

*Before Kanwaljit Singh Ahluwalia, J.*

**HARI SINGH,—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

**CWP No. 7686 of 1995**

28th July, 2010

*Constitution of India, 1950—Art.226—Punjab Police Rules, 1934—Ss. 16.2 and 16.38(1)—Constable found under influence of liquor while on duty—Misconduct—Dismissal from service—Petitioner rendering more than 33 years of service—No previous incident of misconduct committed by petitioner—Punishing Authority falling to take into consideration antecedents of petitioner and length of service rendered by him—Punishment of dismissal from service ordered to be converted into compulsory retirement and petitioner held entitled to all consequential benefits ensuing therefrom.*

*Held*, that the order of dismissal has not considered the past conduct of the petitioner. Petitioner had rendered uninterrupted service of 33 years on the date when he was awarded the punishment. It was the first instance of misconduct committed by him. The Punishing Authority had neither taken into consideration the antecedents of the petitioner nor length of service rendered by him and the fact that he will be deprived of his pension. Accordingly, while upholding the misconduct on the part of the petitioner, this Court is of the view that in case punishment of dismissal from service is converted into compulsory retirement, it will serve the ends of justice.

(Para 5)

Dheeraj Chawla, Advocate, *for the petitioner.*

Himanshu Raj, A.A.G., Haryana, *for the respondents.*

**KANWALJIT SINGHAHLUWALIA, J.**

(1). Petitioner was recruited as a Constable in Police Department on 26th February, 1962 and had more than 33 years of service to his credit, when on the ground of misconduct, he was dismissed from service on 21st August, 1992. In the present writ petition, petitioner seeks quashing of order dated 21st August, 1992 Annexure P1, passed by the Superintendent of Police, Hisar, whereby he was dismissed from service. Petitioner had preferred an appeal and,—*vide* order dated 18th March, 1993, Annexure P2, the Deputy Inspector General of Police, Hisar Range. Hisar dismissed the appeal upholding the punishment of dismissal awarded to the petitioner. Thereafter, the petitioner filed a revision-cum-mercy petition, which was also dismissed,—*vide* order at Annexure P3, dated 5th August, 1994. Petitioner also seeks quashing of orders at Annexures P2 and P3.

(2) The brief facts can be gathered from impugned order dated 21st August, 1992, Annexure P1. It is stated therein that a departmental enquiry was conducted against the petitioner, as he on 2nd March, 1992 while on guard duty at the residence of Deputy Superintendent of Police, Fatehabad, was found under the influence of liquor during the checking conducted by SI Sukhdev Singh, Incharge Police Post City Fatehabad. The petitioner was also medico legally examined at General Hospital, Fatehabad. Shri Ram Gobind, Deputy Superintendent of Police, Tohana conducted the enquiry and recorded the statements of HC Balwant Singh, C. Bhup Singh, Manger Ram, Deputy Superintendent of Police, Fatehabad, HC Jagdish Chander, Dr. A.K. Dadhich, Medical Officer, General Hospital, Fatehabad and SI Sukhdev Singh. These witnesses were cross-examined at the instance of the petitioner. Before the Punishing Authority, a plea was raised that in the present case, the enquiry was not conducted with the concurrence of District Magistrate under Rule 16.38(1) of the Punjab Police Rules (hereinafter to be referred as, 'the Rules'), therefore, the petitioner cannot be punished. This plea was negated by the Punishing Authority by observing that in case, the misconduct was not involved in relation to public dealing, concurrence of District Magistrate was not necessary. The Punishing Authority took into consideration the circumstance that as per opinion of the doctor, the petitioner was under the influence of liquor and he refused to give blood and urine samples. It was inferred that while on duty in uniform, the petitioner had consumed the alcohol, thus, the same constituted misconduct and was liable

to strict action. Accordingly, the petitioner was dismissed from service. As stated earlier, the appeal and the revision-cum-mercy petition were also dismissed.

