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*Before M.M. Kumar, J.*

STATE OF PUNJAB & OTHERS,—*Defendent/Appellants*

*versus*

JAGIR SINGH,—*Plaintify/Respondent*

R.S.A. No. 4728 of 1980

4th January, 2006

*Punjab Police Rules, 1934—Rl. 16.2(1)—Absence of a Constable from guard duty without any permission from the competent authority—Enquiry Officer holding the Constable guilty of charges and finding absence of Constable as a gravest act of misconduct—Dismissal from service—Appellate authority and Revisional authority upholding the dismissal order—Rl. 16.2(1) provides that 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—Whether absence from duty for only one night could be regarded as gravest act of misconduct within the meaning of Rl.16.2(1)—Held, yes, absence of even one day in the facts and circumstances of the case may be serious enough to conclude that there was a gravest act of misconduct—Absence of Constable from duty resulting killing of four other constables on duty would assume extreme significance—Constable was granted adequate and reasonable opportunity to defend himself—No fault in the enquiry nor any rule shown to have been violated in the holding of enquiry—Principles of natural justice fully complied with—Defence taken by the Constable found to be false—Both the Courts below failing to take into consideration the evidence on record—Findings of Courts below held to be without any evidence, bald and liable to be set aside—Appeal allowed and order of dismissal of Constable upheld.*

*Held*, that the enquiry officer and the disciplinary authority are fully conscious of provisions of Rule 16(2) as the charge-sheet itself used the expression of gravest act of misconduct although the rule has not been mentioned. Moreover, the absence of plaintiff-respondent without permission from a competent authority to leave and the killing of four guards on duty would assume extreme significance. The absence, therefore, has been examined in the light of the attending

circumstances by the authority concerned. There is no fault in the enquiry nor any rule is shown to have been violated in the holding of enquiry. Thus, the order of dismissal dated 17th March, 1989 and the subsequent order passed on appeal and revision dated 16th May, 1989 and 28th August, 1989 respectively are liable to be upheld. The findings recorded by both the Courts below are without any application of mind and fail to take into consideration the evidence on record in the form of enquiry file which contains enquiry report. It has merely been stated that the principles of natural justice have been violated but nothing is pointed out as to which rule and how it has been violated. The findings are without any evidence and are bald. The other findings that rule 16.2 of the Rules has not been kept in view is also not sustainable as the summary of charges clearly elaborate the grave acts of misconduct. It may be true that a single act of absence from duty for a week or even for a longer period may not constitute gravest acts of misconduct yet absence of one day in given facts and circumstances may be serious enough to conclude that there was a gravest act of misconduct. The facts in the present case would make the absence of plaintiff-respondent as a gravest act of misconduct as has rightly been found by the Enquiry Officer. Therefore, those findings recorded by both the Courts below cannot be sustained.

(Para 14)

Satish Bhanot, Sr. D.A.G., Punjab, *for the appellants.*

G.C. Gupta, Advocate, *for the respondent.*

### JUDGEMENT

**M.M. KUMAR, J.**

(1) The State of Punjab being the defendant has challenged the judgments and decrees passed by the courts below in favour of the plaintiff-respondent in this appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for brevity the Code). The only question which arises for determination in this appeal is whether in the facts and circumstances of this case the absence of plaintiff-respondent, who is a Constable in Punjab Police, on the intervening night of 11th August, 1987/12th August, 1987 could be regarded as gravest act of misconduct within the meaning of Rule 16.2(1) of the Punjab Police Rules, 1934 (for brevity the Rules).

