

2023:PHHC:071101

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

CWP-15502-1995

Date of decision : 03.05.2023

Sohan Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sehaj Bir Singh, Advocate
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

PANKAJ JAIN, J.

The petitioner herein prays for issuance of a writ in the nature of certiorari/mandamus quashing enquiry report dated 26.09.1991 (Annexure P-2), show cause notice (Annexure P-3) and the consequential orders dated 03.12.1991 (Annexure P-5), 27.09.1993 (Annexure P-7) and subsequent orders and further prays for issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioner with full back wages.

2. The petitioner joined respondent-department as Constable on 30.04.1969. While he was working as Head Constable on 05.06.1991, he was served with a chargesheet for unauthorized absence from 23.02.1991 at 4.30 p.m. till 01.04.1991. The inquiry was conducted against the petitioner, wherein it was concluded as under:-

“xx xx xx

I have read the written reply the defaulter
carefully and I am not satisfied with the written

2023:PHHC:071101

reply of the defaulter as he was posted in Police Lines Faridkot where he fell ill so he could have get himself examined from doctor of police lines or Medical college. If he was serious then he could have appear before MHC Line or Line officer, RI and could have obtained the Govt. vehicle but he had not done so and he absented himself without any permission or leave from the Police lines whereas the defence witness has also stated that he could have move easily but he had not informed about his illness after coming in the Police Lines. Therefore this written reply is without any basis and is not acceptable. Therefore I am not satisfied with his written reply.

I have read and perused the statements of witnesses recorded against the defaulter and the allegations levelled in the charge sheet are fully proved against the defaulter.”

3. The petitioner was served with show cause notice proposing punishment of dismissal. The same was replied to by the petitioner reiterating his explanation for the said absence as under:-

“xx xx xx

2. That when the petitioner was present on duty on 23-2-91 at Police Lines, Faridkot. Suddenly I felt pain in the neck. At that time when the petitioner went to Govt. Hospital Police Lines for treatment, the doctor posted in Police lines was not available. Because the pain in my neck exceeded then the petitioner to save his life after informing MHC Harpal Singh went to private doctor Sh. Parkash Sachdeva, MBBS, Ex-PCMS Faridkot for treatment, who did my Medical check up and after admitting me, gave injections and also gave me the

2023:PHHC:071101

necessary medicines. After taking medicines I felt unconscious and because of illness I was gripped with typhoid. My Blood pressure was also increased.

3. That I continued taking treatment up to 1-4-91 from the said doctor & during my treatment I came to Police Lines, Faridkot to record a report in roznamcha about my illness and also for giving application for leave but the MHC did not record the same nor MHC take the application from me. I was told that I have been suspended vide order no.4454-58/B dated 22.3.91 from 23.2.91. That during the proceedings of the enquiry I came to know from the Romamcha of the police Lines, Faridkot that the MHC did not record his report of illness in the Roznamcha which he should have recorded. Due to which he could not cross- examine the MHC Police Lines due to the absence of the recording of the DDR in that connection because there was no benefit of this cross examination.

4. That Dr. Sachdeva MBBS Ex. PCMS who is a qualified doctor has fully testified to my illness & treatment. The medical certificate issued by him that certificate I have given to to Sh.Kamail Singh. Inspector during enquiry which is on the file of enquiry.

5. That in the enquiry officer while holding me guilty has written that I should have got treatment from the doctor of Police Lines Faridkot or from the Civil Hospital & he should be admitted in Govt. Hospital after recording a report in the roznamcha of the Police Lines or after appearing personally before the officers.

6. That on 23.2.91 a pain suddenly started in my neck on which he went to the doctor of Police Lines

2023:PHHC:071101

but he was not available and after telling everything to MHC Police Lines he went to the private doctor for treatment.

7. That it was duty of the MHC of Police Lines, Faridkot to record a report about my illness in the Roznamcha but he did not care to record the same.”

