

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

**1. CWP No.13483 of 2010
Date of decision: 11.11.2016**

Rajesh Kumar Sharma ..Petitioner

Versus

State of Punjab and others ..Respondents

2. CWP No.13650 of 2010

Constable Surinder Singh ..Petitioner

Versus

State of Punjab ..Respondent

3. CWP No.14262 of 2010

Keemti Lal ..Petitioner

Versus

State of Punjab and others ..Respondents

4. CWP No.2379 of 2011

Constable Kulbhushan Kant ..Petitioner

Versus

State of Punjab and others ..Respondents

5. CWP No.2931 of 2011

Sukhcharanjit Singh ..Petitioner

Versus

State of Punjab and others ..Respondents

6.

CWP No.23351 of 2013

Malkiat Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. R.S. Bajaj, Advocate
for the petitioner in CWP No.13483 of 2010.

Mr. Sarwan Singh, Sr. Advocate with
Mr. N.S. Rapri, Advocate
for the petitioner in CWP No.13650 of 2010.

Mr. Kapil Kakkar, Advocate
for the petitioner in CWP No.14262 of 2010.

Mr. Tarun Jhatta, Advocate for
Mr. Pardeep Bajaj, Advocate
for the petitioner in CWP No.2379 of 2011.

Mr. S.S. Grewal, Advocate
for the petitioner in CWP No.2931 of 2011.

Mr. K.S. Dadwal, Advocate
for the petitioner in CWP No.23351 of 2013.

Mr. L.S. Virk, Addl. AG, Punjab
for the respondents -State.

Daya Chaudhary, J.

By this judgment of mine six cases bearing CWP Nos.13483, 13650, 14262 of 2010, 2379, 2931 of 2011 and 23351 of 2013 shall be disposed of as common questions of law and facts are involved. However, for the sake of brevity, the facts are being extracted from CWP No.13483 of 2010.

The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated nil of June 2010 (Annexure P-8), which was received by the petitioner on 17.07.2010, whereby, he was dismissed from service by cancelling earlier order dated 06.04.2004 (Annexure P-6) passed by respondent No.1.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner being Bronze Medallist in the International Boxing Championship, participated in various National Level Boxing Competitions and won many awards in the field of boxing for his State. He was selected on the post of Constable in the Department of PAP on 01.12.1992 on regular basis from Sports quota and got training from the Police Training School for Commando, which was completed successfully. In the year 1993, during sports practice at Commando Training Centre, Bahadurgarh, District Patiala, he received injury on his lips and this fact was also brought to the notice of the Coach but the same was ignored. He was pressurized to continue the practice in spite of injury. Some other complications also arose subsequently and various tests were got conducted. The petitioner took medical treatment and was advised rest. He was placed under suspension due to his absence from duty. An inquiry was conducted in this regard by Shri Mohan Singh Parmar, DSP, who was appointed as Inquiry Officer. Thereafter, the petitioner joined his duties on 20.04.1994 and an entry was made in Rapat Register No.21. During investigation, an application was submitted by the father of the petitioner as the petitioner could not present himself before the Inquiry Officer. He was proceeded *exparte* and ultimately, report was submitted by the Inquiry Officer with

recommendation to terminate his services. He was terminated from service w.e.f.20.09.1994 vide order dated 23.09.1994 (Annexure P-2).

Aggrieved by said order, the petitioner preferred an appeal before Inspector General of Police, PAP, Jalandhar, which was rejected being time barred vide order dated 02.12.2002 (Annexure P-3). Thereafter, the petitioner filed a mercy petition before the Director General of Police, Punjab, Chandigarh with a request to reinstate him to the post of Constable in the PAP but the same was dismissed on 29.07.2003. He also filed mercy petition before Principal Secretary, Home, Govt. of Punjab on 29.08.2003 as per Rule 16.28 of the Punjab Police Rules, 1934 stating all the facts with regard to his absence. The said mercy petition was allowed on 06.04.2004 (Annexure P-6). Petitioner was reinstated in service but was awarded punishment of stoppage of four annual increments with cumulative effect. Thereafter, the petitioner joined his services in the 75th BTN, PAP, Jalandhar. He appeared in Departmental Promotion Lower School Course, which was qualified by him. Thereafter, one Head Constable Ramesh Verma filed CWP No.5845 of 2006 before this Court for quashing of order of stoppage of five annual increments imposed upon him by respondent No.1 while setting aside his order of dismissal on the ground of his absence from duty. In the aforesaid petition, respondent No.1 filed an affidavit on oath that he had issued show cause notices to total 44 Constables/Head Constables and asked them to explain their position. No show cause notice was received by the petitioner but still he submitted reply. Subsequently, the order of dismissal from service was passed by reviewing the earlier order dated 06.04.2004 and by upholding order dated 29.07.2003 (Annexure P-4)

passed by the Director General of Police, which is under challenge in the present writ petition.

