permitted to an employee in addition to the prescribed representations as per para (b) of the Policy Instructions dated 28.8.62 and the second representation of the appellant which was accepted by the DGP was thus, permissible. However, this argument was brushed aside by the High Court, and rightly so, taking note of the fact that as per clause (b), further representation could be made only on the ground that certain new facts have come to light. Further, whereas the period specified for making this representation as per 1962 Instructions was six months, the appellant had made the second representation almost after nine years which was clearly not permissible as reiterated even in 1999 instructions. In fact, it is this mischief of re-opening the settled cases, by making belated representations which these government instructions aimed curbing at. The High Court in the impugned judgment, in this behalf, aptly remarked as under:

> "Although, the contention of the learned counsel for the petitioner seems to be attractive on first blush, however, a perusal of clause (c) takes the wind out of the aforesaid contention. It is clearly and emphatically pointed out, that any such representation permitted to be made under the 1962 instructions, has to be made within a period of six months. It is not the case of the petitioner, that the representation made by him was within the ambit of the instructions of 1962. In fact, from the facts narrated hereinabove, it is apparent, that after the first representation made by the

petitioner was rejected on 26.5.1993, whereafter the second representation was allegedly made by the petitioner only on 25.2.2002 i.e. after almost nine years."

12. It is manifest that after the change of guards, the appellant took a chance by making another representation to the new DGP and got favourable orders.

13. Even the punishment under Appeal Rules are of no help to the appellant. Reliance was placed on Rules 16.28 and 16.32 of Punjab Police Rules, 1934. These Rules read as under:

"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.

(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 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.

16.32. Review.- An officer whose appeal has been rejected is prohibited from applying for a fresh scrutiny of the evidence. Such officer may, however, apply, within a month of the date of despatch of appellate orders to him, to the authority next above the prescribed appellate authority for revision on grounds of

material irregularity in the proceedings or on production of fresh evidence, and may submit to the same authority a plea for mercy: provided that no application for the revision of an order by the Inspector-General will be entertained. An officer whose appeal has been heard by the Inspector-General may, however, submit to the Inspector-General a plea for mercy or may apply to the Inspector-General for a review of his appellate order only on the ground that fresh evidence has become available since the appellate order has been pronounced. This Rule does not affect the provisions of Rule 16.28. Such application or plea must be in English".

14. However, these are part of Rule 16 which falls in Chapter XVI relating to "punishment". This Rule 16 prescribes the procedure for conducting departmental inquiries and imposition of penalties consequent thereto. It has nothing to do with the confidential reports. In fact, provision relating to Confidential Reports is contained in Rule 13.17 of the aforesaid Rules. Relevant portion of Rule 13.17 reads as under:-

"13.17. Annual Confidential Reports.--

(1) Superintendents shall prepare and submit annually to the Deputy Inspector-General, after obtaining the District Magistrate's remarks thereon, reports in form 13.17 on the working of all Upper Subordinates serving under them. These reports shall be submitted to reach the Deputy Inspector-General on or before 15th April.

Deputy Inspectors-General and Assistant Inspector-General, Government Railway Police, will add their own remarks and retain reports on Assistant Sub-Inspectors and Sub-Inspectors who are not on list 'F' and Sergeants will be forwarded by Deputy Inspectors-General and Assistant Inspector-General, Government Railway Police, so as to reach the Inspector-General on or before the 15th May. In the cases of Indian Inspectors of the General Line, Sub-Inspectors on list

'F' and all Sergeants, Deputy Inspectors-General and Assistant Inspector-General, Government Railway Police, will attach with each report so submitted a duplicate copy thereof. Any remarks recorded by the Inspector-General on the original report will be copied in his office on the duplicate prior to the return of the latter report for record with the duplicate personal file maintained in accordance with Rule 12.38 (1).

(2) Reports shall be of three kinds, A, B and C, and shall be marked as such:--

A reports.-- Reports in which for special reasons it is recommended that promotion be given irrespective of seniority.
B reports.-- Reports in which it is recommended that promotion be given in the ordinary course of seniority.

C reports.-- Reports in which it is recommended that the officer be passed over for promotion or that the taking of departmental action on general grounds of inefficiency or unsatisfactory conduct be considered.

