

Before G S. Sandhawalia, J.

SATBIR SINGH—Petitioner

versus

**THE DIRECTOR GENERAL OF POLICE,
HARYANA AND OTHERS—Respondents**

CWP No. 11500 of 1997

January 11, 2013

Constitution of India - Art. 226, 227 - Punjab Police Rules, 1934 - Rl. 16.2- Petitioner was absent from the service - Regular notices were issued - Challenge thereto - Order of Dismissal was passed - Absence was taken as grave misconduct - Held, Length of service had not been taken into consideration and order of compulsory retirement was passed - Petitioner is entitled for relief of lesser punishment keeping his length of service in mind - Writ partly allowed.

Held, that in the present case, as it is noticed that only after the order of dismissal had been passed on 19.08.1994 and it was received by the petitioner on 23.08.1994, the petitioner suddenly became aware of the fact that he had to report for duty and he was still in service and then filed an appeal on 22.09.1994 after having not reported for duty for more than 8 months. This absence was itself grave misconduct as held by the punishing authority. The petitioner, however, is entitled for the relief of lesser punishment keeping his length of service in mind as, admittedly, he was appointed on 08.09.1981 and he had almost 13 years of service on the date of dismissal on 19.08.1994. The punishing authority, while dismissing him, failed to take into consideration the length of service and his claim for pension in the impugned order. The petitioner in his appeal also, before respondent no. 2, agitated his claim for pension but respondents no. 2 and 3 failed to take this aspect into consideration and dismissed the appeal and revision.

(Para 10 & 11)

Further held, that accordingly, in view of the fact that the petitioner had almost 13 years of service at the time of dismissal and the length of

service had not been taken into consideration by the disciplinary authorities and in view of the fact that the order of dismissal was passed way back on 19.08.1994, it would be appropriate if it is converted into an order of compulsory retirement w.e.f. 19.08.1994 and the respondents would process the case of the petitioner for release of retiral benefits, if entitled to in accordance with Rules. The said exercise be carried out within a period of 2 months from the date of receipt of certified copy of the order.

(Para 14)

Vipul Jindal, Advocate, *for the petitioner.*

Saurav Mohunta, DAG, Haryana.

G.S. SANDHAWALIA, J.

(1) The present petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari for quashing of orders dated 19.08.1994 whereby, the petitioner, a Constable in the Police force, has been ordered to be dismissed from service. Challenge is also to the dismissal of the appeal by respondent no. 2 on 14.12.1994 and dismissal of the revision by respondent no. 1 on 12.07.1996.

(2) The pleaded case of the petitioner is that he joined as a Constable on 08.09.1981 and has been performing his duties diligently and intelligently without any sort of complaint. While being posted as Gun-man of Sh. Krishan Murli Hooda, he was posted to Pamala Barrier on 30.11.1993 and was relieved on 07.12.1993 for joining his new place of posting. The petitioner could not join his duty because of the ailment and remained visiting one hospital or another alongwith his family members and due to his condition deteriorating and beyond control, he was not found mentally and physically fit to join duty. Reference to the OPD ticket dated 04.08.1994 was made that he remained under treatment from 07.12.1993 to 22.08.1994. When the petitioner contacted the office of respondent no. 3 and explained that he had been continuously ill, he was told that ex parte departmental inquiry had been conducted against the petitioner as he was continuously absent from duty and in the inquiry his guilt had been proved and he had been dismissed from service. The said dismissal order was got received by

the authorities from the petitioner on 26.08.1994. The said order was passed without serving any charge sheet upon the petitioner and without asking any explanation and without issuing any show cause notice. The authorities conducted the inquiry without serving the petitioner and proceeded against him and passed the order of dismissal. The inquiry officer had prepared summary list of allegations and list of prosecution witnesses and summoned the petitioner on 08.03.1994 and the notice was sent at the home address of the petitioner but, nowhere it was got received by the petitioner. Thereafter, another registered notice dated 04.04.1994 was again sent at the home address of the petitioner but the said letter was received back undelivered and the petitioner was not found present at the home address and members of the family had refused to take the delivery of the registered letter. The inquiry officer recorded the statements of the prosecution witnesses and framed charge sheet against the petitioner and copy of the same had been sent at the home address but the same was not delivered to the petitioner as none of the family members had received the same. As per Annexure P-2, the petitioner was informed for submitting a list of defence witnesses and there was no service of this information. There was again no service after the report was submitted by the Inquiry Officer and the order was passed and at no stage, the petitioner was associated. The petitioner had filed an appeal before respondent no. 3 taking up this ground but he had dismissed the appeal on 14.12.1994 and similarly the revision also filed before respondent no. 1 had been dismissed against the ex parte departmental proceedings. The petitioner had asked for various documents to seek protection of a competent Court of jurisdiction but the said material was not supplied to him on the ground that he had already been dismissed from service. Accordingly, the present petition was filed placing reliance upon Rule 16.2 of the Punjab Police Rules, 1934 (as applicable to the State of Haryana) (hereinafter referred to as "The Police Rules") that the authorities had not taken into consideration the length of service.

