



**207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-19320-2017 (O&M)
Date of Decision: 24.02.2026**

Balwinder Singh

...Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Geeteshwar Saini, Advocate for
Mr. R.K. Arya, Advocate
for the petitioner.

Mr. 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 orders passed by departmental authorities whereby he was dismissed from service.

2. The petitioner joined Punjab Police Force on 02.08.1989 as Constable. On 15.10.2015 he was posted as Guard at the residence of Yog Raj Sharma, President, Shiv Sena Punjab. He fired four rounds from his rifle at about 12:00 AM. The respondent registered FIR No.130 under Sections 336, 166 and 166-A of IPC at Police Station Division No.2, Pathankot against him. He was not subjected to departmental inquiry. The respondent dismissed him from service invoking Clause (b) of second proviso to Article 311 (2) of the Constitution of India. He unsuccessfully preferred appeal before appellate authority. It is apt to mention here that Appellate Authority while dismissing his appeal considered his past

service record. As per his past record, he was found absent from duty on 45 occasions. He was convicted by trial Court vide judgment dated 17.07.2023, however, released on probation.

3. Learned counsel representing the petitioner submits that respondent did not consider petitioner's length of service as well as entitlement to pension while passing impugned order. It was a case of violation of Rule 16.2 of Punjab Police Rules, 1934 (for short, 'PPR'). The respondent invoked Clause (b) of second proviso to Article 311 (2) of the Constitution of India and dispensed with inquiry. There was no occasion to dispense with inquiry.

4. *Per contra*, learned State counsel reiterates findings of the departmental authorities and submits that no interference is warranted. The petitioner belongs to a disciplined force, thus, his conduct must be above board. He is bound to maintain high standards of discipline.

5. Heard the arguments and perused the record.

6. The petitioner was dismissed from service without conducting inquiry as contemplated by Rule 16.24 of PPR read with Article 311 of the Constitution of India. As per Clause (b) of second proviso to Article 311(2) of the Constitution of India, inquiry may be dispensed with (i) where person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or (ii) where the competent authority finds that it is not reasonably practicable to hold such inquiry; or (iii) where President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry. For the ready reference, Article 311(2) of the Constitution of India is reproduced herein below:-

"311 (2)- No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

7. A Constitutional Bench in ***Union of India v. Tulsiram Patel, (1985) 3 SCC 398***, has observed that while invoking the rigor of Clause (b) of second-proviso to Article 311(2), if disciplinary authority failed to record any reason as to why it is not practicable to hold inquiry, such an order is void and unconstitutional. The relevant extracts of the judgment read as:

"133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

8. In the case in hand, while dispensing with departmental inquiry, the disciplinary authority vide order dated 16.10.2015 has observed as under:-

"I have perused all the above facts and circumstances very carefully and as per my wisdom and thinking I have reached to the conclusion that it is not appropriate to conduct regular inquiry against this employee, because this employee is very influential, and during inquiry he can influence the witness and can create hindrance to bring the truth to light. Therefore to keep this employee in service in public interest will not be appropriate. Therefore in exercise of my powers u/s 311 (2) B of Constitution of India dismiss this employee today dated 16.10.15 before noon with immediate effect. I pass this order today dated 16.10.15 before noon."

[Emphasis supplied]

9. The reason advanced by disciplinary authority for dispensing with inquiry is not plausible reason because same reason is advanced in every second case where there is FIR against serving police officer. The respondent can dispense with inquiry if actually it is not practicable to hold the inquiry. Mere writing one or more lines in the impugned order that it is not practicable to hold inquiry or assigning vague reason of influencing witnesses is not compliance of mandate of either Constitution of India or Rule 16.24 of PPR. It would have been in the interest of both sides and better course, had the respondent instead of straight away dismissing the petitioner put him under suspension and thereafter conducted inquiry.

10. The petitioner is claiming that his conduct was neither gravest misconduct nor continued misconduct proving incorrigibility and complete unfitness for police service, thus, he could not be dismissed

from service. The argument of the petitioner needs to be examined in the light of Rule 16.2 of PPR, which is reproduced as below:-

"16.2. Dismissal. - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed :

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette."

