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**(1998) 01 P&H CK 0038**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 273 of 1996

The State of Punjab and Another

APPELLANT

Vs

Constable Daljit Singh

RESPONDENT

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**Date of Decision :** 21-01-1998

**Acts Referred:**

Punjab Police Rules, 1934 — Rule 16.21

**Citation :** (1998) 119 PLR 160

**Hon'ble Judges :** N.C. Khichi, J;Jawahar Lal Gupta, J

**Bench :** Division Bench

**Advocate :** Charu Tuli, D.A.G, for the Appellant; Manu Bhandari, for the Respondent

**Final Decision :** Allowed

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## Judgement

Jawahar Lal Gupta, J.—Is a constable not bound to remain present in the police lines during the period of suspension in spite of the provisions of Rule 16.21 of the Punjab Police Rules, 1934, volume II? This is the primary question that arises for consideration in this regular second appeal A few facts may be noticed.

2. The plaintiff-respondent was working as a Constable in the Punjab Police. On March 17, 1984, a case u/s 9 of the Opium Act was registered against him. He was arrested. He was placed under suspension. He absented himself from duty. Thereafter, he reported for duty and was again absent from June 28, 1984. On account of continued absence, disciplinary proceedings were initiated against him. In spite of notice, he did not join the inquiry proceedings. Ultimately, the charge of wilful absence from duty was found to have been proved. The respondent was given a show cause notice. After considering his reply, the Superintendent of Police vide his order dated June 25, 1985 ordered his dismissal from service. The order was affirmed on appeal. Even the revision petition filed by the respondent was rejected by the Inspector General of Police vide his order dated March 23, 1987. Aggrieved by the three orders, the respondent filed a civil suit for a declaration that the order of dismissal was illegal and that he continued

to be in service. The suit was decreed by the trial Court. The appeal filed by the State of Punjab having been dismissed, the defendants have filed the present second appeal.

3. Ms. Tuli, appearing on behalf of the appellants, has contended that the plaintiff-respondent was bound to remain present in the police lines in view of the provisions of Rule 16.21 of the Punjab Police Rules, 1934. He did not abide by the mandate of the rule. He was absent. Consequently, departmental proceedings were initiated against him. He did not join even the proceedings. In spite of these facts, the courts below have decreed his claim on the basis of the decision of a Division Bench of this Court in *Ex. HC Munshi Ram v. The State of Haryana* and Ors. 1992(2) R.S.J. 345. Learned counsel submits that the respondent having violated the rule was rightly dismissed from service and that the Courts below have erred in relying upon the decision in *Munshi Ram's* case (*supra*).

4. The claim made on behalf of the appellants has been controverted by Mr. Manu Bhandari who has appeared on behalf of the plaintiff-respondent. It has been contended by the counsel that the decision has been rightly followed by the Courts below and that in view of the ratio of this decision, a constable is not bound to remain present in the police lines and as such the charge of absence from duty cannot be sustained. Learned counsel has further submitted that the action of the appellants was violative of the provisions of Rule 16.2 inasmuch as absence from duty was not the gravest act of misconduct so as to call for the extreme penalty of dismissal from service.

5. The primary question that arises for consideration is was the plaintiff-respondent not bound to remain present in the police lines during the period of suspension in view of the provisions of Rule 16.21 of the Punjab Police Rules, 1934, Volume II?

6. It is apt to notice the relevant provisions of the rule. Clauses (1) and (2) may be usefully re-produced. These provide as under :-

(1) A police officer shall not by reason of being suspended from office cease to be a police officer. During the term of such suspension the powers functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue to be subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

(2) A police officer under suspension shall be transferred to the lines, if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Superintendent may direct; provided that he shall not perform guard duty or any other duty entailing the exercise of the powers or functions of a police officer; shall not be placed on any duty involving the exercise of responsibility, and shall not be issued with ammunition, A police officer under suspension shall ordinarily be confined to lines when off duty, but shall be allowed reasonable facilities for the preparation of his

defence. When transferred to the lines under this rule Lower Subordinates shall deposit their belts and Upper Subordinates their revolvers, belts and swords with the Lines Officer."

