



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

118

CWP-2325-2025
Date of Decision: 27.02.2025

Subhash Chand

.....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Manish Soni, Advocate,
Mrs. Priyanka Soni, Advocate,
Ms. Tanya Mittal, Advocate,
and Mr. Gurdeep Grewal, Advocate,
for the petitioner.

Mr. Raman Sharma, Addl. A.G., Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of order dated 29.11.2024 (Annexure P-6) whereby he was dismissed from service and order dated 08.01.2025 (Annexure P-8) whereby Appellate Authority dismissed his appeal.
2. The petitioner joined Haryana Police as Constable on 08.10.1999. He was promoted to the rank of Head Constable in October' 2011 and thereafter Assistant Sub Inspector on 20.10.2021. He remained posted at Police Station, New Colony, Gurugram as Moharrir Head Constable (MHC) from 03.02.2021 to 21.12.2021.
3. The respondent initiated disciplinary proceedings against him alleging that he was responsible for preparing verification report in respect of



passport of Neeraj S/o Mahesh Dutt, R/o village Faridpur, District Faridabad who was accused in FIR No.141/2024 registered under Sections 419, 420, 467, 471 and 120B IPC at Police Station New Colony, Gurugram. The Investigating Officer conducted inquiry and found the petitioner guilty for not keeping the verification report of aforesaid passport. He was also held guilty for not supervising the passport verification. It is apt to notice that verification report was prepared by a Constable. The Disciplinary Authority after following the procedure prescribed under Punjab Police Rules, 1934 (as applicable in the State of Haryana) (in short 'PPR') issued show cause notice proposing major penalty. In the show cause notice, there was proposal for major penalty and Disciplinary Authority imposed punishment of dismissal from service. The petitioner preferred CWP-32922-2024 before this Court which was dismissed with liberty to assail order of Appellate Authority. It is apt to notice that petitioner preferred appeal before Appellate Authority which was dismissed vide impugned order dated 08.01.2025.

4. Mr. Manish Soni, learned counsel for the petitioner submits that petitioner was found careless in the inquiry, however, Disciplinary Authority formed an opinion that he is guilty of misconduct and subjected him to extreme major penalty i.e. dismissal from service. The petitioner on the date of passing impugned order was having 25 years service to his credit. He was never implicated in any other offence. He has unblemished record. The respondent has imposed penalty ignoring the mandate of Rule 16.2 of PPR. The act of petitioner did not amount to gravest misconduct or incorrigible act. The petitioner is going to retire in October' 2025.



petitioner neither maintained record of verification of passport in question nor supervised verification. He being MHC was bound to maintain record of verification as well as supervise verification of passport. On account of lapse on his part, report was prepared in favour of Neeraj entailing issuance of passport by Passport Authority.

6. On the asking of Court, Mr. Sharma expressed his inability to controvert the fact that Inquiry Officer had found petitioner careless and his act cannot be called as gravest misconduct.

7. For the sake of convenience, findings recorded by Inquiry Officer and Disciplinary Authority are reproduced as below:-

Inquiry Officer

“From the investigation so far, it has come to light that the delinquent E/ASI Subhash No.1536/Gurugram and delinquent constable Surendra No. 1648/Gurugram did the above work and that the delinquents were found to have done the above work carelessly by not showing seriousness towards their respective government work. Due to this negligence committed by the delinquents being the member of disciplined force, accused Neeraj was found to have fled abroad and the image of the police department has been tarnished among the general public. Therefore, on the basis of the evidence available on my investigation, the allegations levelled in the departmental inquiry against delinquent E/ASI Subhash No.1536/Gurugram and delinquent Constable Surendra No.1648/Gurugram have been found to be proved. The report is submitted.”

Disciplinary Authority

“The allegations against the delinquents were that while they were posted in PS New Colony, GGM in the month of December-2021 then they:-

***Const. Surender No. 1648/GGM** had done the verification of passport No. V4709988 in improper manner, the delinquent had not gone to the place/residence for passport verification of passport No. V4709988 and has submitted the report by just completing the formalities.*

***EASI Subhash No. 1536/GGM** neither keep any record related to passport verification nor did any report and written order was recorded in the daily dairy of the police station in connection with assigning the work of passport verification to Const. Surender No. 1648/GGM.*

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On careful consideration of the facts and circumstances available on the departmental enquiry file, I found myself in agreement with the findings of the Enquiry Officer and, therefore, served upon the delinquents a show cause notice vide No. 959/Steno dated 16.10.2024 proposing therein a penalty of major punishment and afforded them 07 days' time to submit their replies.

