

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

CWP No. 18741 of 2015
Date of decision: 07.09.2015

Lakhpat Singh

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Navkiran Singh, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order of the SSP, Patiala dated 17.04.2013 (Annexure P-6) whereby, the petitioner, who was serving as Constable, has been dismissed under Rule 16.2(2) of the Punjab Police Rules, 1934 on account of his conviction by the Judicial Magistrate Ist Class, Patiala vide judgment dated 12.09.2011 (Annexure P-4), which has been upheld by the Sessions Judge, Patiala on 15.10.2012 (Annexure P-5).

A perusal of the judgment would go on to show that the petitioner was held guilty for the offence committed under Section 304-A IPC on account of the fact that while cleaning his revolver on 09.10.1992, he had caused the death of Surinder Pal Singh. Resultantly, he was sentenced for rigorous imprisonment for one year. The said sentence has been upheld as noticed in appeal.

Counsel for the petitioner submits that the criminal revision is pending before this Court and, therefore, the order whereby his services have been dismissed and which have been upheld by the DIG, Patiala Range

on 16.12.2014 and by the Inspector General of Police (Zonal) on 23.04.2015 are not justified. Respondent no. 6 has noticed that the petitioner, despite being a police officer, has acted with grave negligence while on duty and there has been a loss of life of one person. The provisions of Rule 16.2(2) provide that where the enrolled police officer is convicted and sentenced, he shall be dismissed. The relevant Rule reads thus:-

“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 be 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 punished 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.”

The Division Bench of this Court in ***CWP No. 19578 of 2011, H.C. Arora vs. State of Punjab and others*** decided on 28.02.2013, also noticed that once the Rule is in place, there cannot be general directions not to inflict punishment of dismissal at all and it has to be left to the punishing authority to be exercised in each individual case having regard to exceptional cases. Relevant portion reads thus:-

“16. In the present case, however, there is a specific rule in the form of Rule 16.2 of the Punjab Police Rules. It is stated at the cost of repletion that the main provision of this rule stipulates penalty of dismissal in the case of conviction and sentence to imprisonment on a criminal charge. It nowhere states that the offence for which the police official/officer was charged and convicted should carry a maximum punishment of more than 3 years’ rigorous imprisonment. We are not examining the validity of this rule nor it has arisen in the present case. On the contrary, the petitioner is invoking the provisions of this rule and making this rule as foundation for challenging the impugned guidelines. The respondent-State has not amended this rule. Second proviso to this rule, which is exception to the main rule, gives the punishing authority discretion only when the conditions mentioned therein are satisfied. There cannot be general directions not to inflict the punishment of dismissal at all in the cases of conviction for those offences where the maximum punishment is up to three years. It has to be left to the punishing authority, to be exercised in each individual case, having regard to exceptional cases wherein

extenuating circumstances are found on record.”

In such circumstances, the dismissal is based on the Rule itself and the argument that the revision is still pending is without any basis since as per the second proviso, the officer is entitled to review the case in case the conviction is set aside.

Merely because some other police officer has been convicted and the order of dismissal has not been passed would not be a ground to grant the benefit to the petitioner since the provisions of Article 14 of the Constitution of India cannot be applied in a negative manner. At this stage, there is no scope for interference.

Accordingly, the present writ petition is dismissed.

07.09.2015
shivani

(G.S. SANDHAWALIA)
JUDGE