(3) Mr. Dheeraj Chawla, learned counsel appearing for the petitioner has contended that by using the word 'gravest act of misconduct', the petitioner has been denied the fruits of 33 years of service and, thus, the punishment awarded is very harsh and not in commensurate with the misconduct attributed to the petitioner. Reliance has been placed upon **Harjit Singh and another versus State of Punjab and another (1)**, wherein Rule 16.2 of the Rules was noticed that dismissal should be awarded only for 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, shall be had to the length of service of the offender and his claim to pension. Furthermore, it cannot be said that solitary act on the part of the petitioner was such that he had become incorrigible and unfit for police service. There is no previous incident proved on record when the petitioner had committed any misconduct. Therefore, mere use of the words of the section for complying with the principles thereof is necessarily, not the interest of justice. This in nutshell is the dictum of law laid down in **Harjit Singh's case (supra)**. Therefore, the Hon'ble Apex Court in **Harjit Singh case (supra)** held that for absence from duty from 9.00 P.M. till 2.00 A.M., the delinquent constable should be compulsorily retired instead of dismissing him from service. Similarly, in **State of Punjab versus Dharam Singh, (2)** for absence from duty for a period of 11 months, the punishment was converted from dismissal from service to compulsory retirement. A Division Bench of this Court in **SI Surinder Singh versus State of Punjab and others, (3)** has held that ordinarily, the Court will not alter the quantum of punishment inflicted by the employer on its employee, unless it is found to be shockingly disproportionate to the misconduct or any other sufficient reason. In **SI Surinder Singh's case (supra)** for wilful absence, the delinquent employee was dismissed from service. The punishment of dismissal was converted into voluntary retirement.

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(1) 2007 (9) S.C.C. 582

(2) 1997 (2) S.C.C. 550

(3) 2008 (4) S.C.T. 72

For arriving at the above conclusion, in **SI Surinder Singh's case** (*supra*), the Division Bench had relied upon **State of Punjab versus Ram Singh (4)**, Para 8 of the same reads as under :—

“8. Rule 16.2 of the Rules came up for interpretation of Hon'ble the Supreme Court in the case of **State of Punjab versus Ram Singh, 1992(3) SCT 448 : (1992) 4 SCC 54**. While interpreting the rule, Hon'ble the Supreme Court cited the law in the following terms :

“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, that too when it impinges 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 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 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 act 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 employment, if any, may meet the ends of justice. Take for instance the delinquent officer 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."*

A similar view was reiterated by another Division Bench of this Court in **Dhan Singh versus State of Haryana and others, (5)**. In **Dharam Pal versus State of Haryana and others, (6)**, a Single Bench of this Court held that where 37 years of service rendered by the delinquent employee was totally ignored by the Punishing Authority, the punishment order would sound irrational. In **State of Punjab and others versus Piara Singh, (7)** the delinquent employee, like the petitioner, was found drunk on duty. He was dismissed from service. The Court came to conclusion that since 22 years service rendered by him was not taken into consideration, the sentence of dismissal from service was converted into compulsory retirement.

(4) Counsel for the State has relied upon **Ex. Constable Ram Krishan versus State of Haryana, (8)** to state that if a member of police while on duty consumed alcohol and remained absent from duty, it amounts to misconduct. But a perusal of the judgment reveals that the delinquent employee therein had a proven record of misconduct.

(5) I have perused the order of dismissal. It has not considered the past conduct of the petitioner. Petitioner had rendered uninterrupted service of 33 years on the date when he was awarded the punishment. It was the first instance of misconduct committed by him. The Punishing Authority had neither taken into consideration the antecedents of the petitioner nor length of service rendered by him and the fact that he will be deprived of his pension. Accordingly, while upholding the misconduct on the part of the petitioner, this Court is of the view that in case punishment of dismissal from service is converted into compulsory retirement, it will serve the ends of justice.

(6) Hence, the present writ petition is partly allowed and the punishment of dismissal from service is converted into compulsory retirement. He shall be entitled for all consequential benefits ensuing therefrom. However, there will be no order as to costs.

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**R.N.R.**

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(5) 2008 (3) S.C.T. 816

(6) 2009 (4) S.C.T. 130

(7) 2004 (2) R.S.J. 279

(8) 1998 (1) S.C.T. 561