

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

LPA No.45 of 2017

Date of Decision:- 22.03.2017

Ex. Constable Wazir Singh

...Appellant

VERSUS

The State of Haryana & Ors.

....Respondents

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

Present:- Mr. Harish Nain, Advocate for the Appellant.

SUDIP AHLUWALIA, J.

This Letters Patent Appeal challenges the Order of the Ld. Single Judge dated 25.7.2016 and the subsequent Order dated 10.11.2016 rejecting the Review Application aimed at recall/modification of the previous Order dated 25.7.2016 dismissing the Writ Petition filed by the Appellant in which, he had challenged his dismissal from the Haryana Police, after being found guilty of the 'gravest' misconduct.

2) The impugned Order passed by the Ld. Single Judge is brief but sufficiently sets out the gist of the acts of misconduct, which led to dismissal of the Writ Petition, as can be seen from the following observations -

“Having regard to the nature of the imputations of misconduct charged against the petitioner and fully proven in the regular inquiry which qualifies as one which is of the gravest kind and of the most reprehensible kind and also having regard to the sound reasoning contained in the

elaborate order dated February 3, 1994 passed by the Superintendent of Police dismissing the petitioner from service and the orders in appeal etc. till revision, I have no doubt in my mind that this petition deserves to be dismissed. There were four other prior cases of grave misconduct involving charges against the petitioner regarding being under influence of liquor while in office, misbehaviour, willful absence, indiscipline, all of which past record was factored by the Senior Superintendent of Police into his decision who rightly viewed the petitioner as an incorrigible policeman who did not deserve to continue as a member of the uniformed force. More importantly, his gross misbehaviour with the wife of his colleague SI Ram Dhan's when her husband was admitted to hospital for treatment and the character of the words spoken to her are so obnoxious that they are not worth quoting in a judicial order and may be read from the file. It was also alleged that the petitioner committed immoral acts with the nurses on duty, the cumulative effect of which amply justifies dismissal from service and no other punishment.

The petition is dismissed without any compunction.”

3) The background of the matter is that after having been charge-sheeted for the aforesaid acts of misconduct, the Appellant was found guilty by the Enquiry Officer, after which Respondent No.4 passed the Order of punishment (Annexure P-4) dated 3.2.1994 by way of his dismissal from service. His appeal dated 16.2.1994 (Annexure P-5) against the punishment order was dismissed by the Appellate Authority (Respondent No.3) on 11.12.1994 vide its Order (Annexure P-6). The Appellant thereafter preferred Revision (Annexure P-7) on 10.3.1995, which was in turn was dismissed by Respondent No.2 by his order dated 10.9.1996 (Annexure P-8). He therefore, filed the Writ Petition in which, it was contended -

- i) That the Disciplinary Proceeding was itself flawed inasmuch as the mandatory sanction from the District Magistrate had not been obtained;

- ii) That his previous service record could not have been taken into consideration for the purpose of imposing punishment if it was not made known to him along with the Show Cause and without giving any opportunity to explain his conducts;
- iii) That the Enquiry Officer did not consider any of the points raised by the Appellant during the inquiry, and similarly the Orders passed by the Punishing Authority, Appellate Authority and the Revisional Authority were all non-speaking and therefore, liable to be set aside;
- iv) That there was no compliance with the provisions of Rule 16.2 of the Punjab Police Rules, 1934 inasmuch as there was no finding given as to why lesser punishment could not be awarded to the defaulter;
- v) That there was also violation of the principles of natural justice inasmuch as a fair opportunity of hearing was denied to the Appellant; and,
- vi) That in any event, the punishment awarded is disproportionate to the gravest of the alleged misconduct.

4) We have considered the submissions made before us and find that there is no substance in the Appellant's contention that he was denied a fair hearing or there was any violation of the principal of natural justice. None of the orders passed by either the Punishment Authority, Appellate Authority or Revisional Authority is 'non-speaking', but on the contrary are each of those Orders (Annexures P-4, P-6 & P-8) seen to be sufficiently elaborate and well reasoned. For inexplicable reasons however, the Appellant has not included the finding/order of the Enquiry Officer in the Paper Book in the absence of which, it

cannot be said there is at all any substance in his contention that the points raised by him were not considered by the Enquiry Officer. But such contention nevertheless appears to be untenable in view of the subsequent reasoned orders passed by the Superior Authorities (Respondent Nos.2, 3 & 4).

5) We also find no merit in the Appellant's contention that the mandatory sanction from the District Magistrate under Rule 16.38 was not obtained. First of all, no such contention was raised by him in his Original Written Statement of Defence. He thereafter did raise this contention in the appeal preferred before Respondent No.4, but the same was rejected after the specific observation that the concurrence of the District Magistrate had in fact been obtained. The Appellant thereafter did not raise the same contention in his Revisional Application but reverted to it subsequently in the Writ Petition, which was again duly denied on behalf of the Respondents in Para 3 of their reply filed before the Ld. Single Judge.

6) We are also not convinced with the submission that the previous misconduct or punishment awarded to the Appellant could not have been taken into account for the purpose of awarding the punishment of his dismissal. In this context, we may advert to the provisions of the relevant Rule 16.2 of the Punjab Police Rules, 1934 as applicable in case of the Appellant, which is set down below-

“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 service of the offender and his claim to pension.”

7) Now it is no where the case of the Appellant that he was not aware of

the previous punishments awarded to him on four occasions. It is also seen from the record that reference to those punishments had been made during the Disciplinary Proceedings through the statement of PW2. So, there is no merit in his contention that such previous punishment ought to be treated as irrelevant for the purpose of awarding him punishment for his latest acts of misconduct. When viewed in this light, all these instances of misconduct followed by the punishments during the Appellant's service career undoubtedly make out a clear case of his 'incurability and complete unfitness for police service' within the meaning of Rule 16.2 cited above.

8) We therefore, find no merit in this appeal, which is thus dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

22.03.2017
AS

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

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