

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

Date of decision: 24.08.2016

CWP No.5823 of 1995

Om Parkash (deceased through his LRs)

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. C.S.Singh, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

The petitioner had put in about 15 years of service as a Constable in Haryana Police in District Sonapat when he was afflicted with Tuberculosis. The State admits that he died of the disease. He had some periods of absences in the past, but those periods were regularized by orders in due course of time and are presently of no moment for the legal representatives (LRs) of deceased Om Prakash, who are pursuing the case to claim monetary relief from his estate left behind as a deceased employee.

Challenge in this petition against the impugned order of dismissal from service was brought by Constable Om Parkash. He passed away in 1996 pending litigation and his widow and children have been brought on record as LRs since the cause of action qua reinstatement has abated, but not for monetary claims arising in case the petition succeeds and the impugned order is set aside or converted to lesser punishment which might entitle late Constable Om Parkash to salary for the remaining period, pension and pensionary rights etc.

The petitioner was accused by the police department of voluntarily absenting himself from duty for about 2½ months from 28.10.1991 to 14.01.1992 without leave which resulted in extreme penalty of dismissal from service after enquiry. There is no doubt that he neither applied for leave nor waited for it to be sanctioned. There was also no ex post facto sanction. The absence led to charge-sheet.

On notice, the State has contested the case, admitting that the department received intimation from late Constable Om Parkash vide telegram dated 26.12.1991 informing the office that, to quote: "I am seriously ill and not attending the duty". Nevertheless, the telegram was sent after about 2 months of remaining absent without authorization. When the petitioner rejoined service, he was charge-sheeted for major misconduct of remaining on unauthorized absence from duty for the period aforesaid. His reply was not found satisfactory which led to the appointment of an inquiry officer.

In defence of the imputations of misconduct during the inquiry, the petitioner produced the doctor who treated him for a 'diagnosed case of Tuberculosis'. He was treated as an out-door patient in his clinic. It is well-known that persons suffering from Tuberculosis are usually treated out-door hospitals as admission is not necessary unless the condition aggravates to a point when life is in danger and indoor treatment becomes life saving. It is not a case where the Inquiry Officer has disbelieved the statement of the private doctor since Tuberculosis is always a verifiable fact and cannot be concealed on medical examination. In any case, the petitioner succumbed to the disease of which there is no doubt.

What the Inquiry Officer pinned him down on prosecution evidence was that the delinquent had proceeded on leave without permission

from the competent authority. There was no getting out of this except for any help the telegram sent albeit late in the day may offer. The charge was proven. The inquiry report was submitted to the petitioner and his reply sought. He filed reply and pleaded innocence stating that absence from duty was due to his medical unfitness and, therefore, he should not be treated harshly in the matter of punishment and the absence may be viewed sympathetically on health grounds. The disciplinary authority being the Superintendent of Police, Sonapat considered the matter and formed an opinion in his discretion that this was a fit case of dismissal from service. Accordingly, he exercised his powers under Rule 16.2 of the Punjab Police Rules, 1934, as applicable to the Haryana, and dismissed the petitioner from service. While dismissing the petitioner, he also took into account the petitioner's past conduct and earlier instances of absences, which are narrated in the written statement to read thus:-

01.07.1982 to 04.07.1982	<u>Sanctioned</u> casual leave at office's discretion after he reported back from absence. <i>[4 days]</i>
20.09.1986 to 23.09.1986	<u>Sanctioned</u> casual leave at office's discretion after he reported back from absence. <i>[4 days]</i>
12.10.1988 to 12.12.1988	Sanctioned <u>66 days earned leave</u> at officer's discretion after he reported back from absence.
07.11.1990 to 08.11.1990	Absent without leave for which he was <u>awarded punishment</u> of two days <u>parade drill</u> . <i>[1 day]</i>
28.10.1991 to 18.01.1992	<u>Absent without leave for which he was dismissed from service after proper enquiry.</u>
12.04.1992 to 28.04.1992	Absent without leave for <u>17 days</u> and was <u>sanctioned leave without pay</u> at <u>office's discretion</u> after he reported

back.

13.05.1992 to 15.05.1992

Absent without leave for 3 days.

Leave was sanctioned without pay after he reported back from absence.