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(2) Brief facts of the case necessary for deciding the controversy raised in the instant appeal are that the plaintiff-respondent was working as a Police Constable. He alongwith a number of other Constable was deployed for guard duty at the bungalow of Shri Ratnesh Singh Sodhi, Editor of Punjabi Daily 'Akali Patrika' Jalandhar. In addition to the plaintiff-respondent; Constable Surinder Singh belt No. 2083; Constable Baljit Singh belt No. 2104, Constable Prem Chand belt No. 367 and Constable Makhan Singh belt No. 1993 were also members of the guard and Head Constable Surjit Singh No. 1863 was in charge of the guard. The case of the plaintiff-respondent is that on the fateful night of 11th August, 1987/12th August, 1987 when he was on duty he developed a severe attack of dysentery and high fever. It is claimed that with the permission of H.C. Surjit Singh, in charge of the guard, he went to Dr. Rajinder Singh Chhabra of Jalandhar for his treatment and remained there admitted through out the night. He is claimed to have reported for duty on the next day. He has challenged the order of his dismissal dated 17th March, 1989 passed by the Superintendent of Police, Jalandhar being his disciplinary and appointing authority. Plaintiff-respondent has also challenged order dated 16th May, 1989 passed by the Deputy Inspector General of Police, Jalandhar Range, Jalandhar dismissing his appeal and the order dated 28th August, 1989 passed by Inspector General of Police, Punjab, dismissing his revision petition.

(3) The case of the defendant-appellant is that the plaintiff-respondent absented from duty unauthorisedly which has resulted in killing of Constable Makhan Singh, Constable Prem Chand, Constable Baljit Singh and Constable Surjit Singh, who were the remaining members of the Guard on duty at the bungalow of Shri Ratnesh Singh Sodhi. It was further asserted that the plaintiff-respondent alongwith H.C. Surjit Singh have absented unauthorisedly without seeking prior permission from the competent authority. It has further been asserted that had he been there then the others persons on Guard duty could not be killed. Defendant-appellant has referred to the detailed enquiry report dated 2nd December, 1988 conducted by DSP (City) Jalandhar which is part of the enquiry file Exhibit D-1. The Enquiry Officer after following detailed procedure and affording adequate opportunity of defending himself by the plaintiff-respondent, has recorded the finding that the plaintiff-respondent was guilty of charges by remaining absent from duty without permission and in the

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facts and circumstances of the case, it is a grave act of violation of police discipline. Thereafter the delinquent Constable was issued show cause notice for imposition of major penalty of dismissal and forfeiting of other allowances except the subsistence allowance which stood paid during the suspension period. The delinquent Constable duly replied to the show cause notice,—*vide* his reply dated 28th December, 1988 which resulted in passing of the order dated 17th March, 1989 dismissing the plaintiff-respondent from service. It is appropriate to mention that when the show cause notice was issued to plaintiff-respondent he was given a copy of the enquiry report also. The order of dismissal dated 17th March, 1989 passed by the Superintendent of Police, Jalandhar has been upheld by the appellate authority by dismissing the appeal of the plaintiff-respondent on 16th May, 1989 and also by the revisional authority,—*vide* its order dated 28th August, 1989.

(4) The trial court decreed the suit of the plaintiff-respondent by recording finding that Rule 16(2)(1) of the Rules has not been taken into consideration inasmuch as it has not been found that the misconduct committed by the plaintiff-respondent was a gravest act. It has further been concluded that no reasonable opportunity has been afforded to the plaintiff-respondent and the order of dismissal was vitiated. The findings of the trial court are discernible from para 11 of its judgment which reads as under :—

“I am of the considered opinion that it is well settled law that the court cannot interfere with regard to the quantum of punishment with respect to a person or police officer found guilty of dereliction of duty. In view of my observations that the punishing authority was not alive to the ingredients i.e. while awarding the punishment in terms of Rule 16.2(1) of the P.P.R. It has to be satisfied that the act attributed is one of the gravest acts of the cumulative effect of the continuously misconduct making completely unfit for the police service. I also find that the punishment is too harsh and it is clearly disproportionate to the charge established against the plaintiff. Moreover, I find that the respondent authority has not at all taken into consideration the factum of the relevant provision regularising the Procedure of Civil Code, therefore, it has

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been taken note of while determining the quantum of punishment. No reasonable opportunity has been afforded to the plaintiff before passing the impugned order. In the circumstances, therefore, the impugned order stands vitiated in the eyes of law. Hence, these issues are decided in favour of the plaintiff and against the defendants.”

