

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.3460 of 2016(O&M)

Reserved on: 06.04.2022

Date of Decision 29.04.2022

Bakshish Singh

...Petitioner

Vs

State of Punjab and others

...Respondents.

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR.

Present: Mr. D.S. Sidhu, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

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JAISHREE THAKUR J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the impugned orders dated 20.12.2011, 05.07.2013, 18.01.2014 and 27.08.2015 passed by respondents No.5, 4, 3 & 2 respectively whereby the petitioner has been dismissed from service.

2. In brief, the facts are that the petitioner was appointed as Constable in the Police Department on 13.03.1991 and worked efficiently and was promoted as Head Constable in due course. The petitioner fell unconscious while going for duty to Police Station, Jagraon and his family members brought him back to his house. He was taken to various persons including *tantriks* under the belief that he is under the influence of some super-natural being. He remained absent from duty from 21.09.2009 to 26.11.2009 and on account of his absence, departmental proceedings were initiated against the petitioner. Consequently, he was dismissed from service vide order dated 20.12.2011 passed by respondent No.5. The dismissal order was challenged by the petitioner in appeal before respondent No.4-Deputy Inspector General of Police,

who upheld the order of dismissal by order dated 05.07.2013 and the revision petition filed against the same was also dismissed by respondent No.3-Inspector General of Police, Jalandhar Zone vide order dated 01.08.2014. Thereafter, mercy petition came to be filed before respondent No.2 i.e. Director General of Police, which also stood dismissed vide order dated 27.08.2015. Aggrieved against the aforesaid orders, the petitioner approached this Court by way of instant writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner could have been dismissed from service only if he was guilty of the *gravest act of misconduct*. It is argued that the dismissal under the Punjab Police Rules is provided in Rule 16.2 of the Punjab Police Rules wherein it is specified that dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct providing incorrigibility and complete unfitness for police service; or a police officer shall be dismissed if convicted and sentenced to imprisonment on a criminal charge. It is submitted that absence without leave does not amount to gravest act of misconduct and therefore, the said order of dismissal is not sustainable. Apart from that it is submitted that the authorities concerned while dismissing the petitioner from service have not paid regard to his length of service or to his claim for pension as stipulated under the said Rule.

4. Learned counsel appearing on behalf of the respondent-State would argue that the petitioner is a member of the disciplined force and therefore, he could not have remained absent from duty for a period of 67 days 08 hours and 30 minutes without prior permission. It is submitted that on an earlier occasion too, the petitioner remained absent from duty, which amounts to an act of gravest misconduct. He is a habitual absentee and has been awarded many

punishments. In fact, by an order dated 28.10.1991, his service for one year was forfeited on permanent basis instead of dismissal from service, as the petitioner had remained absent from 15.05.1991 to 17.06.1991.

5. I have heard learned counsel for the petitioner as well as the respondent-State at length. Rule 16.2 of the Punjab Police Rules is reproduced herein 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 length of service of the offender and his claim to pension.

(2) An enrolled police officer convicted on a criminal charge and sentenced to imprisonment shall be dismissed;

Provided that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, 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 descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

6. As per Rule 16.2(1), a delinquent official shall be dismissed only for the gravest act of misconduct or if there is continued misconduct by the said

delinquent official proving his incorrigibility and complete unfitness for police service. The explanation as provided to sub-rule (1) defines the gravest acts of misconduct and reading of the same does not reflect absence from duty to be such an act. While dismissing the delinquent official, it is imperative for the authority to take into account the length of service of the delinquent and his claim to pension.

7. A reading of the order whereby the petitioner was dismissed from service would reflect that the petitioner was dismissed on account of his absence from duty for 67 days 08 hours and 30 minutes. The petitioner had been granted 10 days for filing reply to the show cause notice after he had been found guilty but he did not file any reply. He was also issued a notice for personal appearance but he did not appear even at that time, consequent to which order of dismissal was passed. The appeal too was dismissed, while rejecting his plea that he was under influence of some super-natural being and that his family members could not inform the department about his disease. The revision petition preferred by the petitioner was also dismissed holding that the departmental enquiry against the petitioner had been conducted as per rules and norms and the petitioner had been given sufficient opportunities to lead his evidence. The appeal was dismissed on merit, apart from the fact that it was found to be time barred by one year.

8. Learned counsel for the petitioner vehemently argued that absence of duty cannot ordinarily be treated as an act of gravest misconduct and would rely upon the judgment rendered by a Division Bench of this Court passed in Civil Writ Petition No.205 of 1996 titled as *Tarlok Singh Vs. State of Punjab and others* decided on 14.05.1996 wherein it has categorically been held that absence from duty cannot ordinarily be treated as an act of gravest misconduct.

9. However, this court finds no cogent ground to interfere in the impugned order of dismissal or to scale down the punishment chosen by the appellate authority. No procedural flaws have been pointed out in the enquiry proceedings or breach of principles of natural justice. The petitioner had reasonable opportunity to produce his defence witnesses and prove his innocence in the inquiry and on account of his failure to do so the authorities had no option but to dismiss him from service. It has also to be borne in mind that the petitioner apart from being absent for a period of 67 days, was a habitual defaulter and had been imposed a penalty of forfeiture of one year's service on an earlier occasion in 1991.

