

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

CWP No.6403 of 2023

Date of decision : 27.03.2023

Sukhwant Singh

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vivek Salathia, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Section 226/227 of the Constitution of India, the petitioner prays for issuance of writ in the nature of certiorari seeking quashing of the order dated 9th of February, 2023 (Annexure P-12) passed by respondent No.2 vide which the appeal preferred by the petitioner challenging the orders of dismissal dated 26th of October, 2022, has been dismissed. Further challenge is to the order dated 26th of October, 2022 passed by respondent No.3, order dated 20th of July, 2022 (Annexure P-8) passed by respondent No.4 and the findings recorded by inquiry officer (Annexure P-5).

2. Petitioner who was working as Munshi Head Constable

(MHC) faced departmental inquiry owing to allegations raised by employees posted as guards at the same police station wherein the petitioner was posted. The petitioner was placed under suspension and proceeded against in a regular departmental inquiry. The Inquiry Officer found him guilty vide report dated 20th of June, 2022 (Annexure P-5). Show Cause Notice was issued to the petitioner dated 27th of June, 2022 proposing punishment of dismissal. The petitioner responded to the same and finally order dated 20th of July, 2022 (Annexure P-8) was passed whereby the petitioner was awarded punishment of forfeiture of one year service and stoppage of one increment permanently. The punishment was reviewed by IG and the petitioner was issued Show Cause Notice dated 29th of August, 2022 as to why the punishment awarded to him vide Annexure P-8 should not be enhanced. Admittedly, the petitioner was given opportunity of hearing which led to passing of the impugned order dated 20th of October, 2022 whereby the punishment has been enhanced and the petitioner has been saddled with the extreme punishment of dismissal from service. The petitioner filed appeal which also stands dismissed vide Annexure P-12.

3. Counsel for the petitioner has raised primary grievance against the orders Annexures P-10 and P-12 submitting that the punishing authority as well as the appellate authority ought to have

considered the case of the petitioner in the light of mandatory requirement under Rule 16.2 of the Punjab Police Rules, 1934 (hereinafter referred to as 'the Rules'). He further submits that the appellate authority has not even applied its mind as no reasoning has been recorded to dismiss the appeal preferred by the petitioner. Counsel for the petitioner submits that in fact the inquiry proceedings would reveal that there is no evidence on record to establish the case against the petitioner as while two employees have deposed against the petitioner, two co-employees have also deposed in his favour. Reliance has been placed upon **State of Haryana & others vs. Jai Dev - LPA No.40 of 2012**, **State of H.P. and another vs. Jagat Singh etc, 2008(4) SCT 773**, **Ex. Constable Malkiat Singh vs. State of Punjab and others 2012(4) SCT 323**, **Union of India and others vs. Naman Singh Sekhawat, (2008) 4 SCC 1** and **Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors., (2006)4 SCC 713**.

4. Counsel for the petitioner while relying upon the judgment rendered in **State of Himachal Pradesh vs. Jagat Singh etc. (supra)** submits that later part of Rule 16.2 is an independent provision and the claim of the petitioner thus ought to have been treated in terms thereof. He further relies upon the judgment passed by Apex Court in **Narinder Mohan Arya's case (supra)** to submit that the application of mind means that the authority analyzed whether there was sufficient

material to sustain the findings of guilt against the petitioner or not. In the present case, the authorities having fallen short on that aspect, the impugned orders having been passed without application of mind cannot be sustained. He further relies upon judgment passed by Division Bench of this Court in the case of **State of Haryana vs. Jai Dev** (supra) to submit that 30 years of unblemished service of the petitioner ought to have been considered in terms of Rule 16.2 of the Rules.

5. I have heard counsel for the parties and have gone through records of the case.

6. So far as the case built by counsel for the petitioner w.r.t. non-application of the mind at the hands of the authorities is concerned, the same is totally misconceived. Admittedly, the punishing authority/reviewing authority in the present case which passed order Annexure P-8 after going through records of the case issued show cause notice to the petitioner dated 29th of August, 2022 giving him full opportunity of hearing and thereafter passed the order, Annexure P-10. Merely to say that for the reason that two witnesses deposed in favour of the petitioner *viz-a-viz* two against him and thus the fulcrum was balanced and guilt was not proved against the petitioner is misconceived. Trite it is that in the departmental inquiries the allegations are not required to be proved beyond reasonable doubt

as in the criminal trial. It is the quality of the evidence which has to be assessed and not the quantity. Definitely it was within the domain of the inquiry officer to appreciate the evidence and return finding which it did. Counsel for the petitioner cannot claim that there is any infirmity w.r.t. following of procedure in the inquiry. At the same time, it is settled law that this Court while exercising writ jurisdiction cannot sit over as a Court of appeal over the findings recorded by the inquiry officer. Thus, to say that the authorities have not applied its mind cannot be sustained.

