

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

**CWP No.6840 of 2011
Reserved on: 04.04.2016
Decided on : 22.04.2016**

Hardeep Singh, Ex-Constable

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present : Mr. Manish Prabhakar, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia, J.

The petitioner challenges the order dated 02.05.2003 (Annexure P-1) passed by respondent No.5, whereby he has been dismissed from service as constable on account of absence for 2 months and 4 days. The said order has been upheld by the Inspector General of Police on 05.02.2004 (Annexure P-2), rejecting the claim of the petitioner on the ground that the departmental proceedings were conducted in accordance with the provisions of Punjab Police Rules, 16.24 and after giving the petitioner personal hearing. The said order was thereafter upheld by respondent No.2 on 18.03.2009 (Annexure P5)

Counsel for the petitioner has submitted that the petitioner was absent on account of a medical condition and he

was being treated for fever, backache, stroke and, therefore, could not respond to the department. It is submitted that the absence is as such, which was not of that much period which would render him liable for the extreme punishment of dismissal. It is further submitted that the length of service had not been taken into consideration as the petitioner had been selected on 18.04.1992 and had served for more than a decade. Resultantly, reliance has been placed upon the judgment of the Division Bench passed in ***'The State of Punjab Vs. Parkash Chand' 1992 (1) SCT 123.***

The defence taken by the State was that the petitioner had been enlisted on 06.06.1992 and was absenting himself intentionally from Basic Training/Recruit Course at PRTC Jahan Kahelan. He had been enlisted for basic course on 04.04.2002 but had not reported there, but absented himself without any leave or permission. He had reported on 08.06.2002 in the Police Lines, Amritsar and thus remained absent for a period of 2 months and 4 days. He had committed an act of grave misconduct on his part being a member of disciplined force. He was accordingly ordered to be dealt with on the departmental side vide order dated 05.10.2002 (Annexure R-1). During departmental proceedings, reasonable opportunity was given to him, but he did not produce any documents or witnesses in his favour. No medical certificate had been produced and rather a plea had been taken on

30.01.2003 (Annexure R-2) that he does not want to produce any witness. The Inquiry Officer had recorded a finding of guilt on his part and he was issued show cause notice on 05.04.2003 proposing punishment of dismissal, which he had received on 09.04.2003 alongwith the copy of finding (Annexure R-4), but he had not submitted any reply nor he appeared personally.

It was further averred that the petitioner was a habitual absentee having been charged with 5 major and 9 minor punishments. The details of the punishments were incorporated in paragraph 2 of the written statement. Perusal of the same would go on show that the petitioner had a total period of absence of 1257 days and various punishments had been imposed upon him forfeiting his services between 2 to 3 years, on four occasions. The absence period was ranging between 1 month to upto 7 months 12 days.

Counsel for the State has accordingly submitted that the respondent No.5 had rightly come to the conclusion that it was a grave misconduct and the discipline of the police department has been affected. The right of pension and job had also been considered, while imposing the punishment and, accordingly, there was no scope for interference. Rule 16.2 also talks about the claim of pension, which was duly considered by the punishing authority.

In '**State of Haryana Vs. Lakhan Lal**' 1991 (3) RSJ

530 it has been held that the words 'gravest act of misconduct' would not mean that there have to be various acts of the police officials and it could include singular gravest act of misconduct. The reasoning given was that the delinquent police official could commit one heinous crime and then contend that he would not fall within the mischief of Rule 16.2 (1). The relevant portion reads as under:-

“7. Having gone through the entire case law cited at the Bar and having given thoughtful consideration to the entire matter, this Court is of the considered view that even one act of misconduct would be sufficient to attract the applicability of R. 16.2(1) provided the act is gravest. The gravest act, of course, is incapable of any strict definition. The distinction has to be drawn by the punishing authority between misconduct and grave misconduct. Misconduct should not be of an ordinary nature and it always has to be of a serious nature. The use of the word 'gravest' only means that it has to be of a superlative degree than what a particular act can just be described to be 'grave'. The gravest act does not mean that the number of acts complained of should be more than one. The use of the word 'acts' in R. 16.2(1) can be said to include a single gravest act of misconduct. It has to be held in order to give effect to the legislative intendment that the word used in plural in R. 16.2(1) would be deemed to include the 'singular'. If the punishing authority comes to the conclusion that a particular act of the police official was one of the gravest, surely it would not be necessary to wait for the commission of a second act of grave nature by the police official. If such an interpretation is to be taken of the words 'gravest acts of misconduct', the delinquent police official would commit a heinous crime in order to contend that he does not fall within the mischief of Rule 16.2(1). In view thereof a Single act of misconduct of gravest nature is good enough for invoking the aid of Rule 16.2(1) to award punishment

of dismissal. However, a single act or number of acts of misconduct of a police official must prove incorrigibility and complete unfitness for police service. This seems to be the mandate of R. 16.2(1). A particular act may be grave or the gravest but the act complained of may not be such that it must necessarily prove incorrigibility and complete unfitness for police service.”

A Division Bench in '**Constable Jagmal Singh Vs. State of Haryana' 1998 (1) RSJ 151** held that the purpose of the rule whereby the length of the service is to be taken into account is for keeping in mind the right of the employee to get pension. It was noticed that since the employee had only 7 years of service in that case, he had no right of pension and even reference to the length of service is not required to be made.

The Division Bench of this Court in '**Ex. Constable Sat Pal Vs. State of Haryana' 1998 (2) RSJ 491** while dealing with the issue of absence has held that the uniformed personnel are to act responsibly and once an application for leave has not been given, the order of dismissal would be justified.

In '**Prithi Pal Singh Vs. State of Haryana' 2000 (2) SCT 68** it has been held that it is for the police officer who judged the infraction of the police rules to determine the seriousness of the misconduct and to decide upon the suitability of the punishment.

As noticed in the present case the petitioner had been

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deputed to the training course, which he avoided and, thereafter, came back to the Police Lines after the absence of 2 months 4 days. Nothing was brought before the Inquiry Officer as to the reason of his absence and no medical record had been brought forth nor any witness got examined.

In such circumstances, the petitioner being a uniformed personnel was held guilty of the gravest act of misconduct. It is settled principle in the case of uniformed personnel even absence of few days would bring them in the ambit of the provisions of the Rule 16.24.

The judgment relied upon by the counsel for the petitioner in ***Parkash Chand (supra)*** is not applicable to the facts and circumstances of the present case as the Court came to the finding that there was no finding recorded that the act of the respondent amounted to the gravest act of misconduct and upheld the judgment of the lower Appellate Court. The said case was of absence of duty for a period of 3 months and the suit had been decreed by the lower Appellate Court.

The Apex Court in ***'State of U.P. Vs. Ashok Kumar Singh' 1996 (1) SCC 302*** has held that modifying the punishment imposed in the case of a Police Constable who was serving on a disciplined post was not justified. It was held that there should be strict adherence to the rules and procedure more than any other

department.

Resultantly, keeping in view the above discussion, this Court does not feel that it is a fit case for interference with the order of the dismissal passed by respondent No.5. Accordingly, the present writ petition is dismissed.

22nd April, 2016
Naveen/sailesh

(G.S. SANDHAWALIA)
JUDGE