15. This Rule only states the manner in which ACR is to be written. We also have Rule 14.7 which may be relevant to the context and is reproduced below:-

"14.7 Comments on remarks of superior officer.--
A police officer shall not record comments on the remarks made by a superior officer. If a police officer considers that an erroneous view has been taken of his conduct or of any matter affecting his administration he may refer the question in a temperate manner through the proper channel."

16. Thus, these Rules only pertain to recording of ACRs. There is no provision in the Rules containing any procedure for dealing with representations against the ACRs. That is provided in 1962 and 1999 Instructions, already taken note of above. Therefore, the High Court rightly rejected the contention of the

appellant predicated on these Rules. Thus, we find that on the face of it, the second representation preferred by the appellant, in which the ACRs were expunged was not permissible. It was not only contrary to 1962 and 1999 Instructions, but was made after 9 ½ years from the date when first representation against the ACR was rejected.

17. We would like to make certain comments, at this juncture, on the powers of the successor DGP, Haryana in over turning the decision of his predecessor who had accepted the representation and expunged the adverse remarks in a petition which was not maintainable and wholly unwarranted. The general principle is that merely because there is a change in the regime or when the successor assumes the office, he would not be entitled to review and reopen the cases decided by his predecessor. That would apply in those cases where the predecessor had passed the orders which he was empowered to pass under the Rules and had exercised his discretion in taking a particular view. Therefore, this proposition applies in a situation where order of the predecessor resulted in legal, binding and conclusive decision. However, the position would be different when it is found that the order of the predecessor was without jurisdiction or when a palpably illegal order was passed disregarding all the cannons of administrative law viz. when the predecessor's decision was without jurisdiction or ultra vires or when it was exfacie an act of favoritism. In the present case we find that not only the

order passed by earlier DGP, Haryana was ultra vires, as that was not backed by any authority vested in it under the Rules as the representation/ mercy petition was not maintainable, even while exercising its discretion in passing that order, the alleged reasons are abhorrent to the good administration/ governance and in fact there was no valid reason or justification shown in exercise of the non existent power. It was, thus, not a case of mere discretion which the DGP was empowered to exercise or the exercise of power on rational basis. Undue sympathy, that too without stating any such sympathetic grounds would be anathema to fairness. There has to be fairness in the administrative action and it should be free from vice of arbitrariness. We may usefully refer to the judgment of the English Court in the case of ***Roberts* v. *Hopwood***; 1925 All E.R. 24 laying down the law in the following terms:

> "…. A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what her likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably....."

18. The matter can be looked into from another angle as well. In those cases where Courts are concerned with the judicial review of the administrative action, the parameters within which administrative action can be reviewed by the courts are well settled. No doubt, the scope of judicial review is limited and the courts

do not go into the merits of the decision taken by the administrative authorities but are concerned with the decision making process. Interference with the order of the administrative authority is permissible when it is found to be irrational, unreasonable or there is procedural impropriety. However, where reasonable conduct is expected, the criterion of reasonableness is not subjective but objective; albeit the onus of establishment of unreasonableness rests upon the person challenging the validity of the acts. It is also trite that while exercising limited power of judicial review on the grounds mentioned above, the court can examine whether administrative decisions in exercise of powers, even if conferred in subjective terms are made in good faith and on relevant considerations. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or facts in a material respect.(See: ***M.A.Rasheed & Ors. v. The State of Kerala;*** (1974) 2 SCC 687). The decision of the administrative authority must be related to the purpose of the enabling provisions of Rules or Statutes, as the case may be. If they are manifestly unjust or outrageous or directed to an unauthorized end, such decisions can be set aside as arbitrary and unreasonable. Likewise, when action taken is ultra vires, such action/decision has no legal basis and can be set aside on that ground. When there are Rules framed delineating the powers of the authority as well as the procedure to be followed while exercising those powers, the authority has to act within the limits defined by those Rules. A repository of

power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. This was so explained in ***Shri Sitaram Sugar Co.Ltd.*** **v.** ***Union of India*** (1990) 3 SCC 223 in the following manner:

> "A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, [1948] 1 K.B. 223.* In the words of *Lord Macnaghten in Westminster Corporation v. London and North Western Railway, [1905] AC 426*:
>
> > "...It is well settled that a public body invested with statutory powers such as those conferred upon the Corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first...."
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> In *Barium Chemicals Ltd. and Anr. v. The Company Law Board and Ors*., : [1966] Supp. SCR 311, this Court states:
>
> > "...Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

In Renusagar, AIR1988SC1737 , Mukharji, J., as he then was, states:

> "The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated".