7. A perusal of the above provisions shows that even on suspension a police officer does not cease to be "a police officer". Only his powers, functions and privileges are held in abeyance. He continues to be subjected to the same "responsibilities, discipline and penalties.....as if he had not been suspended." Still further, Clause (2) makes it incumbent on the police officer "to attend all roll calls and perform such duties and to attend such parades as the Superintendent may direct." He has to be ordinarily "confined to lines when off duty.....When transferred to the lines.....Lower Subordinates shall deposit their belts....." The rule is clear and categoric. It requires a constable to remain present in the lines. He has to attend to roll calls and to perform such duties as may be assigned to him. He is required to attend parades. The purpose of this provision is obvious. A member of the disciplined force is required to abide by the discipline of the service. He has to remain physically fit. With this purpose in view, the rule making authority has categorically made a provision to ensure that he does not get lethargic by sitting at his house. He must remain present and continue to follow the normal routine. In case the constable does not abide by the discipline of the force as contemplated under the provisions of Rule 16.21, he is liable to be treated as absent from duty. In this situation, the contention raised on behalf of the plaintiff-respondent that during the period of suspension he was not bound to remain present in the lines and as such could not have been treated as absent from duty, cannot be sustained.

8. Mr. Bhandari contends that in view of the binding precedent in Munshi Ram's case (supra), the Courts below have rightly held that the respondent was not required to be present in the lines.

9. It is undoubtedly correct that in Munshi Ram's case (supra), it has been held that during the period of suspension he was not required to attend the office. It appears that the provisions of Rule 16.21 were not pointed out to the Bench. The decision does not even refer to the provision. That being so, the decision is not relevant for deciding a case in view of the categoric statutory provisions contained in Rule 16.21. While the Courts below were bound to follow this decision, it is clear that it is based on the ratio of an earlier decision in Ramesh Chander Chug, Assistant Engineer (Civil) v. The Haryana State Electricity Board 1986(3) S.L.R. 1. However, in neither of the two cases, the provisions of Rule 16.21 were considered by the Bench. These decisions are, thus, clearly distinguishable.

10. In view of the above, it is clear that according to the provisions of Rule 16.21, the respondent was required to be present in the police lines. He did not abide by the mandate of the rule. Consequently, the charge of misconduct was fully proved against him.

11. Mr. Bhandari contends that the extreme penalty of dismissal from service should not have been imposed in view of the provisions of Rule 16.2 of the Punjab Police Rules. He submits that the respondent had joined the police force in February, 1973, and was dismissed in June, 1985. The authorities should have considered that absence from duty was not such a grave act of misconduct as to call for the extreme penalty of dismissal.

12. On the other hand, it has been pointed out by the learned counsel for the appellants that the respondent was involved in a case u/s 380 I.P.C. and F.I.R. No. 94 dated September 26, 1977 was registered against him. He was also involved in a case u/s 9 of the Opium Act and a case vide F.I.R. No. 38 had been registered against him. Despite that, the respondent had remained absent from duty.

13. The respondent was a member of the disciplined force. No explanation whatsoever much less than a reasonable one for absence from duty was given. Still further, it was not the solitary act of in discipline. It has been found that he had remained absent even earlier. In fact, it has been observed that he is a habitual absentee. Further more, a case under the Opium Act was registered against the respondent. He was undoubtedly given the benefit of doubt. Yet, he was not clearly exonerated of the charge. In view of these acts, the competent authority could have formed the opinion that the respondent was not a desirable person to be retained in a disciplined force. Still further, it cannot be said that if a member of the disciplined force remains absent from duty, he is not guilty of a grave act of misconduct. In fact, their Lordships, of the Supreme Court have adversely commented on the conduct of a member of the disciplined force who had remained absent from duty. Reference in this behalf may be made to a decision of the Supreme Court in *State of U.P. and Ors. v. Ashok Kumar Singh and Anr.* 1996(1) S.L.R. 291. It was interalia observed by their Lordships that a police constable serves in a disciplined force which demands strict adherence to the rules and procedure more than any other department. Their Lordships disapproved the decision of the High Court that "absence from duty would not amount to such a grave charge". In view of this authoritative view of the Apex Court, we cannot accept the contention raised on behalf of the respondent that he was not guilty of a grave misconduct so as to warrant the imposition of extreme penalty of dismissal from service.

14. No other point has been raised.

15. In view of the above, we hold that a constable who is under suspension is bound to follow the provisions of Rule 16.23 and the directions given to him by his senior officers. If he remains absent, he renders himself liable to disciplinary action. In the present case, the authorities had acted in conformity with the provisions of Rule 16.21 while proceeding to take disciplinary action against the respondent. This action could not have been interfered with.

16. Consequently, we accept the appeal and set aside the judgment and decree

passed by the Courts below. As a result, the suit is dismissed. However, since the respondent has already lost his job, we make no order as to costs.