(3) The State, in its written statement, took the preliminary submission that the departmental inquiry was ordered on 01.03.1994 by the Superintendent of Police. Notice dated 08.03.1994 was sent to the petitioner at his home address but he was not available. Another notice was sent on 04.04.1994 which was received back undelivered with the report that the petitioner was not available at the home address. Another notice had been

sent and the report of the special messenger was that the petitioner was not available. The mother of the petitioner had refused to accept the service of notice and disclose the whereabouts of the petitioner in the presence of Dhare Ram, Chowkidar. Respondent no. 3, feeling satisfied that the petitioner was deliberately evading the service of notices and not attending the proceedings despite intimation, ordered ex parte proceedings on 16.05.1994. The inquiry officer again sent notice dated 17.05.1994 intimating the date of recording the ex parte evidence. The mother and wife of the petitioner refused to accept the notice or to tell his whereabouts in the presence of Dhare Ram, Chowkidar on 18.05.1994. The petitioner had been summoned through SHO, Police Station Sadar, Rohtak vide notice dated 17.06.1994 and as per report of the local police, the petitioner had met Constable Siri Bhagwan No. 961 and accepted the notice himself but put the signatures of his brother-Ram Phal. Therefore, the petitioner was having clear knowledge of the departmental proceedings but did not join the same deliberately. The inquiry officer recorded the statement of prosecution witnesses and prepared the charge against the petitioner which was approved by the then Superintendent of Police, Rohtak on 05.07.1994. Copy of the charge was also sent to the petitioner alongwith notice dated 05.07.1994 and 12.07.1994 by the inquiry officer. The petitioner neither submitted any list of defence witnesses or any written reply. The inquiry officer submitted his report holding the petitioner guilty of the charge of willful absence and show cause notice of proposed punishment of dismissal from service alongwith inquiry report was sent by the then Superintendent of Police, Rohtak to the petitioner. The notice was accepted by the wife of the petitioner in the presence of Silak Ram, Tek Ram Lamberdar and Ishwar Singh of his village Gaddhi Kheri. No reply was submitted to the show cause notice and eventually order of dismissal of the petitioner was passed by the then Superintendent of Police, Rohtak. The appeal and revision filed by the petitioner were also dismissed.

(4) On merits, it was pleaded that the two future increments of the petitioner were stopped with permanent effect for his absence w.e.f. 18.06.1991 to 08.07.1991. Two future increments of the petitioner were stopped for his absence from duty from 07.12.1991 to 20.11.1992. Two future increments of the petitioner were stopped vide OB No. 377/91 as per the entry in the character roll. The petitioner was ordered 10 days' drill

punishment for absence on two occasions in the year 1995 and 10 days drill punishment for absence vide OB No. 136/87. The petitioner was again awarded 10 days drill punishment vide OB No. 223/87 and was warned to be careful vide OB No. 696/86 for absence from duty. Similarly, he was warned to be careful for absence vide OB No. 1086/86. The petitioner had absented at will on earlier occasions also. The medical certificate was never produced by the petitioner during inquiry or during his appeal and it was an after-thought. It is also submitted that the petitioner opted to get his treatment at Charkhi Dadri, which was not the native place and his native village was 5 kilometers from Rohtak. He had deliberately avoided joining in the proceedings and had concealed his identity and signed notice dated 17.06.1994 in the name of Ram Phal Singh. The conduct of the petitioner was grave and, therefore, the dismissal order had been rightly passed and he was not entitled for any claim towards pension. The family members of the petitioner never disclosed about his whereabouts and the above facts showed volumes of his mischievous conduct.