The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it."

19. Thus, if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be ultra vires. Of course, it is to be done after following the principles of natural justice. This is precisely the position in the instant case and we are of the considered opinion that it was open to the respondents to take corrective measures by annulling the palpably illegal order of the earlier DGP, Haryana.

20. We, therefore, do not find any merit in this appeal which is accordingly, dismissed.

C.A. No. 393 of 2008

21. This appeal arises out of decision in Civil Writ 9805 of 2006 which was decided by the common judgment dated 4.4.2007 already taken a note of above. In this case, ACR is for the period 25.4.1994 – 31.3.1995. It was *inter alia* recorded that there was report of corruption against this officer. The appellant made the representation which was rejected in the year 1995 itself. After a lapse of almost 7 years, the appellant gave another representation in the year 2002 which was accepted by the DGP, Haryana who expunged the adverse remarks, giving following reasons:

> "Representation of SI Swantanter Singh No. 225/H has been examined in depth. Keeping in view the improvement shown by the SI especially in view of good entries against major punishment nil, adverse remarks so recorded in his ACR for the period from 25.4.1994 to 31.3.1995, are hereby expunged and upgraded as "Good". The representations may be informed accordingly."

22. Thus, in this case also not only second representation was made after more than 7 years, but there was no new material or facts as well which were given in the second representation. Furthermore, the reasons given for expunging the remarks on "corruption" and substituting the same by "good remarks" is shocking and untenable to say the least. Simply because the appellant allegedly showed improvement and earned good entries in the subsequent years cannot be a ground to erase the earlier remarks recorded 7 years ago thereby treating him as a good officer even for the earlier period i.e.

25.4.1994 to 31.3.1995. The petition of the appellant was thus, rightly dismissed by the High Court. Present appeal is totally bereft of any merits and is accordingly dismissed.

CA No. 395 of 2008

23. The petitioner was communicated adverse annual confidential remarks for the period from 24.4.1998 to 31.3.1998. Relevant extract thereof is reproduced hereunder:-

1.	Discipline	Poor
2.	Integrity	Poor
3.	Reliability	Poor
4.	Moral Character	Deserves Improvement
5.	General Remarks	He was placed under suspension due to misbehaviour with Smt. Dhano Devi, DC/FTB was requested to accord sanction under PPR 16.38 for DE. But DC/ FTB refused to accord sanction.

24. Dissatisfied with the aforesaid annual confidential remarks communicated to the petitioner, the petitioner made his first representation for the expunction thereof, on 13.12.1999. The aforesaid representation made by the petitioner was partly accepted by an order dated 22.6.2000 inasmuch as the

general remarks recorded in the annual confidential report extracted hereinabove at Serial No. 5 were expunged.

25. The petitioner submitted a second representation for the expunction of his other adverse remarks on 13.7.2000. The second representation made by the petitioner was also rejected on 27.12.2000. Dissatisfied with the aforesaid rejection, the petitioner moved a mercy petition i.e. the 3rd representation in his series of representations, on 9.8.2001. This mercy petition was rejected by the authorities on 22.11.2001. The petitioner, then made a 4th representation for the expunction of annual confidential remarks communicated to him for the period 24.4.1998 to 31.3.1999. This representation of the petitioner was accepted by an order dated 12.6.2002 (14.6.2002). Relevant extract thereof is being reproduced hereunder:-

> "The representation dated 1.1.2002of H.C. Ram Kumar No. 26/ Fatehabad against adverse remarks has been considered and accepted. The adverse remarks recorded in his A.C.R. For the period from 24.4.98 to 31.3.99 have been expunged. He may please be informed accordingly."

26. The respondents, having arrived at the conclusion, that only one representation was competent at the hands of the petitioner for the expunction of adverse annual confidential remarks, acceptance of 4th representation made at the hands of the petitioner on 1.1.2002 by an order dated 12.6.2002 was impermissible in law. Therefore, a show cause notice dated 4.7.2006 was issued to the petitioner. After the petitioner submitted his reply thereto, an order dated

23.8.2006 was passed whereby the order expunging the adverse annual confidential remarks dated 12.6.2002 was set aside and the annual confidential remarks for the period 24.4.1998 to 31.3.1999, as originally recorded, subject to the modification vide order dated 22.6.2000, was reconstructed.

