



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

208

CWP-5780-2016 (O&M)

Date of Decision: 28.10.2025

PYARE LAL

...Petitioner

Vs.

STATE OF HARYANA AND ORS.

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Bikram Chaudhary, Advocate
for the petitioner

Mr. Ravi Partap Singh, DAG Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:

- i. Enquiry report dated 15.10.2012;
- ii. Order dated 08.12.2012, whereby he was dismissed from service;
- iii. Order dated 16.04.2013, whereby his appeal was dismissed; and
- iv. Order dated 30.05.2014 whereby his revision was dismissed

2. The petitioner joined Haryana Police as Constable in 1985.

On 22.05.2022, petitioner met with an accident and suffered head injury.

He got admitted in SMS Medical College & Hospital, Jaipur, Department

of Neurosurgery. He was chargesheeted on 26.01.2012 for absence from duty for a period of 1 year 3 months and 4 days. He failed to join the disciplinary proceedings and was proceeded *ex parte*. On 15.10.2012, charges levelled against him stood proved. Respondent No.4 issued show cause notice dated 17.10.2012 proposing dismissal from service. The Deputy Commissioner of Police, Headquarters Faridabad vide order dated 08.12.2012 ordered to dismiss him from service. He preferred appeal as well as revision which were dismissed vide orders dated 16.04.2013 and 30.05.2014, respectively.

3. Learned counsel for the petitioner submits that while passing order of dismissal from service, length of service of the petitioner and his claim towards pension was not considered by the authorities.

4. *Per contra*, learned State counsel submits that petitioner was a habitual absentee. He was subjected to punishment on three earlier occasions. He was part of Police Force, thus, no leniency is warranted. He did not participate in the departmental proceedings despite sufficient opportunities and at this stage his claim that he was suffering from head injury and undergoing treatment cannot be countenanced.

5. I have heard learned counsel for the parties and perused the record of the case.

6. As per Rule 16.2 of Punjab Police Rules, 1934 (as applicable to State of Haryana) (in short 'PPR'), 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.

7. Rule 16.2 of PPR for the ready reference is reproduced as below:-

“16.2. Dismissal.

(1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or continued misconduct proving Incurability 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.

Explanation.- For the purposes of sub-rule (1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action:

- (i) indulging in spying or smuggling activities;*
- (ii) disrupting the means of transport or of communication;*
- (iii) damaging public property;*
- (iv) causing indiscipline amongst fellow policemen;*
- (v) promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;*
- (vi) going on strike or mass casual leave or resorting to mass abstentions;*
- (vii) spreading disaffection against the Government; and*
- (viii) causing riots and the like*

(2) An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An

enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16/1.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental inquiry, 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 description roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

8. From the plain reading of above quoted Rule, it is quite evident that there should be allegation of gravest misconduct or continued misconduct proving incorrigibility and complete unfitness for the police service. It is a settled proposition of law that punishment should be 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.

9. The Supreme Court time and again has held that in case

Court finds that punishment awarded by authority is disproportionate to alleged misconduct, the Court should remand the matter to competent authority to reconsider quantum of punishment. As per principle of proportionality, punishment prescribed by legislation must be in commensurate to alleged offence. If punishment is disproportionate to alleged offence, it is violative of Article 14 of the Constitution of India.

In '*Om Kumar v. Union of India*', (2001) 2 SCC 386, a 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 to consider imposition of higher degree of punishments in view of the roles of 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: 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], 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.**"*

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. ...”

10. The Hon’ble Apex Court in ***State of Punjab v. Ram Singh, (1992) 4 SCC 54*** has interpreted Rule 16.2 of PPR. The Court has held that an officer may be dismissed in two situations i.e. on account of gravest misconduct or cumulative effect of continued misconduct. The Court has further held that in case of habitual absence from duty, keeping in view length of service, an officer may be compulsorily retired. 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 reemployment, 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 of PPR and perusal of afore-cited judgment reveals that a police officer may be dismissed from service subject to following circumstances and conditions:

- i. If the police officer is accused of gravest misconduct; or
- ii. The cumulative effect of continued misconduct proves that police officer is incorrigible and completely unfit for the service; or
- iii. The authority passing order shall consider length of service as well as claim of pension.

12. The delinquent employee was proceeded *ex parte*. He neither joined inquiry nor proceedings before the disciplinary authority. From the perusal of impugned order, it can be culled out that past record was not considered by the Disciplinary Authority, thus, past record cannot be considered.

