

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10132-2006 (O&M)
Date of Decision:14.03.2024

HARJINDER SINGH..... Petitioner

Versus

STATE OF PB. AND ORS. Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. C.M. Munjal, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 16.06.2003 (Annexure P-5) whereby petitioner has been dismissed from service.
2. The petitioner on 23.03.1993 was enrolled as Constable in the Punjab Armed Police. He was deputed in the Security Wing as a Driver. On 28.07.1995 while he was on duty as Driver his vehicle met with an accident and an FIR No.78 dated 28.07.1995, under Sections 279 and 337 of IPC, 1860 and Section 185 of the Motor Vehicles Act, 1998 came to be registered against him. The petitioner was convicted vide judgment dated 04.09.2000 passed by Judicial Magistrate 1st Class, Chandigarh, however, he was released on probation under Probation of

Offenders Act, 1958. He filed an appeal before Appellate Court which vide order dated 18.03.2005 disposed of the same with the observation that offences under Sections 279 and 337 of IPC, 1860 and Section 185 of the Motor Vehicles Act, 1988 are not the offences involving moral turpitude and extension of benefit under Probation of Offenders Act would not incur any disqualification for the appellant/accused.

3. The respondent No.4-Commandant vide order dated 16.06.2003 (Annexure P-5) dismissed the petitioner from service. He preferred an appeal before Appellate Authority against the order of dismissal. The said appeal came to be dismissed vide order dated 24.09.2004 passed by respondent No.2- Inspector General of Police, PAP, Jalandhar Cantt. He filed mercy cum revision petition before Director General of Police who vide order dated 06.03.2006 dismissed the same.

4. Mr. C.M. Munjal, Advocate submits that petitioner though convicted but was not awarded sentence and he was released on probation, thus, his case does not come in the teeth of Rule 16.2 of Punjab Police Rules, 1934 (for short '1934 Rules'). An officer is liable to be dismissed from service, if he is convicted and awarded sentence. The petitioner was released on probation and Appellate Court has specifically held that release on probation would not be disqualification.

5. Per contra, learned State counsel submits that petitioner was a police officer and he was governed by 1934 Rules which are in the form of a complete Code. Sub-Rule (2) of Rule 16.2 of 1934 Rules categorically provides that if an officer is convicted, he is liable to be dismissed. There is no discretion with the authorities to retain an officer

who has been convicted and sentenced to imprisonment on a criminal charge. He further submits that petitioner was convicted by Trial Court vide judgment dated 04.09.2000 and before passing the dismissal order the disciplinary authority has taken into consideration the mandate of Rule 16.2 (2) of 1934 Rules. He further submits that petitioner cannot be reinstated on the basis of his release on probation. The petitioner was member of Armed Police, therefore, he was bound to maintain discipline and have good conduct.

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. The conceded position emerging from the record is that petitioner joined respondent-department as Constable. An FIR No.78 dated 28.07.1995, under Sections 279 and 337 of IPC, 1860 and Section 185 of the Motor Vehicles Act, 1998 came to be registered against him. In the said FIR, vide judgment dated 04.09.2000, the petitioner was convicted, however, extended benefit of probation. On conviction, he was served with a show cause notice dated 03.12.2002 calling upon to show as to why an action should not be taken against him under Rule 16.2 of 1934 Rules. Pursuant to reply filed by the petitioner, Commandant 82 Battalion, PAP, Chandigarh vide order dated 16.06.2003 dismissed him from service by invoking rigour of Rule 16.2 (2) of 1934 Rules. He preferred an appeal against the order of dismissal which came up for consideration before Deputy Inspector General of Police, PAP, Chandigarh who vide order dated 22.01.2004 dismissed the same.