11. The question of interpretation of Rule 16.2 of PPR came up before the Apex Court in ***State of Punjab v. Ram Singh, (1992) 4 SCC 54*** wherein it was held that an officer may be dismissed in two situations i.e. on account of gravest misconduct or cumulative effect of continued misconduct. A single act may constitute gravest misconduct. The colour of gravest misconduct must be gathered from the surroundings or

attending circumstances. The relevant extracts of the said judgment read as:

"7. Rule 16.2 (1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are gravest acts of misconduct, since it impinges upon the pensionary rights of the delinquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under General Clauses Act singular includes plural, "act" includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word "acts" would include singular "act" as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation that ensues from the offending 'act'. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent who put in 29 years of continuous length of service and had unblemished record; in thirtieth year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service

morale and may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of re-employment, if any, may meet the ends of justice. Take for instance the delinquent officer who is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his long length of service and his claim for pension he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word 'or' cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct".

12. A conspectus of Rule 16.2 (1) of PPR and afore-cited judgment reveals that following are attributes of Rule 16.2:

- (i) The police officer is accused of gravest misconduct; or
- (ii) The cumulative effect of continued misconduct proves that police officer is incorrigible and completely unfit for the service;
- (iii) The authority passing order shall consider length of service as well as claim of pension; or
- (iv) Having regard to length of service and claim of pension, an employee instead of dismissal from service may be compulsorily retired.

13. Sub-Rule (1) of Rule 16.2 is a general rule which permits authorities to dismiss an officer on the occurrence of an event as contemplated therein. The said Rule is an open ended rule. It is a discretionary provision and discretion is always subject to judicial review. An officer may or may not be guilty of gravest misconduct. It is always subject to judicial review to ascertain whether the officer is guilty of gravest misconduct or not. The question whether an officer is guilty of cumulative effect of misconduct proving incorrigibility and complete unfitness is also a question of fact and has always remained subject matter of judicial review. Sub-Rule (2) carves out an exception to Sub-Rule (1) and in a way it is a proviso to Sub-Rule (1) which leaves no discretion with authorities and enjoins that an officer shall be liable to be dismissed if he has been convicted and sentenced to imprisonment on a criminal charge. The petitioner although was convicted but was not sentence to imprisonment. He was released on probation, thus, his case ought to be examined in the light of Rule 16.2(1). The petitioner no doubt was guilty of mis-conduct, however, impugned order was passed without complying with mandate of Rule 16.2(1). Act of petitioner was not declared gravest mis-conduct or incorrigible. Thus, impugned order was contrary to Rule 16.2(1).

14. The question of punishment other than dismissal from service, in case of conviction and sentence of an employee, has been considered by Supreme Court in *Divisional Personnel Officer, Southern Rly. v. T.R. Chellappan, (1976) 3 SCC 190*. The Court has held that in case of trivial or petty offences, an employee cannot be subjected to harsh punishment of dismissal. The relevant extracts of the judgment read as:

"21..... It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Challappan in Civil Appeal 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction."

15. A Constitution Bench in ***Union of India v. Tulsiram Patel***, (1985) 3 SCC 398 approved T.R. Challappan's case to the extent that proviso to Article 311 (2) is not mandatory and Disciplinary Authority may consider circumstances set out in the said judgment before imposing a penalty upon a delinquent Government servant. The Court further held that it is not mandatory that major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned Government servant. The penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case. In order to arrive at a decision as to which penalty should be imposed, Disciplinary Authority will take into

consideration various factors set out in T.R. Challappan' case. The relevant extracts of the judgment read as:

"114. So far as Challappan case is concerned, it is not possible to find any fault either with the view that neither clause (a) of the second proviso to Article 311(2) nor clause (i) of Rule 14 of the Railway Servants Rules is mandatory or with the considerations which have been set out in the judgment as being the considerations to be taken into account by the disciplinary authority before imposing a penalty upon a delinquent government servant. Where a situation envisaged in one of the three clauses of the second proviso to Article 311(2) or of an analogous service rule arises, it is not mandatory that the major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned government servant. The penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case. In order to arrive at a decision as to which penalty should be imposed, the disciplinary authority will have to take into consideration the various factors set out in Challappan case."

16. There is another conundrum which needs to be looked into. The departmental inquiry is adumbrated in Rule 16.24 of PPR. The said Rule prescribes complete procedure of inquiry which is reproduced as below:

"16.24. Procedure in departmental enquiries.-(1) The following procedure shall be followed in departmental enquiries

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- (i) The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry. That officer shall record and read out to the accused officer a statement summarizing the alleged misconduct in such a way as to give full notice of the circumstances in regard to which evidence is to be recorded. A cop of the statement will also be supplied to*

the accused officer free of charge.