His appeal from the dismissal order presented before the Deputy Inspector General of Police, Rohtak Range, Rohtak failed, when the same was rejected on 29.09.1994. No revision was filed before the Director General of Police, Haryana, though it would have been maintainable had it been filed. However, looking to the fact that 21 years have gone by and the man is dead it would not be possible for the widow and the children to present an action before the revising authority and expect them to depose to facts in defence against an action in the remote past which may not even be to their personal knowledge, except to the extent of the illness and how the end came, then it would be appropriate for the Court to determine the rights of late Om Parkash and his family vis-à-vis the dismissal order in this petition and subsisting rights, if any, left in its wake.

The Haryana amendment to Rule 16.2 of the PPR, 1934 prescribes that 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. The amendment added an explanation, which is unlike anything in the extant rules in Punjab (PPR), specifying the meaning of what the “gravest acts” of misconduct are in respect of a police officer facing disciplinary action which are heinous and intolerable in nature to which there are no exceptions. These have been enumerated to read as follows:

“(i) indulging in spying or smuggling activities;

- (ii) disrupting the means of transport or of communication;
- (iii) damaging public property;
- (iv) causing indiscipline amongst fellow policemen;
- (v) promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;
- (vi) going on strike or mass causal leave or resorting to mass abstentions;
- (vii) spreading disaffection against the Government; and
- (viii) causing riots and the like.”

The Punjab Government has not specified what their Government means or understands by gravest acts of misconduct, and has in its wisdom left it open to interpretation by first the police administration and then by Court, when occasion arises in an action brought for judicial scrutiny. Service law is replete with case law on the point in both Haryana and Punjab, which requires no proliferation, except precedent cited by the learned counsel in this case. But the Haryana Government in Rule 16.2 has by amendment narrowed down by amplification of the scope and ambit of the gravest acts are, by creating a dictionary of terms and when read in the light of the explanation of sickness, the misconduct committed by the petitioner even when proven, on first principles of law and interpretation of rules does not appear to fall anywhere nearabout the gravest acts enumerated in the Haryana amendment even if the list is not taken to be exhaustive, which it may not be and only indicative of what acts of commission and omission in the view of the Haryana Police Department amount to gravest misconduct justifying drastic punishment of dismissal. However, the entries in the amendment are plainly to be read *ejusdem generis* from case to case i.e. a general term describing a list of specific terms denotes other things that

are like or similar to the specific elements in the descriptive list in the added Explanation to Rule 16.2, PPR, 1934 as prevalent in the State of Haryana.

The petitioner had put in about 15 years of service and but for the impugned order would have continued in service to earn pension had he lived in due course of nature. The Haryana amendment to Rule 16.2 speaks of a claim for pension and if pension rights had matured on the date when dismissal order was passed, the rights of LRs would follow to claim their dues as are available to them in the rules, including family pension to the widow. The provision deals with future rights to pension curtailed by disciplinary action.

One of the defenses of the State taken in its written statement is that the petitioner did not take treatment from a Government hospital. That may be true. No doubt, the better course for late Constable Om Parkash would have been to show himself to Government doctors and be treated from a Government hospital, but his failure to do so should not inevitably mean that the treatment taken from a private doctor would have to be discarded as proof of TB. If TB is diagnosed, a fact which is not disputed by the department, then the treatment is well known even to lay persons which no longer involves rocket science but protocol of Isoniazid (INH) medicines etc. taken regularly would help cure TB. I wonder what a patient of TB with persistent cough and blood in sputum, in case the situation was reached, would do in policing duties. This is not to justify illegal absence but a sympathetic view of another man's condition can always be taken on facts on which judicial notice can be taken. Tuberculosis carries with it social inhibitions being contagious. A man may become reclusive. It may happen in human affairs and state of mind that a policeman may be so wrapped up by illness as may make him shy of attending office or too scared to reveal