The delinquent EASI Subhash No. 1536/GGM submitted his reply on 11.11.2024 and Const. Surender No. 1648/GGM submitted his reply on 29.10.2024 and the same are placed on the file. I have gone through their replies, and found the same quite unsatisfactory. The (sic) have produced a false and ungrounded story by twisting the facts.



They were also afforded an opportunity of personal hearing on 29.11.2024 to ensure justice. They also failed to put forward any logic worth consideration.

As regards the quantum of punishment to be inflicted upon the delinquents, I have made an analytical and comprehensive study of the departmental enquiry file over and over again to confirm whether there is any convincing material on the same in their defence, but found none. Upon this, I am convinced that the misconduct alleged against them stands proved beyond any suspicion. Their misconduct is of a gravest nature, which calls for infliction of some exemplary punishment upon them.

In view of the facts and circumstances narrated above, I am convinced that the delinquents have proved themselves to be a dead wood. They have no regards for discipline and departmental rules and regulations. They are vitiating the disciplinary environment in the police force. An avoidable burden on the State exchequer, they does not deserve to be retained on the rolls of the force any more. Their retention on the rolls of the force is likely to prove hazardous to our efforts of enforcing discipline in the force. Their delinquency has become unbearable and inexcusable now. They have lost their utility in the force absolutely. Any sympathy or leniency shown to them is likely to encourage similar undisciplined elements in the force and, in this manner; the very root of discipline in the force would shatter. Therefore, it seems to be justified to throw them out of the force urgently.

As such, after making an analytical and comprehensive study of various facts and circumstances available on the file, I am of the considered opinion that there is no question of mitigating the punishment proposed for the delinquents in the show cause notice. They have proved themselves to be a bad hat and thus needs to be fired



from the force. They have committed the shameful act, which is of very serious nature. This has dismantled the image of the police. In this way, they have exhibited an act of grave negligence. Being public servants and that too members of the disciplined force like police, they are supposed to work with commitment and strong sense of duty but they did not. They acted to the contrary and indulged grave act of misconduct. By such act and conduct they have tarnished image of police department in eyes of general public. Due to such act and conduct, they doesn't deserve to remain in service.

*In view of the facts stated above, I, Dr. Arpit Jain, IPS, Deputy Commissioner of Police, Headquarters, Gurugram in exercise of the powers conferred upon me under Rule 16.1 (2) of Punjab Police Rules, 1934, as applicable to the State of Haryana hereby awarded the **punishment of dismissal from service upon the delinquents EASI Subhash No. 1536/GGM and Const. Surender No. 1648/GGM with immediate effect.** In my view, nothing short of this penalty can meet the ends of justice in the instant case.*

A copy of this order be delivered to the delinquents, free of cost, and order be booked accordingly.”

From the perusal of findings recorded by authorities, it is evident that primarily there is allegation of carelessness against the petitioner. There is no allegation of connivance or misuse of his position. The Disciplinary Authority has further recorded the fact that delinquent has proved himself to be a dead wood. He has no regards for discipline and departmental Rules and Regulations. He does not deserve to be retained on the rolls of the Force.

8. As per Rule 16.2 of 1934 Rules, a Police Officer may be dismissed from service for gravest act of misconduct or cumulative effect of continued



misconduct proving incorrigibility and complete unfitness for police service. The said Rule further provides that in passing award of dismissal from service, the Authority shall take care of length of service of the offender and his claim to pension.

9. Rule 16.2 of 1934 Rules for the ready reference is reproduced as below:-

“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. From the plain reading of above quoted Rule, it is quite evident that there should be allegation of gravest mis-conduct or continued misconduct proving incorrigibility and complete unfitness for the police service. From the perusal of impugned orders, it cannot be culled out that authorities have considered scope of Rule 16.2 of PPR in true spirit while passing impugned orders. The Authorities have not even recorded findings to the effect that petitioner was guilty of gravest acts of misconduct or continued misconduct proving incorrigibility. The authorities have not further considered length of service of the Officer as well as his entitlement to pension. The petitioner on the date of passing dismissal order had already completed service of almost 25 years. There is nothing on record disclosing that on any earlier occasion he was subjected to punishment, thus, it can be inferred that he had unblemished record.