4. The petitioner stands dismissed vide impugned order dated 03.12.1991 (P-5). The statutory appeal stands rejected vide P-7. Mercy petitions filed by the petitioner also stand rejected vide subsequent orders (Annexures P-9 and P-14).

5. Counsel representing the petitioner has submitted that the impugned order is in the teeth of mandate of Rule 16.2 of the Punjab Police Rules. It has been contended that while passing an order of dismissal, the punishing authority was required to take into consideration the length of service of the delinquent and his claim to pension. The same having not been done, the impugned order cannot be sustained.

6. Per contra, State counsel submits that the petitioner being a member of disciplinary service cannot afford to remain absent that too for 37 days unauthorizedly and thus no fault can be found with the impugned orders.

7. Having heard counsel for the parties and have gone through the records of the case, it will be apposite to test the impugned order on the touchstone of provision contained in Rule 16.2 which reads 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

2023:PHHC:071101

incurability 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) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed :

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal :

Provided further 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.]¹

(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.”

8. The aforesaid rule came up for consideration before Supreme Court in the case of ‘*State of Punjab vs. Ram Singh Ex-*

Constable’, reported as **1992(4) SCC 54**, wherein the Apex Court held

2023:PHHC:071101

as under:-

“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.

2023:PHHC:071101

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 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 completely unfit to remain in service then 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 re-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

2023:PHHC:071101

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."

9. The same was further followed by Division Bench of this Court in *SI Surinder Singh vs. State of Punjab and others, 2008(4) RSJ 613* to hold as under:-

“11. It is, thus, evident that on the one hand there is violation of mandatory provisions of Rule 16.2(1) of the Rules in more than one way and on the other hand there are binding directions issued by Hon'ble the Supreme Court permitting the petitioner to exercise option of seeking voluntary retirement from the CID Department on the rank he was working.

12. It is equally well settled that the administrative orders can be interfered with, once they are considered to be unreasonable, by invoking 'Wednesbury' principle. In a Seven Judges Bench judgment of Hon'ble the Supreme Court in the case of *Rameshwar Prasad (VI) vs. Union of India, 2006 (2) SCC 1*, a statement of Wednesbury principle has been made in para 242, which reads thus:

“242 The Wednesbury Associated Provincial Picture Houses Ltd. vs. Wednesbury Corpn., 1948(1) KB 223, principle is often understood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly

2023:PHHC:071101

irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.”

13. The case of the petitioner would be covered by the aforementioned principle, inasmuch as, the disciplinary and punishing authority has ignored from consideration while passing the order of dismissal, the mandatory requirement of Rule 16.2(1) of the Rules. The petitioner has rendered meritorious service from 10.10.1970 to 16.3.1992 and, therefore, the order of dismissal would not be sustainable.”

10. In view of afore settled proposition of law, this Court finds that the petitioner had prior to the present incidents served Department for about 22 years. He was promoted as Constable and during service tenure, he is stated to have earned more than 17 commendation certificates. He remained absent for 37 days. The aforesaid act cannot be said to be a gravest act of misconduct. Though, ordinarily the punishment is best left to the judgment of the disciplinary authorities, yet proportionality is one of the grounds of judicial review.

11. In view of above, having found that the absence of 37 days which has been explained by the petitioner on record does not fall within the ambit of gravest act of misconduct and thus the authorities ought to have considered the case of the petitioner in the light of second part of Rule 16.2 and would not fall within the first part thereof.

12. Resultantly, the impugned orders dated 03.12.1991 (P-5), 27.09.1993 (P-7), 12.03.1994 (P-9) and 15.03.1995 (P-11) are hereby set aside and is modified to the order of compulsory retirement.

2023:PHHC:071101

However, The petitioner shall be entitled for his terminal benefits and shall be deemed to have been retired compulsorily from the date of order of dismissal.

13. Disposed off, in the aforesaid terms.

(PANKAJ JAIN)
JUDGE

03.05.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No