

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

CWP No.17343 of 2016 (O&M)

Date of decision : 30.08.2016

Ex. Constable Gulshan Kumar

....Petitioner

Vs.

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Varun Baanth, Advocate and
Dr. A.K. Bansal, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The petitioner who was serving as a Constable under the Haryana Police has filed the instant petition impugning the order dated 01.08.2011 at Annexure P-1 passed by the Superintendent of Police, Yamuna Nagar whereby he has been dismissed from service. Challenge is also to the orders dated 25.01.2012 at Annexure P-3 and 05.07.2014 at Annexure P-4 passed by the Appellate and Revisional Authorities affirming the penalty of dismissal.

Brief facts that would require notice are that the petitioner joined as a Constable in the year 1998. A departmental inquiry was initiated against the petitioner in relation to an incident dated 13.06.2011. On such date, the petitioner was on Quarter Guard duty in Police Lines, Yamuna Nagar and had been issued an Insas Rifle No.14. On following date, when the Guard Duty was changed and the weapons were checked, it was found that the magazine of rifle No.14 issued to the petitioner was short by 5 rounds of ammunition. A search was carried out in the Police Lines to trace the petitioner. After lapse of certain time, petitioner was traced and he was

called upon to explain as regards the missing ammunition but he denied having retained the same. However, on a personal search having been carried out, the 5 rounds of live ammunition were recovered from his trouser pocket. A police official of the rank of Deputy Superintendent of Police was appointed as an Inquiry Officer. After having recorded the statement of a number of prosecution witnesses as also a defence witness, report dated 28.06.2011 at Annexure P-2 was furnished holding the petitioner to be guilty. After issuance of show cause notice dated 30.06.2011 and having been afforded an opportunity of personal hearing, the order of dismissal dated 01.08.2011 has been passed by the Superintendent of Police, Yamuna Nagar. The appeal and revision preferred by the petitioner have also been declined.

Counsel appearing for the petitioner has vehemently contended that the charge of having retained 5 rounds of ammunition cannot be construed to fall within expression of “gravest misconduct” calling for the imposition of major penalty of dismissal in terms of Rule 16.2 of the Punjab Police Rules. In support of such submission, reliance has been placed upon the judgment of this Court in ***Mehboob Ali Versus State of Haryana and others, 2016 (4) SLR 22*** and ***Balwinder Singh Versus State of Punjab and others, 2013 (1) PLR 323***. Counsel has also argued that the mandate of Rule 16.2 of the Punjab Police Rules has not been carried out as while imposing the extreme penalty of dismissal from service, the Punishing Authority has not considered the length of service rendered by the petitioner i.e. of almost 12 years. It has further been argued that the Inquiry Officer has not appreciated the evidence brought on record in the true perspective and the statements of the prosecution witnesses were contradictory. It has, however,

being conceded by the petitioner that he did not cross-examine any of the prosecution witnesses as he had been orally assured that he would be let off by awarding a minor penalty. A submission has also been raised as regards quantum of punishment by submitting that the same is grossly disproportionate to the alleged misconduct and no weightage has been assigned to the statement recorded of the father of the petitioner who had appeared as a defence witness as regards the mental disorder that the petitioner was suffering from and which was duly supported by medical record.

Counsel for the petitioner has been heard at length and pleadings on record have been perused.

A regular departmental inquiry stands concluded against the petitioner. There are no allegations as regards any irregularity or illegality having been conducted during the course of the inquiry proceedings. The scope of judicial review in matters of imposition of penalties after culmination of inquiry proceedings is limited to the decision making process and not to the decision itself. This Court in exercise of its powers under Article 226 of the Constitution of India cannot be called upon to undertake the exercise of reappreciation and reappraisal of evidence. The present case is not one of no evidence.

Rule 16.2(1) of the Punjab Police Rules, 1934 reads as under:

“PPR. 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.”

Bare perusal of the statutory provision makes it clear that

penalty of dismissal can be awarded on account of a gravest act of misconduct or on account of cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

The charge that stands proved against the petitioner and in an inquiry adopting procedure in accordance with law is of having siphoned live ammunition from a service weapon. Such charge would cast a very serious aspersion against a Member of a disciplined force including his character. The Punishing Authority in the impugned order of dismissal dated 01.08.2011 at Annexure P-1 has recorded a finding of such act to fall within the term of “gravest misconduct”. This Court does not find any justification in taking a different view and to substitute its own opinion in the matter. There are no allegations of malafide raised by the petitioner. In the absence of a plea of malafide, intervention in such matters would not be called for.

In the case of **Balwinder Singh (supra)**, the charge against the petitioner therein was of not having proceeded on duty in the Guard of Dera Sacha Sauda, Moga on a particular date. This Court had intervened in the order of dismissal by observing that the Punishing Authority had not followed Rule 16.2 inasmuch as no finding had been recorded in the impugned order as to whether the charge levelled against the petitioner and duly proved would fall within the term “gravest act of misconduct”. Insofar as the case of **Mehboob Ali (supra)** is concerned, the petitioner therein apart from facing departmental inquiry had also faced trial on the similar charge and had been acquitted by the trial Court. A co-ordinate Bench while granting relief to *Mehboob Ali* had come to a conclusion that in the departmental inquiry, no evidence had come forth in support of the charge.

Furthermore, Rule 16.3 of the Punjab Police Rules, 1934 had also been invoked which envisages that in case of acquittal by a Criminal Court, the department has no power to punish the delinquent employee. The facts of the present case are clearly distinguishable and would have no parity with the case of *Balwinder Singh and Mehboob Ali (supra)*.

This Court finds that even the mandate of Rule 16.2 of the Punjab Police Rules as regards considering the length of service rendered by the petitioner has been met. In the impugned order itself, it has been observed that in his service tenure of 12 years, the petitioner has been imposed 3 different penalties i.e. stoppage of 10 increments, having been dismissed from service but subsequently the penalty having been reduced to stoppage of 4 increments and thirdly stoppage of 1 increment. Punishing Authority has also observed that in spite of these 3 punishments having been imposed, petitioner's conduct has not improved. Suffice it to observe that while imposing the major penalty of dismissal vide order dated 01.08.2011 at Annexure P-1, the Superintendent of Police, Yamuna Nagar has considered the service period of 12 years put in by the petitioner and has covered such aspect.

Even as regards quantum of punishment, the submission advanced by learned counsel terming the penalty of dismissal to be grossly disproportionate cannot be accepted. The principles regarding judicial review on the issue of quantum of punishment are by now well settled. It has been held in a catena of judgments rendered by the Hon'ble Apex Court that the High Court while exercising powers of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. It is only if the punishment imposed by the Disciplinary Authority

or the Appellate Authority shocks the conscience of the Court, then, it would be appropriate to mold the relief either by making the Disciplinary/ Appellate Authority to reconsider the penalty imposed or to shorten the litigation and in exceptional and rare cases to pass an order imposing appropriate punishment in the light of cogent reasons being assigned. In the present case, the petitioner is seeking intervention as regards the quantum of punishment in the light of his medical condition and a mental disorder that he was suffering from and has relied upon a medical certificate appended at Annexure P-5 which shows that he was admitted in Civil Hospital, Ambala City for treatment in the psychiatry ward from 07.05.2011 to 06.06.2011. Even such certificate cannot be of any avail. Concededly, the petitioner was discharged on 06.06.2011 and had joined duty immediately thereafter. The incident in question and relating to his misconduct is of 13.06.2011. No case is made out for this Court to interfere even as regards quantum of punishment.

For the reasons recorded above, there is no merit in the instant petition and the same is dismissed.

30.08.2016*shubham***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |