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

CWP-23755-2016

Date of Decision: 14.03.2024

JAIL SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Jasbir Singh Ahlawat, Advocate with
Mr. Rajbir Singh Kadiyan, Advocate
for the petitioner.

Mr. Pawan Kumar, 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 15.01.2016 (Annexure P-1) whereby DGP, Punjab has upheld order of dismissal dated 09.11.2011 (Annexure P-2) passed by 75th Commandant Battalion, PAP, Jalandhar, Chhauni.

2. The petitioner joined Punjab Police as Constable. His wife filed a criminal complaint against him under Sections 406, 498-A, 506, 109, 120 B, 323, 148 and 149 of IPC. He came to be convicted under Section 498-A of IPC vide judgment dated 19.08.2011 (Annexure P-3) passed by Trial Court and was awarded sentence of rigorous imprisonment for a period of 1 year alongwith fine of Rs.2,000/-. He filed an appeal before Appellate Court which came to be dismissed vide judgment dated 11.07.2014. The petitioner preferred revision before this

Court assailing judgment of conviction. This Court vide order dated

02.03.2015 reduced the quantum of sentence from 1 year to 10 months meaning thereby the judgment of conviction was upheld, however, order of sentence was modified.

3. The respondent during the pendency of appeal before Appellate Court, vide order dated 09.11.2011 (Annexure P-2) dismissed the petitioner from service. The petitioner filed representation dated 20.04.2015 before DGP against order of dismissal passed by 75th Commandant Battalion, PAP, Jalandhar, Chhauni. The petitioner preferred CWP No.16929 of 2015 before this Court assailing his dismissal order dated 09.11.2011. This Court vide order dated 20.10.2015 disposed of said petition with a direction to respondents to decide petitioner's representation dated 20.04.2015.

4. The respondent-DGP vide order dated 01.01.2016 rejected representation of the petitioner forming an opinion that petitioner is a convicted person and it is not in the public interest to keep such a person in police department which is a disciplined force. The said order was communicated by DIG vide letter dated 15.01.2016.

5. Mr. Jasbir Singh Ahlawat, Advocate, learned counsel for the petitioner submits that respondent authority while passing order of dismissal was required to consider mandate of Rule 16.2 of Punjab Police Rules, 1934 (for short '1934 Rules'). The Disciplinary Authority while dismissing the petitioner from service did not consider his length of service and entitlement to pension. He has been mechanically dismissed from service. He further submits that neither the petitioner was guilty of gravest misconduct nor was habitual offender, thus, he could not be dismissed from service. As per Rule 16.2 of the Punjab Police Rules,

1934 (for short '1934 Rules') a police officer may be dismissed from service if he is guilty of gravest misconduct or cumulative effect of misconduct of the officer amounts to incorrigibility and complete unfitness for police service. The petitioner was convicted under Section 498-A of IPC and he has already undergone the awarded sentence of 7 months imprisonment. Nonetheless, conviction of an employee in every case does not lead to dismissal from services. He further submits that offence of Section 498-A is not a heinous crime and it does not constitute an offence involving moral turpitude.

To buttress his argument learned counsel for the petitioner relies upon judgment of Coordinate Bench of this Court in *Man Singh Vs. State of Haryana 2010 (1) SCT 604* and *Chander Bhan Vs. State of Haryana 2016 (3) PLR 639*.

6. 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 19.08.2011, thus, he was liable to be dismissed, in terms of Rule 16.2(2) of 1934 Rules.

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

8. The conceded position emerging from the record is that petitioner joined respondent-department as Constable. A criminal

complaint under Sections 406, 498-A, 506, 109, 120B, 323, 148 and 149 of IPC came to be registered against him. On the registration of criminal complaint, departmental proceedings were initiated against him. In the said complaint, vide judgment dated 19.08.2011, the petitioner was convicted and awarded sentence of rigorous imprisonment of 1 year. On conviction, the petitioner was dismissed from service by invoking rigour of Rule 16.2 (2) of 1934 Rules. He preferred representation against the order of dismissal which came up for consideration before DGP, Punjab who vide order dated 01.01.2016 rejected the same. Against the order of conviction, petitioner preferred revision before this Court which vide order 02.02.2015 upheld the order of conviction, however, reduced the quantum of sentence.

9. 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.”

10. 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".

11. A conspectus of Rule 16.2(1) of 1934 Rules and of aforesaid 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.*

12. The entire case of the petitioner is founded upon reading of Sub-Rule (1) of Rule 16.2 whereas his case falls within four corners of

Sub-Rule (2) of said Rule. Sub-Rule (1) 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.

13. 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.

14. The petitioner was convicted under Section 498-A of IPC and awarded sentence of rigorous imprisonment of 10 months. He has already undergone sentence. 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 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. Chellappan 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.”

16. In the case in hand, the petitioner was found guilty of commission of offence under Section 498-A of IPC and was awarded sentence of 10 months imprisonment. The respondent on the direction of this Court re-considered quantum of punishment. The petitioner did not file appeal before Appellate Authority against order of dismissal passed on 09.11.2011 and he preferred representation dated 20.04.2015 before respondent. On the direction of this Court, the respondent has passed impugned order whereby representation of the petitioner has been rejected. The respondent has recorded a finding that petitioner is a convicted man and he cannot be retained in Police Force which is disciplined force.

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. DGP i.e. head of the police force has considered case of the petitioner. The petitioner has been convicted for commission of offence punishable under Section 498-A of IPC. It is a cognizable, non-bailable and a crime

against woman, thus, cannot be called as trivial or petty offence warranting lenient view.

12. In the wake of mandate of Sub-Rule (2) of Rule 16.2 of Punjab Police Rules, 1934, this Court does not find any infirmity in the impugned orders, thus, refrain to ask the authorities to reinstate the petitioner.

13. In the wake of aforesaid discussion and findings, this Court is of the considered opinion that present petitions being bereft of merit deserve to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

14.03.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>