

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

LPA No.1479 of 2016(O&M)

Date of Decision: 19.8.2016

Balwinder Singh

...Appellant

VERSUS

State of Punjab & Ors.

....Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr.Puneet Kansal, Advocate for the appellant.

SUDIP AHLUWALIA, J.

This appeal has been preferred by the appellant Balwinder Singh against the Order dated 25.5.2016 passed on his Review Application, which was filed before the Ld. Single Judge after dismissal of Civil Writ Petition No.4523 of 1999 by a detailed judgment, delivered earlier on 11.3.2016.

2. The factual background of the matter is that the Writ Petitioner/appellant, at the relevant time a freshly appointed Constable on 14.8.1992 in the Punjab Police, had been entrusted with the job of delivering certain samples to the Chemical Examiner at Bathinda, while he was himself posted in the Ferozpur Sadar Police Station. He was sent to Bathinda for this purpose on 14.4.1993 but instead of complying with the directions of delivering samples, he went to his native home and got involved in a quarrel there, which led to registration of FIR No.74 dated 15.4.1993 of Jalalabad Police Station under Sections 148, 323, 324 read

with Section 149 IPC. Consequently, the statement of charges was served upon him on 15.6.1993 to the effect that he had shown carelessness by going to his village without informing any body, which was a condemnable and punishable act, and an enquiry was, therefore, initiated against him.

3. In the inquiry proceedings, the allegation of carelessness towards his duty was established. The Inquiry Officer, however, opined that the petitioner was a freshly appointed recruit. Consequently, a show cause notice dated 27.10.1993 was issued to him to answer as to why he should not be dismissed from service. The petitioner in his reply denied having being careless in his duty, and again put up his defence of having taken ill on the relevant date, which had allegedly led him to seeking medical treatment and the compulsion of taking rest, on account of which, he claimed to have been rendered incapable of traveling to Bathinda and had therefore, been constrained from returning to his own house. It may be mentioned that this defence alibi had also been taken by the petitioner in the inquiry proceedings, but it had been found to be false and untenable. While denying any carelessness on his part, the petitioner in his reply to the show cause notice nevertheless asserted that the proposed punishment was “too harsh”, however, without expressing any remorse or regret for his conduct anywhere in the reply. Resultantly, the Senior Superintendent of Police, Ferozepur on 18.01.1994 (Annexure P-6) came to the conclusion that since he had gone to his home instead of depositing the samples and had quarrelled, and so did not have the qualities of becoming a good police officer, and did not enjoy good reputation in public. He was, therefore, discharged under Rule 12.21 of Punjab Police Rules, 1934.

4. The petitioner challenged the same by filing a civil suit, which

was decreed in his favour on 18.05.1996. However, since he was not given interest on the arrears of pay, he challenged the said judgment, which was also contested by the State. The District Judge vide his judgment dated 10.12.1996 (Annexure R-1), came to the conclusion that the impugned order was stigmatic and it would be an impediment on future employment. The State was, therefore, directed to proceed further from the stage of holding enquiry and to pass appropriate orders according to Rules. In compliance thereof, respondent No.3 passed a reasoned order on the basis of the final inquiry report on 20.3.1997, in which, it was observed that the samples had not been deposited in time, which proved the petitioner's carelessness and indiscipline on account of which, it would be fit to remove him from Police service. The ineligibility of petitioner for Pension was also considered. His defence that he was ill, was rejected as the Doctor, who had been examined on his behalf, had written that he was unable to travel due to illness on the relevant date, whereas the medical certificate was issued by the Civil Hospital, Jalalabad on the next date, which was, therefore, discarded.

5. The Ld. Single Judge found no merit in the writ petition, which was thus dismissed by the judgment dated 11.3.2016. The appellant thereafter filed the Review Application, in which, he sought reversal/modification of the judgment by setting out various grounds in the application, which again was dismissed, vide the impugned Order passed on 25.5.2016. He thereafter filed this appeal. We are now to consider the merit in the contentions raised in the Review Application in order to ascertain whether the judgment of dismissal passed earlier, was liable to be modified or not. In this regard, it would be worthwhile taking note of the specific

grievances/contentions raised in the Review Application, which are set out as below:-

“(A) that there was no occasion for the disciplinary authority to invoke Rule 16.2 of the Punjab Police Rule 1934 which envisages dismissal for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. For supporting the said contention that the alleged misconduct against the petitioner was only for carelessness, reference was made to the charge sheet/statement of charges (Annexure P-1), the defence accordingly of the petitioner (Annexure P-2), the findings of the only carelessness having been proved against the petitioner by the Enquiry Officer after considering all the evidence on record let by the prosecution as well as by the petitioner (Annexure P-3), the agreeing of the Disciplinary Authority with the findings of the said enquiry report and Show Cause Notice dated nil having been served upon the petitioner as to why his services be not dismissed for being careless towards the duty (Annexure P-4). Thus it was contended that there was never a charge or finding against the petitioner that the alleged misconduct is gravest act of misconduct etc. as per the requirement of Rule 16.2 of the 1934 Rules.

(ii) that the petitioner filed reply dated 29.10.1993 (Annexure P-5) to the said Show Cause Notice wherein the petitioner pleaded that the findings of the enquiry officer even with regard to the charge of being careless having been proved is not borne out from the evidence on record and therefore the show cause notice be filed.