7. Coming to the second limb of the arguments w.r.t. the treatment meted out to the petitioner and consideration of his claim in the light of Rule 16.2, the basic law has been propounded by Three Judges Bench of Apex Court in the case of **State of Punjab vs. Ram Singh Ex. Constable, (1992) 4 SCC 54**. Division Bench of this Court in the case of **Jaidev Singh** (supra) and that of Himachal High Court in the case of **Jagat Singh's** case (supra) has also referred to the same. The ratio laying part of the judgment rendered by the Apex Court in the case of **Ram Singh Ex Constable's** case (supra) reads 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.

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 completely unfit to remain inservice 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 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."

8. Thus the ratio propounded by the Apex Court in the case of **Ram Singh Ex. Constable** (supra) is clear and unambiguous. In case one singular act of a police personnel falls within the ambit of "gravest misconduct" there is no requirement for the authorities to consider his claim for pension as contemplated in the other part of Rule 16.2. Apart from that the other important feature of ratio of law laid down in **Ram Singh Ex. Constable's** case (supra) that the contemporaneous construction of Rule 16.2 as propounded by this Court in **Bhagwat Parshad vs. Inspector-General of Police, Punjab and others, 1970 AIR (P&H) 81** stands approved. In **Bhagwat Parshad's** case this Court held as under :

"17. Another consideration which is worthy of weight, is the rule of contemporaneous construction placed by the officers or

departments charged with the duty of acting upon it or executing it. In this case the Superintendent of Police, the Deputy Inspector General, and finally the Inspector General of Police, assessed the conduct of the petitioner to be of the requisite gravity so as to merit the imposition of the punishment of dismissal. The officers of the Police Department are charged with the duty of maintaining and observing discipline. As to the standard of discipline required to be enforced in their case the judgment of their superior officers deserves to be respected and should not be lightly interfered with. The police force is required to discharge highly responsible and onerous duties for maintenance of law and order and for other purposes essential to the life of the Community. These duties from their very nature have to be of an exacting nature. The result of laxity in conduct, or infringement of rules of discipline can undermine the optimum usefulness of the force.

18. Moreover, it was for the police officers who judged the infraction of the police rules to determine the seriousness of the misconduct and to decide upon the suitability of the punishment. It will not be within the ambit of the powers of this Court, when petitioner, to issue the extraordinary writs of certiorari, mandamus etc. to interfere with the discretion of the Heads of the Departments when it has not been exercised wantonly or arbitrarily. These are well settled limitations which High Courts impose upon themselves when exercising the extraordinary jurisdiction. As observed by the Supreme Court in *State of Orissa v. Bidyabhushan*, AIR 1963 SC 779 (786) the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons, which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. The condition necessary for the issuance of a writ of certiorari is, that the order of the inferior tribunal suffers from an error which is apparent on the face of the record, or, in the

exercise of its Jurisdiction, the tribunal has acted illegally or arbitrarily. The evidence has been considered and the conclusion drawn from its appraisal cannot be reopened. No error of fact will be corrected by this Court, when exercising its supervisory jurisdiction. It is not permissible to advance the argument, that the evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. This view is amply supported by a long series of decisions and reference may be made to T. Prem Sagar v. Standard Vacuum Oil Company, AIR 1965 SC 111 and Syed Yakoob v. K. S. Radha Krishnan, AIR 1964 SG 477.”

9. Thus once the police officers who are required to judge the infraction of the Police Rules have found that the claim of the petitioner falls within the ambit of gravest misconduct and this Court also echoes the same sentiment, no reason for interfering in the present writ petition is made out.

10. Consequently, the present writ petition is ordered to be dismissed.

March 27, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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