his medical condition to any one which might entail loss of job and livelihood. This is also not by way of justification, as it is not the business of the court to justify, since that is in the province of the errant official, but it is the business of the court to understand the human condition and keep in view the entire canvas of facts and circumstances and not be too fastidious about one man's behaviour and put it in standardized scale of conduct, since much will depend from person to person, situation to situation, conduct to misconduct, misconduct to the gravest acts of misconduct peaking out to dismissal. This is all very subjective and personalized and that is where the wisdom of the Haryana amendment comes in, reducing considerably subjectivity and injecting more objectivity in exercise of discretion. The list describing gravest acts of misconduct go to dismissal as justification itself with no fanfare. Of course, this does not mean that in human affairs, especially in a uniformed force one is dealing with, the disciplinary authority's powers are curtailed in visiting punishment of dismissal beyond the descriptions in the Explanation. They may be not. Many instances short of the enumerations of gravest acts may justify dismissal even for the reasonable man in the community to approve, forget about the strict disciplinarian that a Superintendent of Police should be to maintain the force. But still in every exercise of discretionary powers, subjectivity and reason must be exercised reasonably and proportionate to the cause or the case. Let us take a look at the facts from past record of the deceased petitioner. There are 7 instances of absence during a period of 10 years, see column in para. 6 (supra). In 5 of them leave was sanctioned of which two without pay involving 17 and 3 days respectively. The punishments awarded are 2 days parade drill for three days of absence. Remarkably, for the absence from 12.10.1988 to 12.12.1988 i.e. for 66 days leave was sanctioned

by debiting the period from account of earned leave. The petitioner could easily have been dismissed from service in 1988/1989 by the same logic. Three years later the logic should not change so drastically as the human mind has not had a sudden spiritual revelation or an exponential jump in the evolution process or in less humanized. Neither have standards in rules changed. Or new tools of interpretation of rules have been forged in Haryana to justify action taken in 1988 as against similar misconduct committed in 1992 one of 66 days sanctioned as earned leave, while the other for 2 months and 21 days (82 days). Juxtaposing 66 days as against 82 days leaves a differential of 16 days which is rather slim when pitted against extreme punishment. This Court does not intend to draw a parallel between the two to lean the case in favour of the LR's of the late petitioner except to say emphatically that there has been no analysis by the disciplinary authority and the appellate authority to the real facts and what really deserves to come out of past record when garnered into decision-making. I am sure the authorities have not even thought of what the Court has been confronted with on past record assisted by counsel and why the two moot periods should be differentiated so starkly opposite as not the gravest, and to qualify, gravest in the mind of the disciplinary authority. There is no such discussion in the impugned orders. Quashing them appears wholly justified in the above scenario and the more I dwell on this aspect, the more am I convinced that there has been gross violation of the equality principle, of unfair discrimination and unreasonableness in choice of quantum of punishment. The impugned orders suffer from want of due application of mind and to the cause of proportionality which is the heart of the rule of law. Relevant considerations have been left out of the decision making process. There must be a careful poise maintained between overemphasis, underemphasis and no

emphasis at all. Viewed from these humanitarian principles and simple logic the order of dismissal appears to this Court as excessive, oppressive and internally unconstitutional and contrary to equality law in Article 14 as against the past record of the petitioner himself [without reference to third party to measure parity and equal treatment] when faced with sanctioned leave of absences, two minor punishments, 66 days of absence condoned on officer's discretion from earned leave and one in between and at the end swinging the pendulum to rest on dismissal. It is not enough to restrict the judicial review to the nature and quality of the inquiry and its procedural aspects which may be unblemished but the larger issue remains on quantum of punishment and whether it is proportionate to the misconduct. Misconduct there is, but still is dismissal justified. I ask myself the question. If the punishment for the incident was withholding of several increments with cumulative effect or some other major punishment had been imposed other than dismissal from service what would the court then have done? Enhanced the punishment? It could not. Here lies the nagging question. In broadly the same set of facts, that is, 66 days in 1988 and 82 days in 1991/92 the decision of the same authority is poles apart. The court has not been acquainted with the reasons of delay in reporting back after unauthorized leave in 1988 by either side but the reason of illness for the period in question is certainly a mitigating factor not to dole out the harshest punishment of dismissal. The action appears mostly callous and bloodless to the court which pricks its conscience. Punishment then must be meted to the petitioner but not so drastically excessive and shockingly disproportionate to the misconduct proved and with even the past misconducts taken into consideration, each of them of taking furloughs without leave, but still dismissal from service is not justified to deprive livelihood. Per se loss of

livelihood is hardly any justification not to dismiss where dismissal is justified. Everyone knows that loss of livelihood is the direct result of dismissal but fewer know how to strike the balance. This is part of the judicial and administrative experience built on intuition, the inexplicable ability for one man to judge the other, one holding authority, the other not. Moreover, in this case the State has failed to “prove” incorrigibility and unfitness for police service and denial of pension. It was the moral duty of the police department to have got the petitioner checked up and supported his treatment which disease had a cure. Instead of taking a liberal and compassionate view, the authorities finished the man literally to death months after filing the petition succumbing to the disease.