27. Vide judgment dated 18.4.2007, the Division Bench dismissed the appellant's challenge to the orders dated 23.8.2006 relying upon the legal position expressed in Vinod Kumar's Case (supra). At the same time, the Court clarified that the remarks in the ACR for the period from 24.4.1998 to 31.3.1999, which relate to the allegation of misbehaviour based on his conduct with Smt. Dhano Devi, were actually and factually expunged (since a regular inquiry was conducted in this behalf in which he was exonerated) while deciding his first representation which was partly accepted on 22.6.2000.

28. In so far as other remarks are concerned, in view of our detailed discussion above, it is clear that such a mercy petition, in the form of 4th representation, at the hands of DGP, Haryana was impermissible in law. The writ petition of the appellant was, therefore, rightly dismissed. This appeal also stands dismissed accordingly.

C.A. No. 402 of 2008

29. From the facts of this case also it is apparent that the representation against the ACR for the period 1992-1993 was rejected on 7.5.1996 and thereafter when fresh representation dated 20.6.2000 was made after a lapse of

more than 4 years. It was accepted vide orders dated 12.7.2000 and the adverse remarks were expunged. This case is thus, on the same footing as Vinod Kumar's case. The appeal is accordingly dismissed.

C.A. No. 405 of 2008

30. The appeal arises out of C.W.P. NO. 20401 of 2006 which was part of batch petitions decided vide common judgment dated 4.4.2007 with lead matter in the case of Vinod Kumar. Without stating the facts in detail, suffice is to mention that adverse reports is for the period 1.4.2001 to 31.3.2002 which was communicated to him on 2.7.2002. His first representation was rejected by IGP on 30.9.2002, he filed second representation to the higher authority namely DGP which was rejected on 28.1.2003. Thereafter, he made another representation (purported to be a review) before the DGP in July, 2003 which was allowed on 30.9.2003 by expunging the adverse remarks. After issuance of show cause notice, orders dated 19.10.2006 were passed recalling earlier order dated 30.9.2003 and reconstructing the ACR by restoring earlier adverse remarks. As is clear from the above, the appellant had earlier exhausted the remedy of first representation before the immediate officer and second representation to the higher officer namely DGP. Thereafter, DGP could not entertain any further representation or review except on "new facts". Record reveals that no such new facts were pleaded. Thus, we do not find any merit in this appeal as well and dismiss the same.

SLP(C)No. 5080 of 2008

31. No one appeared in this matter to address the petition at the time of hearing. Dismissed.

2nd Group Cases

C.A. No. 396 of 2008 & SLP(C)No. 32653 of 2011.

32. This appeal and SLP are filed by the same appellant H.C. Shiv Kumar. Leave granted in SLP.

33. On the basis of those adverse remarks, the appellant was compulsorily retired from service. Vide orders dated 17.3.2011, his writ petition challenging the compulsory retirement has been dismissed against which SLP(C)No. 32653/2011 is preferred. Thus, the outcome of this SLP depends upon the result of C.A. No. 396 of 2008.

34. Coming to C.A. No. 396 of 2008, in the case of the appellant, adverse remarks relate to the period 1.4.2001 to 2.10.2001 which were communicated to him on 2.7.2002. He made the representation dated 24.8.2002 for expunction of these remarks to the Inspector-General of Police which was rejected on 10.3.2003. Immediately thereafter, in the month of March itself he filed the revision petition which was allowed on 2.5.2003 expunging the adverse remarks in toto and replacing the same with 'good' rating.

35. The appellant was also issued show cause notice dated 30.6.2006, in a similar manner as in other cases, stating that as per Government's Instructions

dated 28.8.1962, no second representation lies against the adverse remarks. Therefore, it was proposed to re-construct the original adverse remarks recorded in his ACR for the period in question. The appellant submitted his detailed reply to the aforesaid show cause notice running into almost 20 pages. However, his reply did not cut any ice with the authorities and vide orders dated 25.10.2006, DGP, Haryana recalled earlier order dated 2.5.2003 and directed re-construction of the ACR by restoring the remarks recorded earlier for the period in question i.e. 1.4.2001 to 2.10.2001. His Writ Petition against the said orders dated 25.10.2006 has met the same fate at the hands of the High Court which has dismissed a Writ Petition, following Vinod Kumar's Case (supra), and holding that second representation submitted by a employee is not acceptable in law.