(5) Counsel for the petitioner firstly submitted that the persons mentioned in the list of witnesses did not prove that service was ever effected upon the petitioner and, therefore, ex parte proceedings against him were without reason and were not justified. Reliance was placed upon *Dr. Ramesh Chandra Tyagi versus Union of India (1)*, to contend that the service had not been effected upon the petitioner. Secondly, it was submitted that as per Rule 16.2 of the Rules, dismissal had to be awarded only for the gravest act of misconduct and the cumulative effect of continued misconduct proving any incorrigibility and complete unfitness for police service. While passing such an order of dismissal, regard had to be taken to the length of service of the person and his claim for pension. Accordingly, it was submitted that the petitioner having been employed on 08.09.1981 and having been dismissed on 19.08.1994 was entitled for his pension and the authorities did not take this fact into consideration. Accordingly, reliance was placed upon judgments rendered by this Court in *Ex. Constable Malkiat Singh versus State of Punjab and others (2)*, *Dharam Pal versus State of Haryana and others (3)*, and a Division Bench judgment

(1) 1994 (2) SCC 416

(2) 2012 (4) SCT 323

(3) 2009 (4) SCT 130

of this Court rendered in *Dhan Singh versus State of Haryana and others* (4). It was thereafter submitted that a personal hearing should have been given to the petitioner and reliance was placed upon *Gurbachan Singh Bachi versus State of Punjab and another* (5).

(6) The State, on the other hand submitted that the petitioner was a habitual absentee and had been punished four times earlier for willful absence from duty which was noticed by respondent no. 3 and accordingly, prayed that the writ petition be dismissed since the petitioner had remained absent for over eight months and even one day's absence for uniformed personnel was grave misconduct.

(7) The provision which govern dismissal is 16.2 of the Police Rules. The said provision reads as under:-

[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.

"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;*

(4) 2008 (3) SCT 816

(5) 2004 (1) SCT 568

(vii) spreading disaffection against the Government; and ?

(viii) Causing riots and the life."

(8) The said provision has been examined by the Hon'ble Apex Court and this Court several times regarding the issue that what constitutes the gravest act of misconduct and the incorrigibility and complete unfitness for police service. The second portion as to the length of service of the offender and his claim for pension has also been examined time and again. A three-judge Bench of the Hon'ble Apex Court in the case of *State of Punjab and others versus Ram Singh Ex-Constable (6)*, bifurcated the above said rule into two categories and held that both have to be examined separately and firstly it has to be seen by the punishing authority that the misconduct of the petitioner is single act or include several acts and even in case of a single act, whether it was sufficient to award the order of dismissal. Regarding the second part of the Rule, it was held that after taking into account the cumulative effect of the unfitness of the person, the length of service of the offender and his claim for pension has to be taken into consideration. Thus, long length of service and his claim for pension in order to enable the person to earn proportionate pension was also to be examined by the punishing authority. The relevant part of the judgment of the Hon'ble Apex Court reads as under:-

"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 that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that 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 rules as gravest act of misconduct.

8. The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness of 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 of 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 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 complete unfit to remain in service than 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 an 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".

(9) The said view continues to hold the field and it is in view of the said observations, the case has to be examined as to whether the petitioner was such an employee whose incorrigibility and complete unfitness was there for police service. A perusal of the order of the Superintendent of Police, Rohtak goes on to show that the petitioner remained absent from 07.12.1993 when he was relieved on his transfer but he neither reported at his place of posting nor in the Police Lines, Rohtak. That the inquiry officer was appointed on 01.03.1994 after almost three months when the petitioner did not report for duty. The said inquiry officer issued summons, sent notice at the home address through the SHO, Police Station Sadar but the petitioner did not join the departmental inquiry. The subsequent registered notice was again sent on 04.04.1994 and the members of the family refused to take the delivery of the registered letter. Ultimately, ex parte proceedings were initiated on 16.05.1994. In the inquiry proceedings, the department examined as many as 10 witnesses who gave statement that efforts were made to locate the petitioner at his earlier place of posting and his whereabouts and to find out where he was apart from trying to serve the notice of the departmental inquiry upon him. Thereafter, the inquiry officer submitted his findings holding him guilty of the charge. The finding of the inquiry officer alongwith show cause notice dated 29.07.1994 was also sent to the petitioner through Constable Ranbir Singh. His wife refused to take the notice in the presence of two respectables of the village and a report was recorded on 29.07.1994 regarding this aspect. It was only thereafter the order of dismissal was passed by respondent no. 3 on 19.08.1994 after taking into

account that four punishments had earlier been imposed upon the petitioner on account of his willful absence. It was in such circumstances respondent no. 3 came to the conclusion that the petitioner was a habitual absentee and keeping in view the totality of circumstances, he came to the conclusion that it was a gravest act of misconduct and indiscipline on part of the petitioner which would fall under clause (iv) of the *Explanation* of the Rule 16.2, reproduced above. Thus, no fault can be found in the order passed by the Superintendent of Police, Rohtak regarding the first part that the petitioner was totally incorrigible and completely unfit for police service. It has been time and again held by this Court and by the Hon'ble Apex Court in various judgments that the police force, being a disciplined force, even absent from duty for a short period would be grave misconduct. Reference can be safely made to the Division Bench judgment of this Court in *Karnail Singh versus State of Punjab (7)* and judgment of the Hon'ble Apex Court in *State of U.P. and others versus Ashok Kumar Singh and another (8)*.