This Court while dealing with Rule 16.2 as applicable to Haryana and its Explanation in Dhan Singh Vs. State of Haryana per Permod Kohli, J. speaking for the Division Bench, and which deserves quoting in extensor, observed in the judgment in its relevant parts on the twin arguments addressed, observed and held as follows: -

“8. Mr. Rathee, learned counsel on behalf of the State of Haryana, while interpreting Rule 16.2 (i), argued before us that in terms of the Rule, dismissal is permissible under two situations - (1) the gravest act of misconduct and (2) cumulative effect of continued misconduct. He has laid emphasis on the word "or" occurring in the Rule between the first part and the second part. According to him, both the acts of misconduct are to be read independently and not in conjunction. In sum and substance, his submission is that an employee may invite dismissal on account of act of gravest misconduct and where there is no gravest misconduct, even a cumulative effect of continued misconduct bring incorrigibility and unfitness to police official which is also sufficient to earn the punishment of dismissal.

9. However, Mr. Rathee failed to address the Explanation appended to Rule 16.2. According to him, Explanation does not in any manner control the rule and should be construed as

insignificant where misconduct is proved or for that matter continued acts of misconduct are established.

10. Explanation to a statute has to be read as a part and parcel of the main Rule/Section/Clause and cannot be construed as an independent or separate provision. The object and purpose of "Explanation" may be to explain any expression or term used in the principal provision, to expand or restrict its meaning and so on.

11. There is another principle to understand the dominant purpose of the Explanation. When the Explanation is appended at the end of Section/Rule containing different clauses, it has to be seen as to which part or clause of Section it applies. Similarly, where the Explanation is added towards the end of the Section and uses the words for purposes of this Section then it should be deemed to be Explanation for the entire Section/Rule. It again depends upon the object or the purpose indicated in the Explanation. Hon'ble Supreme Court has again considered various purposes of Explanation when added to a statutory provision. In the case of ***Commissioner of Agricultural Income Tax, Kerala v. Plantation Corporation of Kerala Ltd., Kottayam, 2001(1) S.C.C. 207***, the Apex Court held as under :

"4 That apart, an explanation is intended to either explain the meaning of certain phrases and expressions contained in a statutory provision or depending upon its language it might supply or take away something from the contents of a provision and at times even to, by way of abundant caution, clear any mental cobwebs surrounding the meaning of a statutory provision spun by interpretative process to make the position beyond controversy or doubt."

12. In the present case, the explanation clearly specifies the purpose as it starts with the words for the purposes of Sub Rule (1) and reference in sub- rule one can only be linked to the expression used therein (gravest misconduct). The language of the Explanation thus indicates that expression "gravest misconduct" used in sub-rule (1) of Rule 16.2 has to be confined to the definition and acts as specified from Clauses (i) to (viii) in the Explanation. Thus acts complained of, if fall within the purview of any of the clauses (i) to (iii) would alone constitute "gravest misconduct".

13. The next question which falls for consideration is whether the term "gravest misconduct" as defined/specified in the Explanation is relevant for first part of Rule 16.2 (i) or will it have to be read in conjunction with the entire rule. No rule has been brought to our notice wherein the expressions "misconduct" or "gravest misconduct" have been defined except the Explanation appended to the aforesaid Rule. Explanation only defines "gravest misconduct" and not "misconduct". From the reading of Rule, it also appears that the punishment of dismissal of a delinquent official can be imposed on a delinquent for the gravest act of misconduct or even the cumulative effect of continued misconduct. However, in both the cases incorrigibility and unfitness for police service has to be proved. This Rule came up for consideration before the Hon'ble Supreme Court in the case of ***State of Punjab v. Ram Singh, Ex-Constable, 1992(3) SCT 448 : (1992)4 SCC 54*** wherein following observations were made:

"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 repletion 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, single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct."