- (ii) *If the accused police officer at this stage admits the misconduct alleged against him, the officer conducting the enquiry may proceed forthwith to frame a charge, record the accused officer's plea and any statement he may wish to make in extenuation and to record a final order, if it is within his power to do so, or a finding to be forwarded to an officer empowered to decide the case. When the allegations are such as can form the basis of a criminal charge, the Superintendent shall decide at this stage, whether the accused shall be tried departmentally first and judicially thereafter.*
- (iii) *If the accused police officer does not admit the misconduct, the officer conducting the enquiry shall proceed to record such evidence, oral and documentary, in proof of the accusation, as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay and expense or inconvenience, if he considers such statement necessary, and provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a magistrate, and is signed by the person making it. This statement shall also be read out to the accused officer and he shall be given an opportunity to take notes. The accused shall be bound to answer any questions which the enquiring officer may see fit to put to him with a view to elucidating the facts referred to in statements or documents brought on the record as herein provided.*
- (iv) *When the evidence in support of the allegations has been recorded the enquiring officer shall, (a) if he considers that such allegations are not substantiated, either*

discharge the accused himself, if he is empowered to punish him, or recommend his discharge to the Superintendent, or other officer, who may be so empowered, or (b) proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

- (v) *The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, in no case exceeding forty eight hours, to prepare a list of such witnesses, together with a summary of the facts as to which they will testify. The enquiring officer shall be empowered to refuse to hear any witnesses whose evidence he considers will be irrelevant or unnecessary in regard to the specific charge framed. He shall record the statements of those defence witnesses whom he decides to admit in the presence of the accused, who shall be allowed to address questions to them, the answers to which shall be recorded; provided that the enquiring officer may cause to be recorded by any other police officer superior in rank to the accused the statement of any such witness whose presence cannot be secured without undue delay or inconvenience, and may bring such statement on to the record. The accused may file documentary evidence and may for this purpose be allowed access to such files and papers, except such as form part of the record of the confidential office of the Superintendent of Police, as the enquiring officer deems fit. The supply of copies of documents to the accused shall be subject to the ordinary rules regarding copying fees.*
- (vi) *At the conclusion of the defence evidence, or, if the enquiring officer so directs, at any earlier stage following the framing of a charge, the accused shall be required to state his own answer to the charge. He may be permitted to file a written statement and may be given time, not exceeding one week, for its preparation, but shall be bound to make an oral statement in answer to all questions which the enquiring officer may see fit to put to him,*

arising out of the charge, the recorded evidence, or his own written statement.

- (vii) The enquiring officer shall proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into considerations the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by the defaulter shall be taken into account by the officer before passing orders in the case.
- (viii) Nothing in the foregoing rule shall debar a Superintendent of Police from making or causing to be made a preliminary investigation into the conduct of a suspected officer. Such an enquiry is not infrequently necessary to ascertain the nature and degree of misconduct which is to be formally enquired into. The suspected police officer may or may not be present at such preliminary enquiry, as ordered by the Superintendent of Police or other gazetted officer initiating the investigation, but shall not cross-examine witnesses. The file of such a preliminary investigation shall form no part of the formal departmental record, but statements therefrom may be brought to the formal record when the witnesses are no longer available in the circumstances detailed in clause (iii) above. All statements recorded during a preliminary investigation should be signed by the person making them and attested by the officer recording them.
- (ix) No order of dismissal or reduction in rank shall be passed by an officer empowered to dismiss a police officer or reduce him in rank until that officer has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, provided that

this shall not apply-

(a) where a police officer is dismissed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge; or

(b) where the officer empowered to dismiss him or reduce him in rank is satisfied that for some reasons to be recorded by that officer in writing, it is not reasonably practicable to give to that police officer an opportunity of showing cause.

Before an order of dismissal or reduction in rank is passed, the officer to be punished shall be produced before the officer empowered to punish him, and shall be informed of the charges proved against him, and called upon to show cause why an order of dismissal or reduction in rank should not be passed, Any representation that he may make shall be recorded, shall form part of the record of the case, and shall be taken into consideration by the officer empowered to punish him before the final order is passed:

Provided that if, owing to the complicated nature of the case or other sufficient reason to be recorded, the officer empowered to impose the punishment considers this procedure inappropriate, he may inform the officer to be punished in writing of the charges proved against him, and call upon him to show cause in writing why an order of dismissal or reduction in rank should not be passed. Any written representation received shall be placed on the record of the case and taken into consideration before the final order is passed.