36. We would like to point out, at this stage, that it was also the contention of the appellant before the High Court that on the same set of allegations on the basis of which the adverse remarks were communicated to him, a regular departmental inquiry was conducted against the appellant and the appellant had been exonerated in the said inquiry. It was argued that for this reason adverse remarks could not remain in his service record and the order of restoring those remarks was illegal on this ground as well. The High Court however, rejected this contention recording a finding that the charge sheet in which the inquiry was held, was dated 13.3.2001, which naturally referred to the allegations

preceding the date of charge sheet. On the other hand, the adverse remarks were relatable to the subsequent period and, therefore, in the opinion of the High Court, this contention of the appellant was untenable.

37. Mr. Patwalia, learned Senior Counsel appearing for the appellant, after drawing our attention to the chronology of events from the date of recording the adverse remarks to that of expunction thereof, made a fervent plea that the case was not covered by the principle laid down by the High Court in its earlier judgment in Vinod Kumar's Case (supra) and there was an apparent error in applying that judgment in the present case as well. His first submission in this behalf was that it was not a case where the "second representation" was made after long lapse of time. Secondly, his first representation was to the Inspector-General which was rejected and the purported "second representation" was in fact in the nature of representation given to the higher authority namely DGP which was permissible under the Rules. He, thus, argued that the High Court wrongly treated the same as second representation to the same authority which became the cause of error on the part of the High Court. He referred to the judgment of the High Court in the case of Vinod Kumar itself where such cases as that of the appellant, were saved after interpreting the relevant Instructions.

38. We find the aforesaid contention of Mr. Patwalia to be meritorious. While discussing C.A. No. 392/2008, we have already taken note of the relevant government instructions as well as Rules on the subject. In para 9 above, we

have summarised the position contained in the policy instructions dated 28.8.1962 as per which, once a representation is rejected by the immediate superior officer, one more representation is permissible and allowed to be made to the next higher authority. This precisely happened in the instant case. First representation was to the Inspector-General of Police which was rejected on 10.3.2003 and within few days, the appellant made second representation which was allowed on 2.5.2003. Thus, not only this representation was made within stipulated period prescribed under the Rules namely six months, which is prescribed in the Standing Order, it was made to the higher authority as well. It seems that this vital difference between the appellant's case from the fact situation in Vinod Kumar's Case has been overlooked by the High Court.

39. Once, we find that the revision or second representation to the higher authority was made within prescribed period (in fact within few days of the rejection of representation by the IGP) and such a representation to the higher authority was permissible, it cannot be said in this case that the order of the DGP, Haryana was without jurisdiction i.e. on a representation "which was not permissible" in law. Once, we find this to be the factual position, we are constrained to hold that three years thereafter, the case could not be re-opened and order dated 25.2003 could be interdicted by the successor.

40. As a result, this appeal is allowed and the order of the High Court is set aside. Result would be to allow the writ petition filed by the appellant before the

High Court and quash the orders dated 25.10.2006 passed by the DGP, Haryana.

41. The appellant was given show cause notice dated 24.10.2010 proposing compulsory retirement. The ground on which the action proposed was attached to the show cause notice. On perusal thereof reveals that the material sought to be put up against the appellant was as under:

1. Adverse remarks for the period 1.4.2001 to 2.10.2001.
2. Award of punishment of "warning" vide SP/AMB/OB/218/08 for showing negligence in investigation in case FIR NO. 121 dated 9.7.2008 under Section 279/ 304 A IPC, PS Narayan.

42. In reply, the appellant had submitted that his appeal No. 396/08 is pending against the judgment of the High Court in so far as ACR's for the period 1.4.2001 to 2.10.2001 is concerned and, therefore, notice in question be withdrawn. However, this plea of the appellant was not accepted and vide orders dated 17.3.2011, appellant was ordered to be compulsory retired from service with immediate effect. In this order also, same two grounds namely, ACR for the period 1.4.2001 to 2.10.2001 and award of punishment of warning in every case, are mentioned.