(iii) that in the impugned order dated 20.03.1997, the disciplinary authority again agreed with the findings of the enquiry officer as well as the show cause notice which clearly shows that neither the petitioner was ever charged for any gravest act of misconduct, nor any finding was rendered against the petitioner for committing any gravest act of

misconduct. As a consequence, when the Show Cause Notice for dismissal did not state that the petitioner had committed gravest act of misconduct, no occasion arose for the disciplinary authority to invoke Rule 16.2 of the Punjab Police Rules 1934. In other words once the petitioner was charged for being careless, enquiry was held for the same, finding was rendered qua the same and the said finding of being careless was accepted by the disciplinary authority and show cause notice issued only qua the same i.e. for only being careless and not for committing any gravest act of misconduct, it was not competent for the disciplinary authority to invoke Rule 16.2 at all while passing final order.

(iv) that judgment in Parkash Chand case 1992(1) SCT 123 of the Hon'ble Division Bench of this Hon'ble Court with specific reference to para 10 was cited only for the said purpose wherein also the Hon'ble Division Bench held that there was no finding by the Disciplinary Authority that the act of the respondent in that case was gravest act of misconduct. In the present case also the Disciplinary Authority has issued Show Cause Notice only for being careless and not for any gravest act of misconduct and therefore the grounds envisaged for invoking Rule 16.2 were missing.

(v) that even in the impugned order the Disciplinary Authority has not given any finding that alleged act of misconduct is gravest act of misconduct.”

6. It, therefore, becomes crystal clear that the basic grievance of the appellant is that neither the Disciplinary Authority had given any finding that the alleged act of misconduct imputed to him amounts to be “gravest act of misconduct” within the meaning of Rule 16.2 of the Punjab Police Rules, 1934, and that the Ld. Single Judge in the impugned judgment passed earlier, had also not taken this factor into account.

7. We may at the outset reiterate that a Writ Court is not expected

to interfere with the findings in an inquiry proceeding on questions of fact based upon the evidence led therein, so long as proper procedure in the inquiry has been followed and there is no manifest absurdity or perversity transpiring. The Ld. Single Judge in the circumstances was not inclined to fault the factual finding in the inquiry on the basis of appreciation of evidence led in the matter by the Inquiry Officer as well as the Appellate Authority (respondent No.3). The approach of the Ld. Single Judge in this regard is unexceptional.

8. We have to now consider whether the application of Rule 16.2 in the given circumstances, has been properly dealt with in the impugned judgment or not.

9. The Rule provides as under:-

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.”

10. Now it has been observed that in the impugned order passed by respondent No.3, he had concluded that there is no truth in the medical certificate produced by the petitioner during the inquiry proceedings, and that he had intentionally not gone to Bathinda and instead chosen to go to his village where he got embroiled in a quarrel. Further, according to respondent No.3, ***“..... In this way, by not depositing the samples in time and quarreling in the village, proves carelessness and indiscipline. His above act is so serious that it will be fit to remove him from Police service. So I order to remove him from police service with effect from 20.3.1997.***

Before issue of this order I have considered the rights of pension of the

accused, to which, he is not entitled.....”

11. On the face of it, therefore, respondent No.3 was clearly mindful of the requirement under Rule 16.2 regarding the petitioner's claim of pension, which he was found not entitled to. Undisputedly, his length of service, even from particular date of the order itself, was less than five years. The other aspect of the argument in this regard is that the alleged act of misconduct imputed to the petitioner, is only indicative of “carelessness” which cannot amount to any “gravest act of misconduct” within the meaning of Rule 16.2. The Ld. Single Judge was not convinced with this argument as would be clear from the relevant observations in this regard, which are set out below:-

“It is not disputed that it has been proved as a matter of fact that the petitioner instead of taking the samples to Bathinda for which he had been entrusted had preferred to go to his village. He had been put on duty but he opted to go to his village and only on account of the involvement in the fight and lodging of the FIR his presence was recorded there, due to which the departmental proceedings were initiated against him. If he was unwell, he should have proceeded firstly for the Civil Hospital and got his treatment done there, but he had chosen to fall back on a private practitioner to whom he reported by reaching at 3.30 P.M. and he was advised to rest there. At that point of time he had the option to report back at the Police Station instead of proceeding to his village.”

12. In conclusion thereafter, the Ld. Single Judge referred to the decision of the Supreme Court in “State of U.P. Versus Ashok Kumar” **1996 (1) SCC 302** wherein it had been held that modifying the punishment imposed in the case of a Police Constable, who was serving in a disciplined post, was not justified, and that there should be strict adherence to the rules and procedure more than any other department. We are also in agreement with this conclusion of the Ld. Single Judge since in relation to any

offender belonging to a disciplined/uniformed Force, even unauthorized absence for a day from duty can be fatal. In the present case, the acts of the petitioner-appellant went much beyond that situation. He had been entrusted with certain valuable case property, which he had to deposit in the concerned establishment outside his own District, but he chose to go to his native village without informing any of his seniors, and later got embroiled in some violent incident on the following day, which culminated into the registration of an FIR while the samples in question were neither deposited before the concerned authority in Bathinda nor even returned to his own establishment at least for the next three days. Such a conduct would certainly amount to gravest act of the misconduct coming as it is, from the member of a disciplined Force.

13. We, therefore, find no merit in the appeal, which is accordingly dismissed.

14. As the contentions raised in the appeal have been considered and rejected on merits, no order on the accompanying application for condonation of delay in filing the appeal is, therefore, warranted.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

19.8.2016
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***