Petitioner against judgment of conviction, preferred criminal appeal before Sessions Court which came up for consideration before

Additional Session Judge who vide order dated 18.03.2005 upheld the order of Trial Court and specifically recorded that benefit of probation under Probation of Offenders Act, would not incur any disqualification to the petitioner. The relevant extracts of the judgment read as:

“The accused/appellant was ordered to be released on probation on his undertaking to be of good behaviour for a period of one year. There is no material whatsoever laid before this Court to show that accused did not keep good behaviour during that period which has since come to an end and therefore nothing remains to be done on this aspect of the accused. It is trite that offences under Sections 279 and 337 IPC and 185 Motor Vehicle Act are not the offences involving mortal turpitude and as such, extension of benefit under the Probation of Offenders Act to the accused would not incur any disqualification for the accused/appellant, as far as is lawfully permissible. The appeal is found without merit and is ordered to be dismissed. Papers be consigned to the records after due compilation.”

8. The petitioner is claiming that his conduct was neither gravest misconduct nor continued misconduct proving incorrigibility and complete unfitness for police service, thus, he could not be dismissed from service. The arguments of the petitioner need to be examined in the light of Rule 16.2 of 1934 Rules, which is reproduced as 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) 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. The question of interpretation of Rule 16.2 of 1934 Rules came up before the Apex Court in ***State of Punjab v. Ram Singh, (1992) 4 SCC 54*** wherein it was held that an officer may be dismissed in two situations i.e. on account of gravest misconduct or cumulative effect of continued misconduct. A single act may constitute gravest misconduct. The colour of gravest misconduct must be gathered from the surroundings or attending circumstances. The relevant extracts of the said judgment read as:

“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, since it impinges upon 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 who put in 29 years of continuous length of service and had unblemished record; in thirtieth 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 for 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 and 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 who 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".

10. A conspectus of Rule 16.2(1) of 1934 Rules and of afore-cited judgment reveals that a police officer may be dismissed from service subject to following circumstances and conditions:

1. *If the police officer is accused of gravest misconduct;*
or
2. *The cumulative effect of continued misconduct proves that police officer is incorrigible and completely unfit for the service;*
3. *The authority passing order shall consider length of service as well as claim of pension;*
4. *Having regard to length of service and claim of*

pension, an employee instead of dismissal from service may be compulsorily retired.

11. Sub-Rule (1) of 16.2 of 1934 Rules is a general rule which permits authorities to dismiss an officer on the occurrence of an event as contemplated therein. The said Rule is an open ended rule. It is a discretionary provision and discretion is always subject to judicial review. An officer may or may not be guilty of gravest misconduct. It is always subject to judicial review to ascertain whether the officer is guilty of gravest misconduct or not. The question whether an officer is guilty of cumulative effect of misconduct proving incorrigibility and complete unfitness is also a question of fact and has always remained subject matter of judicial review. Sub-Rule (2) carves out an exception to Sub-Rule (1) and in a way it is a proviso to Sub-Rule (1) which leaves no discretion with authorities and enjoins that an officer shall be liable to be dismissed if he has been convicted and sentenced to imprisonment on a criminal charge.

12. The proviso to Sub-rule (2) of Rule 16.2 carves out window of discretion. The disciplinary authority in exceptional circumstances may grant punishment other than dismissal from service.

13. The petitioner was convicted under Section 279 and 337 of IPC and he was released on probation. As per Section 12 of Probation of Offenders Act, 1958 if a person is released on probation under Sections 3 or 4 of the said Act, he shall not suffer disqualification attaching to such conviction. The relevant extracts of Section 12 of the Act read as:

*“12. Removal of disqualification attaching to conviction
- Notwithstanding anything contained in any other law, a*

person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law: Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence."

14. As per Rule 16.2 (2) of 1934 Rules, normal rule in case of conviction on a criminal charge and sentence to imprisonment is dismissal, however, as per 1st proviso, punishing authority in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority, may impose punishment other than dismissal. For the ready reference first proviso to Sub-Rule (2) of Rule 16.2 is reproduced as below:

"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"

From the reading of above cited proviso, it is evident that punishment other than dismissal from service can be awarded if:

- (i) it is an exceptional case;
- (ii) there are manifestly extenuating circumstances;
- (iii) reasons are recorded by punishing authority; and
- (iv) punishing authority seeks prior approval of next higher authority.