43. Since, we have allowed C.A. No. 396 of 2008, the effect thereof is that adverse remarks for the period in question no longer remain in the service record of the appellant and for this period his rating now is "good" to which he was upgraded vide orders dated 2.5.2003. In so far as award of "warning" is concerned, leaned Counsel for the State could not dispute that "warning" is not a

punishment prescribed under the Rules. It was not given to him after holding any inquiry. Therefore, such a warning recorded administratively in a service record cannot be the sole basis of compulsory retirement.

44. The appellant's writ petition has been dismissed by the High Court vide orders dated 26.12.2011. We, thus allow this appeal and set aside the impugned judgment of the High Court. As a consequence, the appellant shall be reinstated in service in the same position on which he was working as on the date of compulsorily retirement with consequential benefits in case he has not already attained the age of superannuation. However, if he has already attained the age of superannuation, he shall be treated as deemed to be in service throughout as if no compulsory retirement orders were passed and will be given consequential benefits including pay for the intervening period and pensionary benefits on that basis.

C.A. No. 400 of 2008

45. The ACR for the appellant pertains to 3.11.2002 to 31.3.2003 which were adverse in nature. These remarks were conveyed to him vide memo dated 8.6.2003, the appellant made representation against those adverse remarks vide his communication dated **30.10.2003** which was rejected by the Inspector-General of Police, Hisar Range, Hisar. He filed “appeal” thereagainst to the Director General of Police within a few days thereafter i.e. 30.10.2003 which was accepted by the DGP. Adverse remarks were expunged and his ACR was

upgraded to 'good'. He was given show cause notice for reversal of the good rating and re-construction of old ACR on 15.8.2006 and order to this effect was passed, after eliciting his reply, on 18.10.2006 on the ground that his adverse remarks were expunged on his "second representation" which was not permissible in law. The aforesaid facts would demonstrate that the appellant herein is also identically situated as the appellant in C.A. No. 396 of 2008. For the reasons given therein, this appeal is also allowed and the order of the High Court is set aside. As a consequence, writ petition of the appellant stands allowed and the orders dated 18.10.2006 of DGP, Haryana are hereby quashed.

SLP(C)No. 3932 of 2008

46. Leave granted.

47. The appeal arises out of C.W.P. No. 1249 of 2007 which was part of batch petitions decided vide common judgment dated 4.4.2007 with lead matter in the case of Vinod Kumar. Adverse remarks in the case of this petitioner are for the period 1.4.2001 to 31.3.2002. His representation dated 18.7.2002 was rejected. On 30.4.2003, he filed revision/ representation against order dated 30.4.2003 to the higher authority namely DGP which was by the DGP vide orders dated 6.10.2003 and the adverse remarks were expunged. He was given show cause notice dated 8.9.2006 whereafter orders dated 3.12.2006 were passed reviewing the earlier order dated 6.10.2003 and reconstructing the ACR by maintaining earlier adverse report which was communicated to him in the

beginning. From the aforesaid facts it becomes clear that it was not a case of second representation to the same authority. Another representation to the higher authority was made which is permissible under the Rules and that too immediately after his first representation by the IGP was rejected. His case is thus *para materia* with C.A. No. 396 of 2008.

48. The impugned order of the High Court qua the appellant is accordingly set aside and appeal is accordingly allowed.

C.A. No. 459 of 2009

49. This appeal is filed by the State of Haryana against the judgment of the High Court in the writ petition filed by the respondent. The respondent was communicated adverse ACR for the period 5.11.00 to 31.3.2001. On 13.11.2001 he submitted his representation dated 18.12.2001 which was rejected on 14.8.2002. Thereafter he filed the revision petition dated 4.10.2002 which was allowed on 13.2.2003. However, this order was recalled vide orders dated 18.1.2007 after giving show-cause notice dated 21.11.2006. From the aforesaid, it is clear that second representation to a higher authority was clearly maintainable and this aspect has been discussed in detail by us while dealing with CA 396 OF 2008.