Learned counsel for the petitioner submits that the petitioner was under medical treatment of various Doctors from 24.12.1993 to 25.04.1994, which was intimated by him to his superior officers whereas the petitioner was suspended from service due to absence from duty only on 15.04.1994. Learned counsel further submits that the petitioner joined his duties on 20.04.1994 and an entry was also made in Rapat Register No.21. During investigation, an application was also moved by the father of the petitioner along with medical record before the Inquiry Officer but still he was proceeded *exparte*. The services of the petitioner were terminated without affording any opportunity of hearing and without conducting any regular inquiry. Learned counsel also submits that the mercy petition filed by the petitioner was accepted on 06.04.2004 and he was reinstated into service with punishment of stoppage of four annual increments with cumulative effect. Learned counsel also submits that the petitioner was having unblemished and exemplary service record and no complaint was ever made against him. Even all the ACRs were good. Only on the basis of show cause notice, which was never conveyed to the petitioner, his services were terminated. Learned counsel also submits that the petitioner was not a habitual absentee and the punishment imposed upon him was disproportionate to the gravity of the charge. Learned counsel also submits that the impugned order of reviewing earlier order dated 06.04.2004 was passed after a long period of more than 6 years without mentioning any reason. Learned counsel also submits that the order of reinstatement was

passed in favour of the petitioner after considering his medical record and he was awarded penalty of stoppage of four annual increments with cumulative effect. The petitioner cannot be awarded double punishment only on the ground of absence from duty which is not a gravest act of misconduct as has been defined under Section 16.2 of the Punjab Police Rules. At the end, learned counsel for the petitioner submits that the absence of similarly situated employees was ignored after considering their medical record and as such, the action of respondents is not only discriminatory but illegal and unlawful as well. Learned counsel for the petitioner has relied upon judgment rendered by Hon'ble the Supreme Court in *Malkiat Singh vs. State of Punjab and others*, JT 1996(2) SC 648 as well as judgments of this Court in *Satpal Singh (dead) through his LR's Savitri Devi and others vs. State of Haryana and others*, 1999 (3) RSJ 18, *Randhir Singh vs. Dy. Inspector General of Police, Ambala Range, Ambala Cantt.*, 2004(4) RSJ 720, *Punjab State and others vs. Ashok Kumar*, 2009(4) SCT 260, *Shri Kalyan Singh vs. State of Punjab and another*, 1967 C.L.J. 156, *Ex. Constable Malkiat Singh vs. State of Punjab and others*, CWP No.11458 of 2001 decided on 11.07.2012 and *Mukhtiar Singh and others vs. State of Punjab and others*, CWP No.10942 of 2007 decided on 01.07.2010 in support of his arguments.

In response to notice of motion, the reply has been filed, which is on record. Learned State counsel submits that the petitioner has remained absent for a longer period of 117 days and no medical certificate was also produced by him at the time of his joining. During the course of departmental inquiry, the petitioner remained absent willfully from

06.06.1994 to 01.07.1994. An inquiry was conducted by the Inquiry Officer as per rules and a finding was recorded by perusing the documents available on record. The petitioner neither submitted any reply to the show cause notice nor appeared before the Punishing Authority and ultimately, he was dismissed from service.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order and the relevant record available on the file.

The facts with regard to appointment, undergoing training, issuance of show cause notice, reinstatement and imposition of punishment of stoppage of four annual increments with cumulative effect are not disputed. It is also not disputed that there were total 44 constables/head constables and some of them were still working and were not dismissed like the petitioner.

Vide order dated 15.07.2016, the respondent-State was directed to file affidavit of some responsible Officer of the Department explaining therein as to how many constables were dismissed from service and how many were still working. It was also directed to mention as to how many constables were allowed to be retained in service even after passing of orders.