(2) (i) Notwithstanding anything contained in sub-rule (1) a Superintendent of Police or any officer of rank higher than Superintendent, may institute, or cause to be instituted, ex parte proceedings in any case in which he is satisfied that the defaulter cannot be found or that in spite of notice to attend the defaulter is deliberately evading service or refusing to attend without due cause.

(ii) The procedure in such ex parte proceedings shall, as far as possible, conform to the procedure laid down in sub-rule (1): Provided that the defaulter shall be deemed-

(a) not to have admitted the allegations contained in the summary of misconduct, and

(b) to have entered a plea of not guilty to the charge:

Provided further that the defaulter, if he subsequently appears at any stage during the course of the proceedings shall not be entitled to claim de nova proceedings or to recall for cross-examination any witness whose evidence has already been recorded. He shall, however, be fully informed of the evidence which has been led against him and shall be permitted to take notes thereof. He shall also be furnished with a copy of the summary of misconduct and of the charge or charges framed.”

[Emphasis Supplied]

17. As per Rule 16.24(1)(vii) of PPR, a disciplinary authority may consider past service record of a delinquent employee, however, authority is bound to confront the delinquent employee with adverse service record which authority is going to rely upon. In the case of petitioner, inquiry was dispensed with and Appellate Authority without complying with Rule 16.24(1)(vii) relied upon past service record of the petitioner. Action of respondent was bad in the eye of law.

18. It is a settled proposition of law that punishment should be commensurate to alleged offence. The principle of proportionality should be followed by all quasi-judicial and judicial authorities while awarding punishment irrespective of nature of offence. As per principle of proportionality, even punishment prescribed by legislation must be incommensurate to alleged offence. If punishment is disproportionate to alleged offence, it is violative of Article 14 of the Constitution of India.

19. In ***Om Kumar v. Union of India, (2001) 2 SCC 386***, Supreme Court vide order dated 4.5.2000 proposed to re-open the land of

the DDA allotted to M/s. Skipper Construction Co. It was proposed to consider imposition of higher degree of punishments in view of role of these officers in the said matter. The question posed before the court was whether the right punishment was awarded to the officers in accordance with well-known principles of law or whether the punishments required any upward revision. The Court has highlighted proportionality as a constitutional doctrine.

20. In *Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442*, the Apex Court held that any penalty which is disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. The relevant extracts of the judgment read as:

"15. ... It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. ..."

21. In the instant case, by no means or reasons, awarded punishment can be called proportionate to alleged misconduct. The petitioner at the time of passing impugned order of dismissal from service was having 26 years' service to his credit. He was implicated on the basis of firing four rounds in the air while he was on Guard duty. He faced trial and came to be convicted vide judgment dated 17.07.2023. He was released on probation by trial Court. He was not involved in any other criminal case. He was not subjected to departmental inquiry. Inquiry was dispensed with without plausible reason. His past record was relied upon without complying with Rule 16.24(1)(vii) of PPR. There is no finding that he was incorrigible or his conduct was gravest mis-conduct. He is not claiming back wages. Thus, awarded punishment cannot be called

proportionate to alleged misconduct. The respondent was bound to award punishment proportionate to alleged offence.

22. The Supreme Court has held that in case Court finds that punishment awarded by authority is disproportionate to alleged misconduct, the Court should remand the matter back to competent authority to reconsider quantum of punishment. Thus, in the normal course matter ought to be remanded to authorities to reconsider quantum of punishment. However, in this particular case, this Court does not find it appropriate to remand the matter back to departmental authorities because a period of more than a decade from the date of alleged offence has already passed away. The authorities have passed impugned orders mechanically and there are all possibilities that remand would multiply the litigation. Thus, to cut short the litigation and considering the alleged misconduct, this Court deems it appropriate to modify the punishment of dismissal from service to compulsory retirement. The petitioner shall be deemed to be compulsorily retired w.e.f. 16.10.2015 i.e. date of dismissal from service. As conceded by petitioner, he would be entitled to pension w.e.f. 01.02.2026. He is entitled to gratuity and leave encashment. He shall not be entitled to salary or pension for the past period. The respondent shall release gratuity, leave encashment and pension within three months from today failing which would be liable to pay interest @ 9% per annum on the expiry of said period.

23. **Allowed** in above terms.

24. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

24.02.2026

Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No