

(2011) 10 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20140 of 2008

Ashok Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-10-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 323, 506, 509
Probation of Offenders Act, 1958 — Section 12

Citation : (2013) 1 SLJ 122

Hon'ble Judges : Tejinder Singh Dhindsa, J;Permod Kohli, J

Bench : Division Bench

Advocate : R.K. Sharma, for the Appellant; Lisa Gill, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—This order shall dispose of two writ petitions i.e. C.W.P. No. 20140/CAT of 2008 and C.W.P. No. 11938 of 2008 as both the writ petitions are directed against the same order dated 12.12.2007 passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short "CAT") in O.A. No. 467/CH of 2006. The facts are being noticed from C.W.P. No. 20140/CAT of 2008. The petitioner was recruited as Constable in the Chandigarh Police on 23.04.1991. In the year 1995, he was involved in a criminal case under Sections 509/ 506/ 323/ 147/ 149 Indian Penal Code (in short "IPC") and was convicted by the Trial Court having committed an offence punishable under Sections 323 & 509, IPC vide order dated 07.04.1999. The petitioner was ordered to be released on probation under Probation of Offenders Act, 1958. The appeal filed by the petitioner against the order of conviction was dismissed by the Sessions Judge, Chandigarh vide order dated 30.07.1999. The petitioner thereafter was issued a show cause notice dated 14.06.2000 for imposition of the major penalty of dismissal from service. Upon consideration of his reply, he was ordered to be dismissed from service on 04.09.2000. On appeal, the matter was remanded back so as to afford him an opportunity of personal hearing. The

Punishing Authority on 31.07.2002 again passed an order of dismissal against which the petitioner has availed his statutory remedies of having filed an appeal and also a revision. The order of dismissal however, was upheld upto the highest level. It is against such order of dismissal dated 31.07.2002 that the petitioner filed O.A. No. 467/CH of 2006 in the CAT, Chandigarh Bench, Chandigarh.

2. The penalty of dismissal imposed upon the petitioner was ordered to be converted to that of removal from service by CAT, Chandigarh Bench. It is against such order dated 12.12.2007 that the aforementioned two writ petitions have been filed, one by the petitioner and other by the Chandigarh Administration.

3. Ms. Lisa Gill, Advocate and Mr. R.K. Sharma, Advocate appearing for the parties have been heard at length.

4. It is common case between the parties that the penalty of dismissal imposed upon the petitioner was ordered in terms of Rule 16.2 of the Punjab Police Rules, which reads as under:

PPR 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 purpose 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 class 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 absentions;
- (vii) spreading disaffection against the Government; and.
- (viii) causing riots and the life.

5. Rule 16.2(1) provides for dismissal for the gravest act of misconduct or for the cumulative effect, of continued misconduct proving incorrigibility and complete unfitness for police service. There is however, a rider on the award of punishment incorporated in the rule itself, which, inter alia requires the Punishing Authority to take into consideration the length of service of the delinquent and his claim to pension.

6. Mr. R.K. Sharma; Advocate for the petitioner in C.W.P. No. 20140/CAT of 2008 has contended that the petitioner having been released on probation under the Probation of Offenders Act, 1958 no penalty could have been imposed under Rule 16.2 of the Punjab Police Rules. Ms. Lisa Gill, Advocate appearing for Chandigarh Administration in C.W.P. No. 11938 of 2008 has primarily contended that the Central Administrative Tribunal while passing the impugned order dated 12.12.2007 has erred in terms of having interfered in the quantum of punishment.

7. Rule 16.2 came up for consideration before the Hon"ble Supreme Court in the case of State of Punjab and Others Vs. Ram Singh Ex. Constable, wherein following observations were made:

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 repletion 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, single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. In the case of Randhir Singh Vs. Dy Inspector General of Police Ambala Range and Others, , a Bench of this Court considered the scope of Rule 16.2 of the Punjab Police Rules, 1934 and held as under:

I have perused the order of punishment dated 07.12.1984 (Annexure P-3). The Punishing Authority, while inflicting the punishment of dismissal from service on the petitioner, admittedly, did not take into consideration the fact that the petitioner had rendered more than 10 years service entitling him to pensionary benefits. The Punishing Authority also did not take into consideration the fact that the petitioner had not committed any act of omission or commission described as "gravest acts of misconduct" by the rule itself, while inflicted the gravest punishment prescribed. In its aforesaid action, the authorities obviously did not follow Rule 16.2 in its letter and spirit. It is mandatory for the Punishing

Authority to take into consideration the length of service of an employee and his claim to pension before inflicting the punishment of dismissal from service under Rule 16.2 of the Punjab Police Rules.