In response to that direction, an affidavit was filed wherein the details of all the similarly situated persons were mentioned. It has been mentioned that total 44 Constables were awarded punishment of dismissal from service like the petitioner for remaining absent from duty. They were reinstated into service by accepting their mercy petition. Out of total 44

orders, approximately, 40 orders were passed by a single officer within a period of approximately one year. Majority of the similarly situated persons were retained in service. This fact has also been mentioned in the order dated 22.09.2006 passed by the Division Bench of this Court in ***CWP No.5845 of 2006*** titled as ***Ramesh Verma vs. State of Punjab and others***. In spite of directions issued by the Division Bench, still some of the candidates were allowed to be kept in service. Out of total 44 Constables, 27 Constables including the petitioner were dismissed from service after reviewing their cases by the Principal Secretary, Home, Punjab. 17 Constables were retained in service by recording certain reasons. In case of Subba Singh Constable, he expired on 30.03.2009 and no adverse order was passed against him. Constable Tirath Singh expired on 03.07.2012 and Constable Amrik Singh also expired on 11.05.2012 and their orders could not be reviewed by the Home Department. Similarly Constable Jarnail Singh also expired on 13.08.2009. Head Constable Sham Sunder, Constable Hakam Singh and Constable Sukhdev Singh retired from their services on 31.08.2011, 31.07.2008 and 31.12.2005, respectively. The case of Constable Samsun Masih was reviewed and by considering his reply to the show cause notice, the State Government decided to file the show cause notice. Similarly Constable Satwinder Singh was heard in person and allegations were not proved against him and order of reinstatement was passed. Similarly Constable Kewal Singh was also reinstated. Constable Avtar Singh was discharged from service on 23.04.1992 due to registration of FIR. Constable Sardool Singh was dismissed from service and thereafter, his order was cancelled. Constable Gurcharan Singh was dismissed from

service and thereafter, he was reinstated in service and inquiry was initiated against him. Similarly Constable Bagga Singh and Constable Ram Lubhaya were also reinstated in service.

It is clear from the facts as mentioned above that the respondents have treated similar candidates in different manner as allegations of remaining absent from duty were there against all the 44 candidates. Some of them were reinstated in service whereas some of them were dismissed from service.

In the present case, four annual increments with cumulative effect were stopped for remaining absent. For the same allegations, the petitioner was dismissed from service. Admittedly, the second penalty/punishment was passed on the same cause of action i.e., willful absence from duty. It is also not disputed that the petitioner was not associated in the regular inquiry. Earlier, the petitioner was reinstated and was allowed to join duty. Thereafter, the order was reviewed and order of dismissal from service was passed. The action of respondents is not only discriminatory but also contrary to the principles of natural justice. The punishment of dismissal from service is a major punishment and the same cannot be awarded without giving any opportunity of hearing and before conducting regular departmental inquiry. It is also not disputed that the principles of natural justice have not been followed while passing the impugned order of dismissal from service.

No doubt dismissal from service is the extreme penalty, which is to be awarded only in the gravest acts of misconduct and in case the misconduct is proved to be incorrigible and the petitioner is found

completely unfit for the Police Service. For imposing such a major penalty, the total length of service of the candidate is to be taken into consideration. No finding whatsoever has been recorded that the petitioner is guilty of an act of gravest misconduct. It has also not been held that the petitioner is guilty of a continued misconduct proving his incorrigibility and complete unfitness for police service. There is no such reference to the service record of the petitioner and the impugned order of dismissal does not even reveal the application of mind at the hands of the punishing authority on the question whether any other penalty could be imposed upon the petitioner keeping in view his past service record. Apart from that, the mandate of Rule 16.2 has also been given a go by inasmuch as the length of service of the present petitioner has not been taken into account while passing the impugned order. Even the reply to show cause notice, which was never served has not been considered and the punishment of dismissal from service has been imposed whereas for that allegation, the petitioner has already been punished.

In view of the facts and law position as discussed above, I find that the present petition is squarely covered by the judgment rendered by the Division Bench of this Court in ***Tarlok Singh vs. State of Punjab and others, CWP No.205 of 1996*** decided on ***14.05.1996***. Accordingly, the impugned order of dismissal from service is set-aside and the respondents are directed to reconsider the case of the petitioner by conducting a fresh inquiry by giving an adequate opportunity of hearing and also by considering the cases of other similarly situated employees. The necessary exercise be done within a period of three months from the date of receipt of

certified copy of this order. In case, the petitioner is at par with similarly situated employees, then he be reinstated within one month thereafter.

Disposed of accordingly.

11.11.2016
neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	✓ Yes/No
Whether Reportable	✓ Yes/No