(10) In the present case, as it is noticed that only after the order of dismissal had been passed on 19.08.1994 and it was received by the petitioner on 23.08.1994, the petitioner suddenly became aware of the fact that he had to report for duty and he was still in service and then filed an appeal on 22.09.1994 after having not reported for duty for more than 8 months. This absence was itself grave misconduct as held by the punishing authority.

(11) The petitioner, however, is entitled for the relief of lesser punishment keeping his length of service in mind as, admittedly, he was appointed on 08.09.1981 and he had almost 13 years of service on the date of dismissal on 19.08.1994. The punishing authority, while dismissing him, failed to take into consideration the length of service and his claim for pension in the impugned order. The petitioner in his appeal also, before respondent no. 2, agitated his claim for pension but respondents no. 2 and 3 failed to take this aspect into consideration and dismissed the appeal

(7) 1993 (3) PLR 117

(8) (1996) 1 SCC 302

and revision. This proposition regarding the length of service and its due examination by the punishing authority has also been dilated upon by the Hon'ble Apex Court in *Harjit Singh and another versus State of Punjab and another (9)*, In the said case, vide order dated 21.01.1985, the order of dismissal had been passed and the Apex Court came to the opinion that it would be appropriate if the quantum of punishment was fixed by way of compulsory retirement to meet the ends of justice since the occurrence was of the year 1984. Relevant paragraph of the judgment reads as under:-

"15. In the aforementioned situation, ordinarily, we would have asked the disciplinary authority to consider the matter afresh, but the occurrence had taken place in the year 1984. The appellants and the said Parminder Singh had worked only for a few years, one of them is dead. In the aforementioned situation, we are of the opinion that we would be justified to fix the quantum of punishment. We are of the opinion that in the facts and circumstances of this case and in particular having regard to the passage of time, punishment of compulsory retirement will meet the ends of justice. If other eligible, the delinquents would be entitled to retiral benefits. The appeal is allowed to the aforementioned extent."

(12) That a Division Bench of this Court in *SI Surinder Singh versus State of Punjab and others (10)*, in a case pertaining to dismissal of service on account of absence, noticed that the said employee had 20 years of service till the date of dismissal and accordingly, directed that the order of voluntary retirement be passed in order to enable the person to get his retiral dues. Similarly, another Division Bench in *Shiv Raj Singh Sidhu versus Union of India and others (11)*, while taking into account 33 years of service of the employee, held that the punishment of forfeiture of two years of service was appropriate and he was deemed to have been retired on 30.11.2004 to entitle him to the benefit of pension.

(9) (2007) 9 SCC 582

(10) 2008 (4) SCT 72

(11) 2011 (2) SCT 626

In *Dhan Singh's case (supra)* also, the service of the petitioner who had served 11 years and 9 months was taken into consideration by the Division Bench and a direction was issued that the matter should be reconsidered.

(13) The judgment in *Ex. Constable Malkiat Singh case (supra)*, relied upon by the petitioner would not be applicable in view of the non-consideration of the judgment of the Hon'ble Apex Court in *State of Punjab and others vs. Ram Singh's case (supra)* and in view of the fact that the petitioner herein had already earlier also absented four times and punished on that account. In the said judgment referred to by the petitioner, the punishing authority had not recorded any such finding as has been done in the present case. In *Dharam Pal's case (supra)*, the Court came to the conclusion that the punishment was disproportionate and there was 37 years of service and it was not a case of absence from duty and thus, would not be applicable. The judgment of *Gurbachan Singh Bachi's case (supra)* pertains only to the issue of natural justice and removal of a member of the Electricity Board. In the present case, the petitioner was given several opportunities to appear before the inquiry officer and the punishing authority but failed to do so and, therefore, the said judgment would not be applicable. Similarly, in the judgment of *Dr. Ramesh Chandra Tyagi's case (supra)* the Apex Court came to the conclusion that the ex parte proceedings were not justified and it was not a case of a person in uniform and was a case of a Research Assistant.

(14) Accordingly, in view of the fact that the petitioner had almost 13 years of service at the time of dismissal and the length of service had not been taken into consideration by the disciplinary authorities and in view of the fact that the order of dismissal was passed way-back on 19.08.1994, it would be appropriate if it is converted into an order of compulsory retirement w.e.f. 19.08.1994 and the respondents would process the case of the petitioner for release of retiral benefits, if entitled to in accordance with Rules. The said exercise be carried out within a period of 2 months from the date of receipt of certified copy of the order.

(15) The writ petition is partly allowed, to the extent mentioned above.