(5) On appeal the lower appellate court came to the conclusion that absence from duty for only one night intervening 11th/12th August, 1987 could not constitute the basis for finding that it was a gravest act of misconduct. The lower appellate court further held that the punishment is too harsh and disproportionate to the charge established against the plaintiff-respondent. The view of the lower appellate court in this regard is discernible from a perusal of para 9 of its judgment, which reads as under :—

“The plaintiff was found to be absent from duty on 11th August, 1987 at 7.30 p.m. And he had joined his duty on the next day in the morning and for remaining absent from duty only for these 12 hours this severe punishment has been imposed on him which is in contravention of rule 16.2(1) of the Punjab Police Rules. For this the counsel for the plaintiff has relied on **State of Punjab and others vs. Darshan Singh** 1989(1) All India Services Law Journal 191, wherein it has been held by our own Hon'ble High Court that according to rule 16.2(1) of the Punjab Police Rules, the penalty of dismissal from service can be awarded only for gravest act of misconduct. The present misconduct of the plaintiff for remaining absent from duty only for 12 hours is not gravest type of misconduct. On the same point, the counsel for the plaintiff has also relied on **State of Punjab v Parkash Chand** S.L.R. 1992 page 174 wherein it has been held that the absence without leave does not amount to gravest act of misconduct. Moreover the perusal of enquiry file Ex.D1 shows that the proper procedure was never adopted by the Enquiry Officer while holding enquiry proceedings. Summary of allegations and copy of charge sheet was never supplied to the plaintiff in accordance with the provisions of law.”

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(6) As a consequence of the aforementioned findings the orders dated 9th December, 1988, 17th March, 1989 and 16th May, 1989 have been declared illegal, unlawful, unconstitutional, arbitrary, capricious, discriminatory, against the provisions of law, Police Rules etc. The plaintiff-respondent has been held entitled to all the rights, privileges and emoluments attached to the post of Constable.

(7) When the appeal came up for preliminary hearing this court while admitting the appeal had stayed the operation of the judgments of the courts below till further orders as is evident from order dated 21st January, 2000.

(8) Mr. Satish Bhanot, learned State counsel has argued that there is nothing on record to conclude that adequate opportunity of hearing or a chance to defend himself has not been granted to the plaintiff-respondent. According to the learned counsel the enquiry file Ex. D1 bears ample testimony to the fact that every possible opportunity has been granted to the plaintiff-respondent in accordance with the rules. Learned counsel has referred to the issuance of charge sheet (Ex. P1) wherein the plaintiff-respondent has duly signed the receipt of copy. He has then referred to the answer given by the plaintiff-respondent in the proceedings by the Enquiry Officer on 19th December, 1987. Similarly, a list of witnesses was supplied to the plaintiff-respondent on 19th December, 1987 where names of 5 witnesses have been given. Then the statements of various witnesses have been recorded in the presence of plaintiff-respondent which have been duly signed by him. He has also been granted permission to cross-examine those witnesses. Learned counsel has also referred to the statement made by the witnesses of the plaintiff-respondent like Dr. Chhabra at page 59 of the enquiry report and his written statement Ex. P2. Learned State Counsel has also emphasized that after detailed consideration an enquiry report was prepared rejecting the version of the plaintiff-respondent and the statement of Dr. Chhabra because if the plaintiff-respondent was really ill then he could have gone to the Government Doctor who was available at police lines which was near to the bungalow of Shri Ratnesh Singh Sodhi, who was resident of Model Town, Jalandhar. While drawing my attention to page 75 of the enquiry report, learned counsel has maintained that the finding of both the courts below to the effect that no opportunity of hearing was given is completely vitiated and perverse because there is ample

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evidence on record to prove compliance with the rules and principles of natural justice. Learned counsel has then referred to the enquiry report which has found the charges to be established. The charge itself shows that the absence in the facts and circumstances of the case was a grave act of misconduct which is condemnable and punishable.

