

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

332

**CWP-13553-1995 (O&M)
Date of decision: 17.03.2017**

Surjit Singh

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Girish Agnihotri, Adovcate with
Mr. Vijay Pal, Advocate for the petitioner.

Mr. Hitesh Pandit, AAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of dismissal order dated 21.11.1988 in the year 1995. The petitioner has joined as a Constable on 06.07.1966. He was dismissed from service in the year 1984. Later on in the revision petition, the Director General of Police, Haryana modified the penalty of dismissal to that of reduction in rank from the Head Constable to Constable. The petitioner remained unauthorized absent from 04.09.1987 to 08.10.1987 for a period of about one month and 3 days for this allegation petitioner was subjected to disciplinary proceeding which was ended in imposing the penalty of dismissal from service w.e.f. 21.11.1988.

2. Feeling aggrieved by the order of dismissal petitioner preferred an appeal before the appellate authority and the appellate authority confirmed the order of dismissal on 25.05.1993. Thereafter, he preferred a revision petition. Revision Petition was also rejected. In this background,

the petitioner has questioned the validity of dismissal order. Learned counsel for the petitioner submitted that the petitioner has rendered 20 years of service. Therefore, on the allegation of misconduct that the petitioner remained unauthorized absent for a period of one month and 3 days, penalty of dismissal would be disproportionate. Therefore, penalty is required to be reduced.

3. On the other hand, learned counsel for the respondents submitted that the petitioner was subjected to disciplinary proceeding on earlier occasion which was resulted in imposing the penalty of dismissal from service and further it was modified by the revisional authority from dismissal to that of reduction in rank i.e. from Head Constable to the post of Constable. Having regard to the conduct of the petitioner he being in a disciplined force, he is not entitled to remain in service. Therefore, the disciplinary authority rightly taken a decision to impose the penalty of dismissal from service. Thus, there is no infirmity in the order of dismissal. It was further contended that the petitioner had suffered order before appellate authority as well as revisional authority. The same are not under challenge in the present petition. Therefore, on this ground also the petition is liable to be rejected.

4. Heard learned counsel for the parties.

5. Having regard to the conduct of the petitioner while he was in service, it is evident that the petitioner was already punished in a departmental inquiry by imposing the penalty of dismissal from service which has been modified to that of reduction in rank and petitioner is serving in a disciplined force of police therefore, he should have been very careful that to when he has already faced a disciplinary proceedings which

resulted in imposing the penalty. In this background, the petitioner has not learnt a lesson. Consequently, he has repeated misconduct while he was in service. Since the allegations relating to imposing penalty of dismissal from service for remaining unauthorized absent for a period of one month and 3 days. Therefore, it requires re-examination of the penalty is concerned having regard to the Rule 16.2 of Haryana , which reads as under:-

*“16.2 **Dismissal.** (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or 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.*

*(**Explanation.**- For the purposes of sub-rule (1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action:*

- (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 casual leave or resorting to mass abstentions;*
- (vii) spreading disaffection against the Government; and*
- (viii) causing riots and the like)*

(2) An enrolled police officer sentenced judicially to

rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16.1.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental inquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full description roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

6. While dismissing the petitioner from service above statutory provision has not been taken into consideration. Therefore, the matter is required to be remanded to the disciplinary authority for re-examination. The disciplinary authority is directed to to re-examine insofar as imposing of penalty of dismissal from service i.e. prospectively. If the disciplinary authority modifies the penalty

of dismissal to that of compulsory retirement in that event the petitioner is not entitled for any amount during the intervening period from 21.11.1988 till modification of dismissal order having regard to the conduct of the petitioner and the fact that petitioner has not challenged the appellate and revisional authorities' orders. The appellate authority's as well as revisional authority's orders dated 25.05.1993 and 17.11.1994 would not come in the way of disciplinary authority to decide afresh only in respect of imposing penalty of dismissal to that of any other penalty pursuant to Rule 16.2 read with fact that the petitioner has rendered 20 years of service.

7. With the above observation, petition stands disposed of.

17.03.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No