50. Additionally, we find that on the same allegations on which ACR's were recorded, the respondent was also issued charge sheet but was completely exonerated therein. The High Court in these circumstances rightly allowed the

writ petition following its earlier judgment in the case of Randhir Singh, ASI vs. State of Haryana & Ors. (C.W.P. No. 867 of 2007 decided on 29.3.2007) in the following manner:-

> "In our view, the claim of the petitioner was liable to be adjudicated upon its merits based on the judgment and decree dated 24.5.1999. in this behalf, it would be pertinent to mention, that the annual confidential report for the period 1.4.1995 to 2.7.1995 (which has been extracted herein above), clearly reveals that the same was based on the allegation, wherein in a departmental enquiry was conducted against the petitioner, and the petitioner had been found guilty, and inflicted with the punishment of stoppage of two annual increments with cumulative effect. So far as the aforesaid factual position is concerned, there was no difference of opinion between learned counsel representing the rival parties. However, the aforesaid factual position underwent a change, with the passing of the judgment and decree at the hands of the civil judge at Sirsa dated 24.5.1999. The findings recorded int eh departmental enquiry which constituted the foundation and the basis of the annual confidential report dated 30.9.1995 were set aside in the judgment and decree dated 24.5.1999. In sum and substance, therefore, the very basis on which the annual confidential report (under reference) was recorded, had been annulled by the judgment and decree dated 24.5.1999. Not only that, although liberty was given by the trial Court o the respondents to hold a fresh enquiry, yet, after a conscious application of mind, the Government by its order dated 11.7.2002 decided to file the matter. That being so, we have no doubt in our min, that the allegation contained in the charge sheet were considered to be unjustified by the respondents themselves. Since, the basis of the aforesaid charge sheet was treated as unjustified by the State Government itself, it is apparent, that the adverse remarks recorded thereon were wholly unjustified in the facts and circumstances of this case. We are, therefore satisfied, that the former Director General of Poki8ce, was fully justified in passing the order dated 26.8.2003, by which he ordered the expunction of remarks communicated to the petitioner on 30.9.1995."

51. We thus, do not find any merit in these appeal and is dismissed.

C.A. No. 592 of 2009

52. This appeal is also preferred by State of Haryana. The factual position in this case is same as in C.A. No. 495 of 2008. For same reasons, this appeal also stands dismissed.

3rd Group Cases

C.A. No. 1721 of 2008

53. In this appeal, subject matter is not the annual confidential report but the departmental inquiry. Though the orders are shadowed by same set of circumstances, here the penalty imposed as a result of disciplinary proceedings was set aside on the basis of mercy petition filed by the appellant, that too after exhausting all the departmental remedies. It happened in the following circumstances:

The appellant was charge sheeted and departmental inquiry conducted against him related to conduct of investigation in a case wherein he had implicated innocent persons in false cases getting the accused free from police custody and misusing his post for ulterior motives. Charges were proved in the inquiry on the basis of which Superintendent of Police, Faridabad as a disciplinary authority imposed the penalty of stoppage of three future annual increments on permanent basis vide order dated 17.1.1999. The appellant filed appeal against the said order which was rejected by the DGP on 1.3.1999. He

filed revision on 20.6.2000 which was also rejected on 13.2.2001. Under the disciplinary Rules, there is no further departmental remedy provided. However, the appellant has preferred mercy petition dated 12.5.2001 to the Secretary, Home, Government of Haryana, through proper channel. On this mercy petition, order dated 9.7.2001 was passed by DGP, Haryana accepting the said petition thereby setting aside the penalty imposed upon the appellant.

54. A perusal of the orders dated 9.7.2001 would show that the DGP took note of the facts of the case and holding of the inquiry. He also referred to the departmental remedy of appeal and revision filed by the appellant. Thereafter, it is mentioned that being satisfied with the order passed in revision the appellant had "preferred the instant mercy petition". Curiously, after examining the records, the DGP also held the view that departmental inquiry was properly conducted. Inspite thereof, without giving any reasons and simply "taking a lenient view", the punishment is set aside as is clear from the following paras of the said order.

> "And whereas, I have carefully gone through the revision petition, departmental enquiry file and the relevant records. The instant departmental enquiry has been conducted as per prescribed Rules and procedure and does not suffer from any legal infirmity various pleas taken by the revisionist have been examined and could to be devoid of any merit.
>
> Now, therefore, keeping in view the please of mercy made by the revisionist after taking a lenient view, the punishment of stoppage of three future annual increments with permanent effect is hereby set aside".

55. When this fact came to light, show-cause notice dated 25.8.2006 was issued stating that there was no provision in the Rules for entertaining another petition (Mercy Petition) by the DGP without new material, once revision petition of the appellant had already been considered and rejected. It was, therefore, proposed to restore the penalty orders and the appellant was asked to show-cause against the proposed action. The appellant submitted his reply and on consideration thereof the orders dated 22.10.2006 were passed restoring the earlier penalty order finding no merit in the lease taken by the appellant.

