

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

CWP No.10992 of 2016

Date of decision : 16.01.2023

Bikram Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vikas Singh, Advocate and
Mr. A.S. Pannu, Advocate
for the petitioner.

Mr. Charanpreet Singh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed invoking writ jurisdiction of this Court under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing the impugned order dated 24th of December, 2013 (Annexure P-8) and order dated 25th of March, 2015 (Annexure P-14) whereby the petitioner has been ordered to be dismissed from the services and the same has been affirmed in departmental appeal respectively.

2. Shorn of the details the brief facts that needs to be noticed for proper adjudication for the case in hand are that the petitioner joined service with the police department as Constable on 18th of January, 1994. On an anonymous complaint received w.r.t. scam in dealing with TA bills an inquiry was conducted wherein one Head Constable Malkit Singh was

found to be guilty in the said inquiry. Some aspersions were raised w.r.t. the conduct of the petitioner as well. After inquiry the petitioner was ordered to be dismissed from services vide order dated 25th of August, 2006. The said order was taken by the petitioner in appeal and finally the same came under challenge before this Court in CWP No.23398 of 2011 decided vide judgment dated 25th of September, 2013. This Court held as under :-

“A bare perusal of the dismissal order passed by the Commandant, 82nd Battalion, PAP Chandigarh would clearly reveal that no finding has been recorded that the petitioner is guilty of an act of “gravest misconduct”. It has also not been held that the petitioner is guilty of a continued misconduct proving his incorrigibility and complete unfitness for police service. The extent and effect of findings of the Inquiry Officer holding the petitioner to be negligent and the amount of Rs. 21,730/- having not been received by him have not been gone into. There is no reference to the service record of the petitioner and the impugned order of dismissal does not even reveal application of mind at the hands of the Punishing Authority on the question as to whether any other penalty could have been imposed upon the petitioner keeping in view his past service record. That apart, the mandate of Rule 16.2 has also been given a go by inasmuch as, the length of service of the petitioner has not been taken into account while passing the impugned order. Suffice it to notice that even the Appellate Authority as also the Revisional Authority have not gone into the aspect of non consideration of the provisions of Rule 16.2.

In view of the reasons recorded above, the impugned orders dated 25.08.2006 (Annexure P-4), 14.05.2007 (Annexure P-6), 25.3.2008 (Annexure P-8) and 19.02.2009 (Annexure P-10) are set aside. The matter is remanded back to the Punishing

Authority to pass a fresh order upon reconsideration strictly in the light of Rule 16.2 of the Punjab Police Rules. Such exercise be completed within a period of three months from the date of receipt of a certified copy of this order. It is, however, clarified that the order of reinstatement of the petitioner shall remain in abeyance till the fresh consideration is accorded and will depend upon the outcome of such fresh consideration.”

3. On the basis of the aforesaid order passed by the Writ Court, Annexure P-8 has come into existence which reads as under :-

“In compliance of order dated 25.09.2013 of Hon'ble Punjab & Haryana High Court, Chandigarh in CWP No. 23398/2011, the following order is issued :-

I have carefully gone through the case of Ex. Constable Bikram Singh No. 82/672 (Petitioner) in the light of rule 16.2 of Punjab Police Rules. In the department enquiry he has been held guilty of signing the blank TA forms. Being a government servant, he must have known that these TA forms could be misused. The misconduct done by him is of very serious and grave nature.

The service record of the petitioner is also not clean. He remained absent for 13 days from 4-3-2005 to 17-3-2005. Again he was absent for 10 days from 15-11-2005 to 24-11-2005. Once again he was found absent for 11 days from 31-1-2006 to 10-2-2006.

Keeping in view the above mentioned facts, I am of the opinion that the order of dismissal passed by the then Commandant is correct.”

4. Ld. Counsel for the petitioner contends that despite there being specific directions by this Court to consider the claim of the petitioner in the light of Rule 16.2 of the Punjab Police Rules, the authorities have

passed the impugned order acting in violation of the directions by this Court with impunity. He, thus, submits that the impugned order being in violation of the judgment passed by this Court in CWP No.23398 of 2011 *ibid* cannot be sustained.

5. Per contra, State Counsel submits that the allegations levelled against the petitioner surfaced during the inquiry being held in widespread scam related to TA bills. Reliance is being placed upon Para No.5 of the preliminary submissions to submit that the petitioner being involved in the TA scandal, his case would be governed by Notification dated 22nd of August, 1955.

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

7. Facts are not much in dispute. The issue would be '*whether the impugned order (Annexure P-8) can be said to have been passed as per the directions issued by the Writ Court while remanding back the case to be considered in the light of Rule 16.2 of the Punjab Police Rules or not ?*'

8. It will be apposite to peruse Rule 16.2 of the Punjab Police Rules, 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 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) 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.]

(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*.”

9. Thus, the import of Rule 16.2 primarily relates to consideration at the hands of the Punishing Authority while awarding the punishment of dismissal *viz-a-viz* the past service of the delinquent employee and his claim to pension. A bare perusal of the impugned order when seen in the light of the aforesaid provision, this Court is satisfied that the order dated 24th of December, 2013 passed by the Punishing Authority cannot be said to be in consonance with the directions issued by the Writ Court in CWP

No.23398 of 2011, dated 25th of September, 2013. The impugned order is bereft of the consideration *viz-a-viz* the claim of the petitioner and his qualifying service to the pension. Merely recording that the service record of the petitioner is not clean and that too for being absent for 13 days, 10 days and 11 days on three different occasions does not absolve the authority from considering the case of the petitioner in the light of Rule 16.2 of the Punjab Police Rules. Moreover, in order to constitute gravest misconduct on account of unauthorized absence, the authority has to record that the absence was willful. There is no such finding in the impugned order to say that the absence on part of the petitioner on earlier three occasions as recorded was willful.

10. Consequently, order dated 24th of December, 2013 and the consequential orders affirming the same cannot be sustained in the eyes of law. The same are thus quashed.

11. Liberty is granted to the authorities to reconsider the case of the petitioner strictly in light of the directions issued by Writ Court in CWP No.23398 of 2011 vide order order dated 25th of September, 2013, within a period of 30 days from the date of receipt of certified copy of this order.

12. Writ Petition stands disposed off accordingly.

January 16, 2023

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No