14. In the case of ***Randhir Singh v. Dy. Inspector General of Police, Ambala Range, Ambala Cantt. And another, 2004(4) SCT 462 : 2005(1) SLR 259 (P&H)***, a Bench of this Court considered the scope of Rule 16.2 of the Punjab Police Rules, 1934 and held as under :

"I have perused the order of punishment dated 7.12.1984 (Annexure P-3). The punishing authority, while inflicting the punishment of dismissal from service on the petitioner, admittedly, did not take into consideration the fact that the petitioner had rendered more than 10 years service entitling him to pensionary benefits. The punishing authority also did not take into consideration the fact that the petitioner had not committed any act of omission or commission described as "gravest acts of misconduct" by the rule itself, while inflicted the gravest punishment prescribed. In its aforesaid action, the authorities obviously did not follow Rule 16.2 in its letter and spirit. It is mandatory for the punishing authority to take into consideration the length of service of an employee and his claim to pension before inflicting the punishment of dismissal from service under Rule 16.2 of the Punjab Police Rules."

This judgment was rendered on the basis of a Division Bench judgment of this Court rendered in the case of ***Constable Shiv Charan v. The Superintendent of Police, Gurgaon, District Gurgaon and others, 1998(3) SCT 255 : 1998(3) Recent Services Judgments 151.***

15. A Division Bench of this Court in the case of ***Constable Om Parkash v. State of Haryana and others, 1995(3) SCT 170***, while considering the scope of Rule 16.2, particularly, the obligation of the disciplinary authority to take into consideration the length of service and the right to pension, made following observations :

"11. On notice of motion having been issued written statement was filed by the Superintendent of Police, Sirsa, *inter alia* stating that the petitioner was relieved on May 4, 1990 from Police Station Uklana District Hissar on his transfer to Police Lines, Hissar, but he did not report there. Subsequently, on May 16, 1990, he reported and he was ordered to be transferred to District Sirsa but he did not report there till September 15, 1990. Thus there was absence for 12 days and 3 hours on the first occasion and 4 months on the second occasion. He was described as a habitual absentee.

He had not completed 20 years of qualifying service to claim pension. His length of service was thus not required for taking into consideration. No reply to the show-cause notice was submitted by the petitioner. Since he continuously remained absent even during the enquiry, no person hearing was required to be given to him. Findings of the Enquiry Officer were served upon him on July 23, 1991. No evidence in defence was produced by him to support his supposed plea of illness. Before imposing punishment show cause notice was given. Taking into consideration the constant absence on the occasions mentioned above, a finding was recorded that the delinquent was proving his incorrigibility and complete unfitness for the police. Keeping in view the ratio of the decisions referred to above, no case for interference is made out in this case."

In addition, judgment of the Hon'ble Apex Court in the case of ***Harjit Singh and Anr. v. The State of Punjab and Anr., 2008(1) SCT 766 : 2007(4) SLR 645***, the Hon'ble Supreme Court while relying upon the earlier Apex Court judgment in the case of ***State of Punjab v. Ram Singh*** (supra), observed as under:

"15. In the aforementioned situation, ordinarily, we would have asked the Disciplinary Authority to consider the matter afresh, but the occurrence has taken place in the year 1984. Appellants and the said Parminder Singh had worked only for a few years, one of them is dead. In the aforementioned situation, we are of the opinion that we would be justified to fix the quantum of punishment. We are of the opinion that in the facts and circumstances of this case and in particular having regard to the passage of time, punishment of compulsory retirement will meet the ends of justice. If otherwise eligible, the delinquents would be entitled to retiral benefits. The appeal is allowed to the aforementioned extent."

The two judgments relied upon by Ms. Shruti Jain Goyal in Virender Singh Vs. State of Haryana and Others, 2014 (1) S.C.T. 561: 2014 (13) R.C.R. (Civil 300 and Satbir Singh Constable No.902/RTK Vs. The Director General of Police, Haryana and Others 2013 (3) S.C.T 76 are distinguishable on facts. In these two cases the willful absence without permission or leave sanctioned of policemen were rather long i.e. 7 and 8 months respectively but still the court

interfered either on quantum or on right to pension or both. The case in *Dhan Singh* was noticed by the co-ordinate benches. Even in *Satbir Singh* the Court while upholding punishment interfered in quantum to protect right to pension by converting dismissal to compulsory retirement as element of pension was not taken into consideration while awarding punishment. In *Virender Singh*, the order of dismissal was quashed when found disproportionate to the charges leveled against the petitioner and right to pension upheld for 11 years of service rendered before termination. The Court clarified once again that the period of twenty years service is relevant and important only for the purpose of seeking voluntary retirement but would have no relevance to cases of the present kind.

The law officer further contends that the absence without leave in a police force is a serious matter and the punishment order deserves to be upheld so as not to send a wrong message to the public.