10. It is also well settled that absence without leave in a disciplined force like the Police has to be viewed seriously so as to warrant dismissal from service. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Om Prakash vs. State of Punjab & Ors.*, 2011(14) SCC 682, wherein dismissal of a Head Constable for his absence for a period of 39 days without leave or intimation was upheld. Therefore, in view of the pronouncement in the judgment as relied upon by the petitioner in *Tirlok Singh's* case would not be applicable.

11. While not interfering with the impugned orders, this Court is also conscious of the fact Rule 16.2 of the Punjab Police Rules stipulates that in making an award of dismissal, there shall be regard to the length of service of the offender and his claim to pension. Rule 16.2 of the Punjab Police Rules came up for interpretation of Hon'ble the Supreme Court in the case of **State of Punjab v. Ram Singh**, 1992(3) SCT 448 : (1992)4 SCC 54. While interpreting the rule, Hon'ble the Supreme Court cited the law in the following terms :

"7. Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of

dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are gravest acts of misconduct, that too when it impinges the pensionary rights of the delinquent after putting long length of service. As stated, the first part relates to gravest acts of misconduct. Under General Clauses Act singular includes plural, act includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word "acts" would include singular "act" as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation that ensues from the offending 'act'. The colour of the gravest act must be gathered from the surrounding or, attending circumstances. Take for instance the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously No. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness of police service and that the length of service of the offender and, his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct of minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found complete unfit to remain in service than to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of

compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of employment, if any, may meet the ends of justice. Take for instance the delinquent officer is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his long length of service and his claim for pension he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word "or" cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct."

12. In the instant case, the petitioner herein did not bother to put in appearance before the Enquiry Officer, consequent to which the charges against him were proved and order of dismissal was passed. However, while passing the said impugned order, there was no consideration regarding length of service of the delinquent employee or his claim to pension. It is admitted fact that the petitioner herein was employed as Constable in the Police Department on 13.03.1991 and was dismissed from service by an order dated 20.12.2011. He had worked for a substantial length of time (even though there is forfeiture of one year service) and therefore, his claim for pension ought to have been considered by the disciplinary authority/punishing authority. The Hon'ble Supreme Court in the judgment passed in ***State of Punjab and others Vs. Mohinder Singh*** Civil Appeal No.2559 of 2005 (Arising out of SLP (C) No. 13859 of 2003) decided on 8.4.2005 while upholding the order of dismissal from service of a police Constable who remained absent from duty for a period of 5 ½ months, had directed the authorities to pass an appropriate order if any

representation for converting the order of dismissal into an order of compulsory retirement was made by respondent, who had already put in more than 23 years of service. A Coordinate Bench of this Court in the judgment passed in RSA No.370 of 1994 titled as ***State of Punjab and another Vs. Waryam Singh*** decided on 25.05.2017 while taking into consideration the length of service of the delinquent police official of 23 ½ years, who was dismissed from service for his absence from duty without permission for a period of four months, five days and two hours, directed the disciplinary authority/competent authority to reconsider its decision as per Rule 16.2 and the case law on the subject matter, and pass fresh order within a period of three months from the date of receipt of certified copy of the order. The Department may in accordance with law consider treating the petitioner as deemed to have been retired compulsorily on August 19, 1985 with right to take home pension and other consequential service benefits accruing prior to dismissal. In another judgment rendered in ***State of Punjab Vs. Surjit Singh 2002(3) SLR 148***, a Coordinate Bench while placing reliance upon the judgment rendered by the Hon'ble Supreme Court in ***Major G.S. Sodhi Vs. Union of India 1992 (3) RSJ 502***, which has been subsequently followed by this Court in ***Krishan Lal Vs. State of Punjab 1997(1) RSJ 535*** while affirming the order of dismissal has held that *having regard to the fact that the plaintiff had rendered service of about 15 years, he should not be deprived of pensionary and other benefits earned by him for rendering service. If the plaintiff makes a representation in this regard, the authorities will consider to grant such benefits to him and the representation if any made by the plaintiff will be decided within a period of three months and benefits, if any, held admissible to him shall be paid to him.*

13. Therefore, in view of the findings rendered by this Court and the case laws cited, this Court does not find any reason to interfere with the impugned orders passed by the disciplinary/competent authority. Consequently, the instant petition stands dismissed. However, keeping in view the fact that the petitioner herein has rendered a substantial length of service and the fact that while passing the impugned order of dismissal, the disciplinary/competent authority did not take into consideration the length of service of the petitioner and his claim to pension as per Rule 16.2 of the Punjab Police Rules, the disciplinary/competent authority is directed to reconsider the case of the petitioner in terms of Rule 16.2 of the Punjab Police Rules, if a representation is made by the petitioner for converting the order of dismissal into an order of compulsory retirement within a period of three weeks from the date of receipt of certified copy of this order and take a decision thereon within a period of two months thereafter.

(JAISHREE THAKUR)
JUDGE

April 29, 2022
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No