56. Writ petition of the appellant challenging the said order has been dismissed by the High Court. However the High Court has directed the respondent not to make any recovery from the appellant as he did not play any fraud or made any mis-representation.

57. While dealing with C.A. No. 392 of 2008, we have already reproduced extract of the relevant Rules i.e. Rule 16.28 and 16.32 of the Punjab Police Rules, 1934. Rule 16.28 relates to the review which had already been exhausted by the appellant. As per Rule 16.32 such an officer is prohibited from applying from a fresh scrutiny of an appliance. He could however apply, within a month of the appellate order, to the authority next above the prescribed appellate authority for revision on grounds of material irregularity in the proceedings.

58. Thus, such a review under Rule 16.32 is admissible only if some material irregularity in the proceedings is found or some fresh evidence is

surfaced.

59. Rule 16.28 is in Chapter XVI which deals with "punishments" and various sub rules of Rule 16 in this Chapter cover all the aspects of punishment which include the nature of punishments that can be imposed and the circumstances under which such punishments can be imposed viz. either on the basis of conviction in a judicial case or after conducting departmental inquiry into the misconduct. These provisions also deal with suspension, subsistence grants etc.. Rule 16.24 deals with the procedure which is to be adopted in departmental inquiries. Thereafter, relevant provision is Rule 16.28 which deals with "powers to review proceedings". Next Rule is Rule 16.29 which gives "right of appeal" to the delinquent employee. Rule 16.30 relates to the manner of dealing with these appeals and Rule 16.31 enumerates the orders on appeals by prescribing that every order shall contain the reasons. Thereafter, comes Rule 16.32 which again deals with revision.

60. In the scheme of things, as provided, it is clear that Rule 16.28 is different from Rule 16.32. While Rule 16.28 deals with Review, Rule 16.32 deals with Revision which is permissible under certain specified circumstances, after the appeal is rejected. It is this provision in Rule 16.32 which talks of Revision on certain grounds namely (a) material irregularity in the proceedings or (b) on provision of fresh evidence.

61. It also stipulates that mercy petition may be submitted to the same

authority. There is no separate or other provision for mercy petition which is contained in Rule 16.32 itself. Thus, under Rule 16.32 an employee can seek Revision either on the ground of material irregularity in the proceedings or on provision of fresh evidence. In the alternative he can submit Revision Petition raising a plea for mercy. We are ,therefore, of the opinion that when the Revision Petition is earlier rejected on merits, another revision petition raising the plea for mercy would not permissible. Moreover, no grounds for mercy are stated except showing that lenient view be taken.

62. In the present case, we also find that the mercy petition was not filed within one month. Further, it was not filed on the ground of material irregularity in the proceedings or by producing any fresh evidence. On the contrary, as pointed out above, the DGP while allowing the mercy petition specifically recorded that there was no irregularity in the conduct of departmental proceedings. In spite thereof, he cancelled the order of penalty without giving any cogent reasons. Such a order was palpably illegal and was rightly set right departmentally. We thus do not find any merit in this appeal which is accordingly dismissed.

C.A. No. 1811 of 2008

63. This is also a case of departmental inquiry which was held against the appellant and culminated an order of dismissal from service on 2.2.1999. His appeal was rejected by DIG on 1.7.1999. Thereafter, revision was rejected by

the IGP ON 3.9.1999. More than 1 ½ years, thereafter he preferred mercy petition which was allowed by DGP, Haryana and the punishment of dismissal was reduced to stoppage of 5 increments. This order was also recalled after giving show-cause notice, vide orders dated 16.10.2006. Appellant challenged this order by filing writ petition in the High Court which has been dismissed by the High Court on 21.8.2007. Order fo the High Court is the subject matter of the present appeal.

64. In view of our discussion in C.A. No. 1721 of 2008, we find that here also such a mercy petition was not maintainable which was not only filed belatedly but no fresh material was also furnished.

65. Thus, we are of the view that the order allowing the mercy petition without reason was clearly untenable and was rightly recalled. We thus, do not find any merit in this appeal either which is accordingly dismissed.

….....….….….....J
[Sudhansu Jyoti Mukhopadhaya]

….....….....J.
[A.K. Sikri]

New Delhi
October 24, 2013