13. The disciplinary authority as well as appellate authority while passing impugned orders has not taken care of length of service of the deceased employee as well as his entitlement to pension. As per statement of learned counsel for the petitioner, made at Bar, in the Police

Department an employee is entitled to pension on completion of twenty years service. The deceased employee had already completed 27 years service on the date of passing impugned order thus, he had already completed qualifying service and was eligible to pension. The respondent while passing impugned order has neither considered length of service of deceased employee nor his entitlement to pension. The authorities were bound to consider these factors while passing impugned orders because these are mandatorily required to be considered.

14. A Coordinate Bench of this Court in '***State of Punjab Vs. Surjit Singh***', 2002(3) SLR 148, while referring to judgment of Apex Court in '***Major G.S. Sodhi vs. Union of India***', 1992 (3) RSJ 502, affirmed the order of dismissal of the petitioner therein, however, having regard to the service rendered by the petitioner, granted him liberty to make representation for the benefits which has accrued in his favour for rendering qualifying service. The relevant extracts of the judgment read as:

"9. After hearing learned counsel for the parties and perusing the case law cited, I am of the view that no interference is called for with the order of dismissal preceded by departmental inquiry wherein misconduct of absence from duty was fully proved. In the context of the Punjab Police Rules, absence from duty could be treated as gravest act of misconduct as held by the Supreme Court in Ashok Kumar Singh's case (supra), and no doubt, it is expected and is desirable that the punishing authority expressly records a finding of this nature and also consider the past record, and also record reasons for depriving an employee of pension and reasons for

imposing punishment even where the past record may be clean, the order passed by the punishing authority is not open to interference unless it can be held that the charge was not proved or the order was vitiated by mala fides or arbitrariness. The observations in the order about treating the period of absence to be leave cannot be taken to be condoning the absence but only with a view to maintain correct record. Even absence of express mention of consideration of the past record and reasons for depriving the employee of pension will not always vitiate the order nor warrant substitution of lesser punishment such as, compulsory retirement etc. by the civil Court, the scope of interference by the civil court being limited to see that the order of punishment was not passed in denial of reasonable opportunity, was not without evidence and was not mala fide or arbitrary. Where the charge was fully proved, as in the present case, order of dismissal was justified as per the law laid down by the Supreme Court in Ashok Kumar Singh's case (supra), there was no scope for interference. This being the position answer to the questions arising in this appeal have to be in favour of the appellant-State, and interference by the courts below with the order of dismissal cannot be held to be legal and valid.

10. In Major G.S. Sodhi v. Union of India, 1992(3) R.S.J. 502 : 1994(3) SCT 335 (SC), it was observed that since the punishment of forfeiture of pension and other benefits has not been inflicted, such benefits ought to be given to the concerned employee. Following the said judgment, a Single bench of this Court in Krishan Lal v. State of Punjab, 1997(1) R.S.J. 535 observed that claim of the appellant in that case deserved to be considered sympathetically. I find that the observations made in the said case apply to the present case also.

11. For the above reasons, this appeal is allowed, decree of the courts below is set aside and the suit filed by

the respondent-plaintiff is dismissed. However, having regard to the fact that the plaintiff had rendered service of about fifteen years, he should not be deprived of pensionary and other benefits earned by him for rendering service. If the plaintiff makes a representation in this regard, the authorities will consider to grant such benefits to him and the representation, if any, made by the plaintiff will be decided within a period of three months, and benefits, if any held admissible to him shall be paid to him within three months of the disposal of the representation.

Appeal allowed.”

15. The delinquent employee has already attained age of superannuation so there is no question of reinstatement. Keeping in view length of service rendered by the employee and the fact that disciplinary authority, in the impugned order, has not taken into consideration length of service rendered by employee and his claim for pension, as mandated by Rule 16.2 of PPR, the matter ought to be remanded to the disciplinary authority to reconsider question of entitlement of pension, however, at this belated stage, this Court does not find it appropriate to remand the matter back to disciplinary authority. No useful purpose would be served if matter is remanded back.

16. The punishment of dismissal from service was harsh and against the principle of proportionality. This Court finds it appropriate to convert punishment of dismissal from service into compulsory retirement. The petitioner shall be deemed to be compulsorily retired w.e.f. 08.12.2012 i.e. date of dismissal from service. As conceded by learned counsel for the petitioner, the petitioner shall be entitled to gratuity and leave encashment with interest @6% p.a., however, shall not be entitled

to salary/pension for the intervening period. Pension would start w.e.f. 01.10.2025 as per his entitlement.

- 17. Disposed of in above terms.
- 18. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

October 28, 2025
Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No