(9) Mr. G.C. Gupta, learned counsel for the plaintiff-respondent has argued that the version of the delinquent Constable that he remained admitted as an outdoor patient on the intervening night of 11th August, 1987/12th August, 1987 must be accepted and his absence on that account cannot be regarded as a gravest act of misconduct. In that regard learned counsel has placed reliance on a judgment of this court in the case of **Ex. Constable Balwant Singh versus The State of Haryana and others (1)**. According to the learned counsel that absence of delinquent Constable from duty and too with permission from Head Constable Surjit Singh in charge of the guard would not constitute a gravest act of misconduct within the meaning of Rule 16(2) of the Rules. It has further been urged that the finding of the courts below deserve to be upheld inasmuch as the punishing authority or the appellate authority has not kept in view the provisions of Rules.

(10) After hearing the learned counsel for the parties, I am of the view that the only question of law which would arise for determination in this appeal is the one posed in the opening para of this judgment. Rule 16(2) as applicable to the plaintiff-respondent is extracted below for a facility of reference :—

**“16.2. Dismissal—**Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct providing 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) An enrolled police officer convicted and sentenced to imprisonment on a criminal charge shall be dismissed :

“Provided that in case the conviction of a 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 in this behalf.”

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- (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."

(11) A perusal of the aforementioned rule makes it evident that the punishment of dismissal could be awarded only for the gravest act of misconduct. The Enquiry Officer in his enquiry report has held that the charges against the plaintiff-respondent have been proved. Plaintiff-respondent was granted full opportunity in the enquiry as has been rightly pointed out by the learned State counsel. A perusal of the summary of charges at page 33 of the enquiry file would show that the plaintiff respondent absented himself on the night intervening 11th August, 1987/12th August, 1987 without any permission which is an act of gravest violation of the police discipline. The aforementioned summary of charges is in Punjabi script which has been duly received by the plaintiff-respondent. According to the enquiry report these charges have been proved. It has been concluded that had the plaintiff-respondent remained present then the unfortunate incident of killing of four other Constables would not have occurred and that the defence of loose motion/fever has been found to be false. The concluding part of the enquiry report dated 2nd December, 1988 which has been accepted by the appointing authority when translated reads as under :—

"In the instant enquiry, I have carefully perused the allegations levelled against H.C. Surjeet Singh No. 1863, Constable Jagir Singh No. 1154, statements of complainant witnesses, statements of defence witnesses and the statements of delinquent in writing. The allegations against the delinquent was that while posted on guard duty at the residence of Shri Ratnesh Singh Sodhi, Editor of 'Akali Patrika', they absented themselves on 11th/12th August, 1987 without any sanctioned leave and permission. In the morning on 12th August, 1987,



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Constable Makhan Singh No. 1993, Prem Chand No. 367, Baljit Singh No. 2104 and Surinder Singh No. 2033, who were posted on guard duty at the said Kothi, were found murdered in the guard room by some unknown accused who were gunned down at night. In case, H.C. Surjit Singh, who was posted as guard in charge, had not absented himself from duty and would have deputed armed sentry on duty while performing his duty diligently, the above said heinous crime of murder of four constables would not have occurred. Similarly, Jagir Singh Constable No. 1154 while posted as standing guard has committed gross negligence and has committed grave violation of police discipline by absenting himself from the duty without any leave or permission. The evidence which has come on record during the course of departmental enquiry clearly proves that both the above said officials were absent from the guard duty on the intervening night of 11th/12th August, 1987. The delinquent produced Shri Rajinder Sain Chhabra, RMP, Rasta Mohalla, Jalandhar in their defence, who stated in his statement that on 11th August, 1987 at about 7.30 p.m., Jagir Singh delinquent had come to his clinic with the complaint of dysentery and fever. H.C. Surjit Singh had brought him there ; and that Jagir Singh delinquent had remained under his treatment till 1.00 p.m. and H.C. Surjit Singh had remained there to look after him. The evidence of this defence witness is not reliable. Rather it proves the absence of both the delinquent from guard duty. The kothi of Shri Ratnesh Singh Sodhi situated in Model Town and the police line where the Government doctor remains available, is much nearer than Rasta Mohalla. Moreover Civil Hospital, Jalandhar is also much nearer to the kothi of Shri Ratnesh Singh than Rasta Mohalla. In case the ailment of Jagir Singh delinquent was genuine, then H.C. Surjit Singh, guard in charge could have sent him alongiwth a Constable to some nearby doctor, police line hospital or civil hospital after giving information in the police station, Model Town. Therefore,