It is a settled proposition of law that punishment should be incommensurate to alleged offence. The principle of proportionality should be followed. Rule 16.2 of the PPR embodies guiding factors which should be kept in mind while passing order of dismissal. For an employee, dismissal from service is gravest and most harsh punishment.

11. In ***Om Kumar v. Union of India, (2001) 2 SCC 386*** matter came up for hearing on account of an order of Supreme Court dated 4.5.2000 proposing to re-open the quantum of punishments imposed in departmental inquiries on certain officers of the Delhi Development Authority who were connected with the land of the DDA allotted to M/s. Skipper Construction Co. It was proposed



these officers in the said matter. The question posed before the court was whether the right punishments were awarded to the officers in accordance with well known principles of law or whether the punishments required any upward revision. Proportionality as a constitutional doctrine has been highlighted in as follows:

*"30. On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability similar to the one experienced by English Courts for declaring as unconstitutional legislation on the principle of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of "proportionality" has indeed been applied vigorously to legislative (and administrative) action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India - such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India - this Court has occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. "Reasonable restrictions" under Articles 19(2) to (6) could be imposed on these freedoms only by legislation and courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this Court, the extent to which "reasonable restrictions" could be imposed was considered. In **Chintamanrao v. State of M.P. [AIR 1951 SC 118: 1950 SCR 759]** Mahajan, J. (as he then was) observed that "reasonable restrictions" which the State could impose on*



*the fundamental rights "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public". "Reasonable" implied intelligent care and deliberation, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Articles 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri, C.J. in **State of Madras v. V.G. Row** [AIR 1952 SC 196: 1952 SCR 597: 1952 Cri LJ 966], observed that the Court must keep in mind the "nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time". This principle of proportionality vis-a-vis legislation was referred to by Jeevan Reddy, J. in **State of A.P. v. McDowell & Co.** (1996) 3 SCC 709 recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in the last fifty years. Decided cases run into thousands.*

*31. Article 21 guarantees liberty and has also been subjected to principles of "proportionality". Provisions of the Criminal Procedure Code, 1974 and the Indian Penal Code came up for consideration in **Bachan Singh v. State of Punjab** [(1980) 2 SCC 684] the majority upholding the legislation. The dissenting judgment of Bhagwati, J. (see **Bachan Singh v. State of Punjab** (1982) 3 SCC 24] dealt elaborately with "proportionality" and held that the punishment provided by the statute was disproportionate.*

32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the



*courts considered the question whether the classification was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable [see **Air India v. NergeshMeerza [(1981) 4 SCC 335 (SCC at pp. 372-373)]**. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in **State of A.P. v. McDowell and Co. (1996) 3 SCC 709.**"*

12. In **Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442**, the Apex Court held that any penalty which is disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. The relevant extracts of the judgment read as:

"15. ... It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. ..."

13. In the case in hand, the punishment awarded is contrary to principle of proportionality and Rule 16.2 of PPR especially when there is no finding as necessitated by Rule 16.2 of PPR, thus, the impugned orders deserve to be set aside.

14. In the normal course, matter is remanded to authorities to reconsider quantum of punishment. In the case in hand, the petitioner has to retire in October, 2025. He has 25 years service to his credit and is not involved in any offence. He has unblemished record. The act of petitioner cannot be called as gravest misconduct in terms of Rule 16.2 of PPR. Considering the findings



recorded by authorities; length of service of the petitioner and his date of superannuation, this Court does not find appropriate to remand the matter back to authorities, rather, finds it appropriate to substitute the awarded punishment by order of pre-mature retirement and forfeiture of one increment with cumulative effect.

15. Accordingly, the impugned order dated 29.11.2024 (Annexure P-6) and order dated 08.01.2025 (Annexure P-8) are hereby modified to the extent of quantum of punishment. The petitioner is ordered to be superannuated from the date of impugned order of dismissal from service i.e. 29.11.2024. He shall also be liable to punishment of forfeiture of one increment with cumulative effect. He shall be entitled to retiral dues.

16. Disposed of.

27.02.2025
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes