
(1992) 12 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6102 of 1992

Chanan Pal, Ex-Constable

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 02-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Police Rules, 1934 — Rule 16.2(1)

Citation : (1993) 103 PLR 516

Hon'ble Judges : Ashok Bhan, J;A.L. Bahri, J

Bench : Division Bench

Advocate : Nidhi Gupta, for the Appellant; Jagdev Sharma, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—The point raised in this writ petition is as to whether a single act of being absent from duty and found to be under the influence of alcohol during this time, would amount to an act of grave misconduct to merit dismissal from service of a member of the disciplined force like police or not.

2. The facts shortly stated are that on 2.9.1989, the petitioner who was working as a Constable in Haryana Police since 27.10.1976, was deployed in Flying Squad, found to be absent from duty and under the influence of alcohol during this period. He was got medically examined from a Doctor who declared him to be under the influence of alcohol. Regular Departmental enquiry on the above allegations was ordered against him by the Superintendent of Police, Karnal. Welfare Inspector, Karnal, was appointed as Enquiry Officer. Petitioner was appraised of the allegations made against him List of P.Ws. and other documents relied upon were also served upon him. After recording the evidence, the Enquiry Officer submitted a detailed report dated 6.6.1990 Annexure P/6 showing the allegations having been fully established. Copy of the enquiry report was served upon the petitioner and a show cause notice was issued to him by the appointing

authority proposing the punishment of dismissal from service After giving an opportunity of hearing, the appointing authority, passed a detailed order Annexure P/8 holding that the defaulter indulged himself in the act of gravest act of misconduct by consuming liquor while on duty" and awarded the extreme penalty of dismissal from service Against this order, an appeal was carried to the Deputy Inspector General of Police, which was dismissed vide Annexure P/10. Revision was taken to the Inspector General of Police which was also dismissed on 30.10.1991 vide Annexure P/12 Aggrieved against the orders Annexure P/8, P/10 and P/12, the Petitioner has filed the present writ petition.

3. It was argued by Ms. Nidhi Gupta, Advocate, that the charge framed against the petitioner was false and quantum of punishment viza viz offence, if at all proved, was ill-proportionate.

4. We have gone through the enquiry report as well as orders Annexure P/8, P/10 and P/12. From the perusal of these orders it is clearly established on facts that the petitioner had consumed liquor during duty hours while remaining absent. No case is made out for interference on facts. We accordingly reject the submission sought to be raised by the counsel for the petitioner on the appreciation of evidence by the authorities under the rules.

5. Rule 16 2(1) of the Punjab Police Rules, 1934 (hereinafter referred to as the Rules), reads as under : -

"16 2 (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."

6. It was argued by Ms. Nidhi Gupta, Advocate, that Rule 16 2 (1) of the Rules stipulates that the punishment of dismissal is to be awarded only in the cases of "the gravest acts of misconduct or as the cumulative effect of "continued" misconduct proving incorrigibility and complete unfitness for police service" and a single act of being absent or found under the influence of alcohol would not constitute a gravest act of misconduct to merit dismissal from service.

7. We do not find any substance in this submission of counsel either in view of the law laid down by their lordships of the Supreme Court in State of Punjab and Others Vs. Ram Singh Ex. Constable, . wherein it has been held that the word "acts" would include singular act as well It has further been held that rule 16.2 of the Rules consists of two parts The first part referable to the gravest acts of misconduct which entails awarding order of dismissal and the second to the cumulative effect of continued misconduct proving incorrigibility and complete unfitness of police service. It has been held therein as under:-

"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.

The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfit-ness 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 affect on service morale may be a ground to take lenient view of giving an opportunity to reform.....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."

8. As in the present case, so in the case of Ram Singh (Supra) before their lordships of the Supreme Court a personnel of police force was found to be under the influence of liquor during duty hours. Their lordships held that such an act on the part of a police personnel amounted to an act of gravest misconduct which could merit dismissal The Petitioner being a police constable belongs to a law enforcing agency which should be disciplined and exercise self restraint. The act of the petitioner being absent from duty and taking liquor during that period is an act of gravest, misconduct which can neither be accepted nor condoned by showing mercy. Agreeing with the view taken by the authorities under the rules, we dismiss this writ petition with no order as to costs.