15. The question of punishment other than dismissal from service, in case of conviction and sentence of an employee, has been considered by Supreme Court in ***Divisional Personnel Officer, Southern***

Rly. v. T.R. Chellappan, (1976) 3 SCC 190. The Court has held that in case of trivial or petty offences, an employee cannot be subjected to harsh punishment of dismissal. The relevant extract of the judgment read as:

“21..... *It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Challappan in Civil Appeal 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction.*”

16. A Constitution Bench in **Union of India v. Tulsiram Patel, (1985) 3 SCC 398** approved **T.R. Challappan’s case** to the extent that proviso to Article 311 (2) is not mandatory and Disciplinary Authority may consider circumstances set out in the said judgment before imposing a penalty upon a delinquent Government servant. The Court further held that it is not mandatory that major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned Government servant. The penalty which can be imposed may be some other major

penalty or even a minor penalty depending upon the facts and circumstances of the case. In order to arrive at a decision as to which penalty should be imposed, Disciplinary Authority will take into consideration various factors set out in T.R. Challappan' case. The relevant extracts of the judgment reads as:

“114. So far as Challappan case is concerned, it is not possible to find any fault either with the view that neither clause (a) of the second proviso to Article 311(2) nor clause (i) of Rule 14 of the Railway Servants Rules is mandatory or with the considerations which have been set out in the judgment as being the considerations to be taken into account by the disciplinary authority before imposing a penalty upon a delinquent government servant. Where a situation envisaged in one of the three clauses of the second proviso to Article 311(2) or of an analogous service rule arises, it is not mandatory that the major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned government servant. The penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case. In order to arrive at a decision as to which penalty should be imposed, the disciplinary authority will have to take into consideration the various factors set out in Challappan case.”

17. In the case in hand, the petitioner was found guilty of commission of offence under Sections 279 and 337 of IPC and was not awarded any sentence whereas he was released on probation. From the reading of Rule 16.2 of 1934 Rule, it comes out that a person shall be dismissed from service if he is convicted and sentenced to imprisonment, however, in the present case, the petitioner was never subjected to any imprisonment. The Appellate Court specifically pointed

out that the offences under which petitioner is convicted are not of moral turpitude and it would not incur any disqualification for the petitioner.

As per judgment of Supreme Court in ***T.R. Challappan (supra)*** and ***Tulsiram Patel (supra)***, the Disciplinary Authority is supposed to consider nature of offence and extenuating circumstances. The petitioner has been convicted for commission of offence punishable under Sections 279 and 337 of IPC. From the perusal of impugned order, it comes out that Disciplinary Authority has failed to consider the nature of offence alongwith mandate of Section 12 of 1958 Act and 1st proviso to Rule 16.2 of 1934 Rules.

18. In the wake of mandate of Article 311 of the Constitution of India, 1st proviso to Sub-Rule (2) of Rule 16.2 of Punjab Police Rules, 1934 and judgment of Supreme Court in ***T.R. Challappan (supra)*** & ***Tulsiram Patel (supra)***, this Court finds that the impugned order deserves to be set aside and accordingly set aside. The petitioner is ordered to be reinstated.

19. The petitioner approached this Court in 2006 and his petition was admitted vide order dated 11.07.2006. The petitioner is not at fault for this long and unexplained delay in adjudication of this writ petition. No litigant can be made to suffer on account of delayed adjudication because it would amount to denial of justice. It is common principle of law that justice not only should be done, it must also seem to be done. As per principle of 'no work no pay', the petitioner is not entitled to back wages but it would be travesty and miscarriage of justice if he is totally denied of back wages. Thus, keeping in view principle of 'no work no pay'; balance of convenience & equity; rule of law and no lapse on the

part of petitioner for delayed adjudication, it is hereby further held that petitioner from the date of filing of civil writ petition would be entitled to 33% of back wages. He shall also be entitled to other service benefits. The respondent shall do the needful within 3 months from today. It is further made clear that petitioner would not be entitled to interest on the aforesaid amount.

20. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

14.03.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>