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the evidence of Dr. Rajinder Sain Chhabra is false and baseless. The statements of delinquents in writing also prove their absence from 7.30 p.m. On 11th August, 1987 to 1 p.m. on 12th August, 1987. Therefore, on the basis of above said circumstances, I hold H.C. Surjit Singh No. 1863 and Constable Jagir Singh No. 1154 guilty in this departmental enquiry in connection with allegation of being absent from the guard duty at the residence of Shri Ratnesh Singh Sodhi, Editor of 'Akali Patrika' on the intervening night of 11th/12th August, 1987 without any sanctioned leave, permission and any cause". (emphasis added)

(12) A perusal of the aforementioned conclusion recorded by the Enquiry Officer categorically mentioned that the absence of the plaintiff-respondent without any authorised leave is an act of gravest misconduct and gross negligence.

(13) It is well settled that once the punishing authority himself comes to the conclusion that a particular act of a delinquent officer constitutes a gravest act of misconduct warranting dismissal then the courts have no jurisdiction to re-examine the question as to whether such an act constitutes gravest of misconduct. In that regard reliance may be placed on a judgment of the Supreme Court in the case of **Maan Singh versus Union of India (See para 10 and 11) (2)**. It is also equally well settled that the courts cannot sit over the findings of the Enquiry Officer as accepted by the disciplinary authority and as a court of appeal unless it is shown that the findings are without any evidence. In this regard reliance could be placed on the judgments of the Supreme Court in the cases of **Apparel Export Promotion Council versus A.K. Chopra (3)**, **B.C. Chaturvedi versus Union of India (4)**.

(14) In the present case the Enquiry Officer and the disciplinary authority are fully conscious of provisions of Rule 16(2) as the charge sheet itself used the expression of gravest act of

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(2) (2003) 3 S.C.C. 464

(3) (1999) 1 S.C.C. 759

(4) (1995) 6 S.C.C. 749

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misconduct although the rule has not been mentioned. Moreover, the absence of plaintiff-respondent without permission from a competent authority to leave and the killing of four guards on duty would assume extreme significance. The absence, therefore, has been examined in the light of the attending circumstances by the authority concerned. There is, no fault in the enquiry nor any rule is shown to have been violated during the arguments addressed by the learned counsel for the plaintiff-respondent in the holding of enquiry. Thus, the order of dismissal dated 17th March, 1989 and the subsequent order passed on appeal and revision dated 16th May, 1989 and 28th August, 1989 respectively are liable to be upheld. The findings recorded by both the courts below are without any application of mind and fail to take into consideration the evidence on record in the form of enquiry file which contains enquiry report Ex. D1. It has merely been stated that the principles of natural justice have been violated but nothing is pointed out as to which rule and how it has been violated. The findings are without any evidence and are bald. The other findings that rule 16.2 of the rules has not been kept in view is also not sustainable as the summary of charges clearly elaborate the grave acts of misconduct. It may be true that a single act of absence from duty for a week or even for a longer period may not constitute gravest acts of misconduct yet absence of one day in given facts and circumstances may be serious enough to conclude that there was a gravest act of misconduct. The facts in the present case would make the absence of plaintiff-respondent as a gravest act of misconduct as has rightly been found by the Enquiry Officer. Therefore, those findings recorded by both the courts below cannot be sustained.

(15) In view of the above, this appeal is allowed, the judgments and decrees passed by the courts below are set aside and the suit of the plaintiff-respondent is dismissed. Accordingly, I uphold the findings recorded in the enquiry report, the order of dismissal dated 17th March, 1989, the appellate order dated 16th May, 1989 and revisional order dated 28th August, 1989. In the facts and circumstances the parties are left to bear their own cost.

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**R.N.R.**