



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

CWP No.17757 of 1999(O&M)

Date of Decision: 09.01.2025

Iqbal Kaur

....Petitioner

VS.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Bikramjit Singh Patwalia, Advocate
Mr. Gaurav Jagotia, Advocate and
Mr. Abhishek Masih, Advocate
for the petitioner

Mr. Aman Dhir, DAG, Punjab

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 :

- (i) Enquiry Report dated 10.08.1994 (Annexure P-4);
- (ii) Order dated 08.11.1994 (Annexure P-5) whereby she was dismissed from service;
- (iii) Orders dated 06.02.1995 (Annexure P-8) and dated 23.12.1993 (Annexure P-10) whereby her appeal and revision respectively were dismissed.



2. The petitioner joined Punjab Police on 06.12.1978 as a Constable. She was promoted to the post of Head Constable in 1988. On account of absence from duty, she was suspended in February'1994. She was issued Charge Sheet on 26.05.1994. The respondent after conducting enquiry and following prescribed procedure came to a conclusion that she deserves to be dismissed from service and was accordingly dismissed vide order dated 08.11.1994 (Annexure P-5). She unsuccessfully preferred appeal and revision before Appellate Authority and Revisionary Authority respectively.

3. Mr. Bikramjit Singh Patwalia, Advocate submits that allegation against the petitioner did not warrant punishment of dismissal from service. As per Rule 16.2 of Punjab Police Rules, 1934 (in short "1934 Rules"), a Police Officer may be dismissed from service if there is allegation of gravest misconduct or it is found that he is guilty of continued mis-conduct proving incorrigibility and complete unfitness for police service. The allegations against the petitioner were not such which warranted her dismissal from service. The prime allegations against her were that she was absent from duty for 25 hours and made a wrong entry in the Roznamcha to the effect that she was going to Ropar to collect her pay. The third allegation against her was that she did not obey order of her senior to the effect of joining duty at MLA Hostel.

4. Mr. Aman Dhir, DAG, Punjab submits that petitioner has already attained the age of 58 years, thus, she cannot be reinstated. There were three allegations against her. Police force is a disciplined force and



every officer is bound to obey orders of his/her seniors. She manipulated record with respect to her absence from duty.

5. I have heard counsel for the parties and perused the paper book with their able assistance.

6. The findings recorded by Enquiry Officer and Disciplinary Authority stand adverted to by Appellate Authority in its order dated 06.02.1995 (Annexure P-8). Instead of noticing findings of Enquiry Officer or Disciplinary Authority, it is appropriate to look at findings recorded by Appellate Authority which are reproduced as below:-

“I have gone through the appeal and relevant record carefully and find that the appellant has been dismissed from service on the allegations that while posted on Security duty at Punjab Bhawan, Chandigarh, she became absent from duty from 5.10.93 to 6.10.1993 for 25 hours, got made a wrong entry in the Roznamcha i.e. DDR No.11 dated 6.12.93 that she had to go to Ropar to collect her pay & came back on 7.12.1993. Further on 27.12.1993, Karam Singh, Inspector, Security ordered her to go to MLA Hostel for duty, but she refused to obey the order. All the allegations were duly established against the appellant in the departmental enquiry held against her under rules. PW-I, ASI Sardul Singh, Police Lines, Ropar in his statement, stated that the appellant had received her pay of November, 1993 on 11.12.1993 on which date a sum of Rs.2938-80 Ps. was disbursed. This ASI was Cashier at that time in the Police Lines, Ropar. Though the appellant did not mention the date under her signatures regarding the receipt of her pay, but from the evidence of ASI Sardul Singh(PW-7), it stands amply proved that the pay was received by the appellant on



11.12.1993 as per record of the Police Lines, Ropar. The evidence of ASI Om Parkash(DW-1) does not help the appellant as this ASI was neither a cashier nor maintained the salary record of Police Lines, Ropar in the Month of December, 1993. So in view of the above said reasons, the impugned orders are quite legal and in accordance with the rules. I, therefore, find no force in the appeal and reject the same.”

7. From the perusal of findings recorded by Appellate Authority, it is evident that primarily there is allegation of absence from duty for 25 hours. There is further allegation that petitioner had not gone to Ropar instead made wrong entry to the effect that she was going to Ropar. The third allegation is not considered serious by the Appellate Authority.

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

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 mis-conduct 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 1934 Rules 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 mis-conduct or continued mis-conduct proving incorrigibility. The authorities have not



further considered length of service of the Officer as well as her entitlement to pension. The petitioner on the date of passing dismissal order had already completed service of almost 16 years. There is nothing on record disclosing that on earlier occasions she was subjected to punishment, thus, it can be inferred that she had unblemished record. It is a settled proposition of law that punishment should be in commensurate to alleged offence. The principle of proportionality should be followed. Rule 16.2 of the 1934 Rules 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. The punishment awarded was contrary to principle of proportionality and Rule 16.2 of 1934 Rules especially when there is no finding as necessitated by Rule 16.2 of 1934 Rules. The impugned orders deserve to be set aside. The petitioner is out of service for quite a long time and lost all benefits like salary, seniority, social status, opportunity to serve the society etc. which enure to a police official. Thus, there is no need to award her any further punishment for the alleged lapse.

11. There is another facet of the matter which needs to be taken care of. The petitioner has already attained age of superannuation, thus, she cannot be ordered to be reinstated. On account of dismissal from service, she was deprived from benefit of gratuity, leave encashment and pension. She had served the Police Department for 16 years and is out of service since 1994. She cannot be paid salary from the date of her dismissal to date of notional retirement. If she has not completed qualifying period for pension, it would not be fair at this stage to extend benefit of pension,

however, if she is eligible to pension on the basis of 16 years service, she deserves to be extended said benefit.

12. In the wake of above noticed peculiar facts and circumstances, the impugned orders deserve to be set aside and accordingly set aside with a direction that petitioner shall not be entitled to salary and allowances from the date of termination to date of retirement, however, she would be entitled to gratuity, leave encashment and pension on the basis of length of service. It is made clear that period from the date of termination to notional retirement shall not be included in the length of service for the purpose of pension. It is further made clear that interest @ 9% per annum shall be payable on the gratuity and leave encashment. The needful shall be done within three months from today.

12. Petition stands disposed of in the above terms.

13. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

09.01.2025
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	