It is true that illegal or unlawful absence without prior information and permission in the police department is of supreme importance and should be guarded against for law and order maintenance. However, while discipline cannot be downgraded but still looking to the special facts of the case and the fact the petitioner was a confirmed case of chronic tuberculosis which he succumbed to, then it appears inhuman to support the extreme punishment of dismissal. The order was not wholly justified especially looking to the previous 7 feeble instances I have thoroughly examined above to discern a thread of continuing misconduct till the present institution of the case.

There is a specific instance of a court case somewhat similar in point of issue involving a policeman in Haryana also suffering from Tuberculosis and who too was dismissed. That matter fell for consideration of the Supreme Court in a recent judgment in Rajinder Kumar Vs. State of Haryana and another, Civil Appeal No. 8064 of 2015 arising out of S.L.P. (C) No. 10039 of 2014 decided on September 30, 2015. Unlike the present case, in *Rajinder Kumar* the petitioner was declared unfit for service due to chronic TB and thus his absences should not have been visited by dismissal from service. The question which fell for consideration was whether dismissal was the only option. The Supreme Court held that it had no doubt that indiscipline of any sort cannot be tolerated at all in a disciplined force. However, in the factual background of chronic illness, the disciplinary authority or at least the appellate authority should have considered whether a punishment other than dismissal would have been appropriate on Rajinder Kumar and whether dismissal was the only punishment available and appropriate in the circumstances. The rule provided discretion vested in the authority to decide what should be the proper punishment taking note of the nature of the misconduct. On these premises and reasoning, the Supreme Court thought appropriate to convert dismissal to one of compulsory retirement. The present case and the case in *Rajinder Kumar* are clearly in parallel.

I may record that Ms. Shruti Jain has also referred to the decisions of the Supreme Court in Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T.T.Murali Babu, AIR 2014 SC 1141: 2014 (2) S.C.T. 193 to hammer her point that interference in judicial review in a case of fair and proper inquiry and

punishment inflicted of dismissal is not open to be interfered with. In *Murali Babu's case* (supra) the unauthorized absence from duty by a Junior Engineer in the Board was for a long period of one year and 7 months without adequate reason. The Supreme Court did not think the dismissal order was shockingly disproportionate to the proven misconduct and thus the High Court was held not justified in its interference. I fail to see in what ways this ruling applies to the facts of the present case. It is distinguishable on facts.

The learned law officer for Haryana has next placed reliance on another judgment of the Supreme Court in State of Punjab v. Dr. P.L.Singla, (2008) 8 SCC 469. This was a case of unauthorised absence from duty for 5 years with no satisfactory explanation for the absence coming forth. Initially, P.L.Singla was imposed major punishment of withholding of five increments with cumulative effect which was declared by the Government to be extra-ordinary leave for the period of absence. The question which fell for consideration was that grant of extra-ordinary leave does not wipe out the punishment already imposed since it was only consequential to the imposition of punishment. In short the punishment was not converted and replaced by another dispensation. The lower courts was held wrong in assuming that, to quote the words of the Supreme Court: "according extra-ordinary leave for the period of absence, [it] will have the effect of effacing or erasing the punishment already imposed, is therefore incorrect and is a serious error of law." The High Court was held right in setting aside the lower court judgments in regular second appeal in an action arising from a civil suit. This case has hardly any bearing on

the facts of this case and does not promote the cause of the State for dismissal of the instant petition.

Having heard the learned counsel, I am convinced that the petitioner was unfairly dealt with in the matter of imposition of punishment. The authorities have not applied their mind to the proportionality of punishment awarded and have also not taken into consideration the length of service of the petitioner of about 15 years and his right to pension while awarding the punishment. Consequently, the impugned orders cannot be sustained and deserves to be set aside.

In the facts and circumstances, I deem it appropriate to allow the writ partially by issuing a writ of certiorari setting aside the impugned order of dismissal and the order in appeal and convert the order of dismissal to one of compulsory retirement from service. The LR's are held entitled to monetary benefits which may be determined after processing the case of the LR's for release of retiral benefits as per rules keeping in view the period of service spent towards qualifying service for pension. In case the amounts due are not paid within two months from the date of receipt of this order the amounts will earn interest @ 8 % from the notional date of compulsory retirement till actual payment.

[RAJIV NARAIN RAINA]
JUDGE

24.08.2016
Vimal

Whether speaking/reasoned: Yes

Whether Reportable: Yes