9. In a recent Division Bench judgment of this Court rendered in *Dhan Singh v. State of Haryana and Others*, 2009 (1) RSJ page 62, it was held as under:

The petitioner's misconduct for remaining absent on two occasions has been established. Even if the act of the petitioner is not considered as "gravest misconduct" as it does not fall within the purview of Explanation appended to Rule 16.2, it definitely is an act which constitutes misconduct. There are at least two acts of misconduct. Cumulative effect of misconduct also makes a Police Officer incorrigible and unfit for police service. However, the authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment, it has been stated by the petitioner in ground (c) of this petition that he has rendered 11 years 9 months service. No rule has been brought to our notice that the petitioner is not entitled to any pensionary benefits for rendering about 12 years of service. Giving consideration to the length of service, the right to pension is inherent under Rule 16.2 itself and thus it cannot be ignored. The authorities having failed to adhere to the rule while awarding punishment renders the impugned order of punishment illegal and unwarranted. It is also settled law that when a relevant provision is given go by, it amounts to arbitrary exercise of power and such an order is not sustainable.

10. It is thus, apparent that under Rule 16.2 the penalty of dismissal can be awarded only for the gravest acts of misconduct or as a cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award of dismissal, regard has to be had to the length of service of the delinquent and his claim to pension.

11. A perusal of the order dated 13.07.2002 imposing upon the petitioner the major penalty of dismissal would clearly show that the Competent Authority has applied its mind and has come to a conclusion that the petitioner has committed a grave act of misconduct and such conclusion is based on his conviction at the hands of the Trial Court, under Sections 323 & 509 IPC. There is no merit in the contention raised by Mr. R.K. Sharma, Counsel for the petitioner in C.W.P. No. 20140/CAT of 2008 to contend that the petitioner having been released on probation under Probation of Offenders Act, 1958, he could not have been imposed the penalty under Rule 16.2 of Punjab Police Rules. Precisely this issue has been dealt with minutely by this Court in a judgment rendered in C.W.P. No. 15228 of 2009 titled as *Dilshad AH v. State of Punjab and Another* decided on 30.05.2011 and it was so held:

In so far as the question of impact of release on probation is concerned, there is catena of judgments wherein it has been held that release on probation does not wash away his conviction. In *Harichand Vs. The Director of School Education*, ,

Hon"ble the Supreme Court observed as under:

In our view, Section 12 of the Probation of Offenders Act would apply in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such Jaw" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purpose of dismissal of the person convicted from Government service.

In The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, , it has been observed by the Hon"ble Supreme Court that conviction of an accused for the finding of the Court that he is guilty, does not stand wash away i.e. sine qua non, for the order of release on probation. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. The factum of guilt on the criminal charge is not swept away merely by passing order under 1958 Act.

A similar view has been taken in Trikha Ram Vs. V.K. Seth and Another,

In view of the above, release of the petitioner on probation cannot come to his rescue nor does it provide a ground for setting aside his conviction which otherwise stands even on release on probation.

12. Suffice it to say that mere release on probation does not take away the effect of conviction.

13. There has, however, been a violation of the mandate of Rule 16.2 of the Punjab Police Rules inasmuch as while imposing the penalty of dismissal upon the petitioner his length of service has not been taken into account. It is an admitted position of fact that the petitioner had completed approximately 11 years of service in the department on the date of imposition of extreme penalty of dismissal. This has been so noticed even in the impugned order by the Central Administrative Tribunal. The CAT has converted the penalty of dismissal to that of removal from service and for doing so has taken into account certain relevant factors i.e. the petitioner was 35 years of age when he was convicted by the Trial Court and that he was not a previous convict and it was his first offence. Still further it has been noticed that the petitioner had rendered more than 10 years of service at the point of time when the order of dismissal was passed by the Disciplinary Authority. Coupled with the fact that the Disciplinary Authority has not taken into consideration the length of service of the petitioner while imposing the extreme penalty of dismissal from service as was the mandate of Rule 16.2, we do not find it to be a fit case that warrants interference with the impugned order dated 12.12.2007 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh. For the reasons recorded above, both the writ

petitions are dismissed and the order of removal from service is upheld.