



J. Thakur

Before Tejinder Singh Dhindsa, J.

EX. CONSTABLE MALKIAT SINGH—Petitioner

versus

STATE OF PUNJAB & OTHERS—Respondents

CWP No. 11458 of 2001

July 11, 2012

Constitution of India, 1950 - Art. 226 - Punjab Police Rules, 1934 - Rl. 16.2 - Petitioner, a constable in Punjab Police absented himself from duty - Inquiry instituted, during which he did not appear - Ex parte proceedings ordered against him and he was found guilty - Punishing Authority agreed with the findings and issued show cause notice, proposing the penalty of dismissal - No reply received on behalf of the petitioner - Order of dismissal passed -

Appeal and revision against above orders dismissed - In writ jurisdiction, the High Court held that in the absence of a finding that the petitioner is guilty of the gravest act of misconduct, the order of dismissal cannot be sustained in terms of Rule 16.2 - The punishing authority had in fact held that action of the delinquent employee in not filing reply to the show cause notice amounts to grave misconduct - The conduct aforesaid does not amount to gravest act of misconduct as per Rule 16.2 - Writ petition allowed.

Held, that a bare perusal of the impugned order (Annexure P-1) passed by the Senior Superintendent of Police would clearly reveal that no finding has been recorded that the petitioner is guilty of an act of gravest misconduct. It has also not been held that the petitioner is guilty of a continued misconduct proving his incorrigibility and complete unfitness for police service. As has been held by the Division Bench in Tarlok Singh's case (supra) even in the facts of the present case, there is no reference to the service record of the petitioner and the impugned order of dismissal does not even reveal the application of mind at the hands of the punishing authority on the question whether any other penalty could be imposed upon the petitioner keeping in view his past service record. That apart, the mandate of Rule 16.2 has also been given a go by in as much as the length of the service of the present petitioner has not been taken into account while passing the impugned order. Suffice it to notice that even the appellate authority as also the revisional authority have not gone into the aspect of non-consideration of the provisions of Rule 16.2.

(Para 10)

Further held, that there is yet another aspect of the matter. In the impugned order it has been noticed that the delinquent had not filed a reply to the show cause notice and such action would amount to be a gravest misconduct. Such stand is also reflected in the written statement filed on behalf of the State and in para 3 of the reply a clear stand has been taken to the effect that the action of the delinquent by not filing the reply in time is a grave misconduct of the department of police.

(Para 11)

Sunil Chadha, Advocate, *for the petitioner:*

Vivek Chauhan, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

(1) The petitioner, who was working as Constable in the Punjab Police has impugned by way of filing the present petition the order dated 3.5.1999 passed by the Senior Superintendent of Police, Bathinda imposing upon him the extreme penalty of dismissal from service. Also under challenge are the orders at Annexures P-2 and P-4, whereby the appeal as also revision preferred by the petitioner against the order of dismissal have been rejected.

(2) Facts in brief may be noticed hereunder:-

The petitioner had joined the Police Department on 11.11.1989 as Constable. A departmental inquiry was initiated against him on the allegation that he had remained absent from duty for a period of 72 days 17 hours and 25 minutes i.e. w.e.f. 8.4.1998 to 19.6.1998 and that he had also absented himself continuously w.e.f. 8.7.1998. An Inquiry Officer had been appointed and in spite of repeated notices having been served upon the petitioner, the petitioner had not joined the inquiry proceedings and accordingly, he had been proceeded ex-parte. An inquiry report had been furnished holding the petitioner guilty of having absented himself without any justifiable reason. The punishing authority upon consideration of the matter and having agreed with the findings recorded by the Inquiry Officer issued a show cause notice to the petitioner proposing the extreme penalty of dismissal but in spite of having been served with such notice no reply had been filed. The impugned order dated 3.5.1999 had as such been passed by the punishing authority i.e. the Senior Superintendent of Police imposing the extreme penalty of dismissal from service on account of a total absence from duty of 192 days 7 hours and 45 minutes. Vide Annexure P-2 the Deputy Inspector General of Police, Faridkot has rejected the appeal preferred by the petitioner and thereafter, the Inspector General of Police, Punjab vide order dated 15.3.2000 (Annexure P-3) has even rejected the Revision-cum-Mercy petition preferred by the petitioner. Resultantly, the present writ petition.

(3) Mr. Sunil Chadhar, learned counsel appearing on behalf of the petitioner has argued the present petition primarily on the ground of nonconsideration of the provisions of Rule 16.2 of the Punjab Police Rules. It has been strenuously contended that the dismissal of the petitioner on account of absence from duty does not constitute "gravest act of misconduct" as defined under Rule 16.2 read with the explanation appended thereto and accordingly, it has been contended that the impugned orders of dismissal affirmed in departmental appeal and revision are illegal and as such liable to be quashed.

(4) *Per contra*, Mr. Vivek Chauhan, learned Assistant A.G., Punjab has referred to the averments made in the written statement filed on behalf of the respondents to contend that the petitioner had not even filed the reply to the show cause notice served upon him and had not even associated himself with the inquiry proceedings, which would clearly manifest that he had nothing to plead in defense and as such a clear inference that was required to be drawn was to the effect that he admitted his guilt. Learned State counsel would further refer to the impugned order, wherein it has been noticed that the petitioner is a habitual absentee and accordingly, would contend that the impugned order of dismissal was perfectly valid and would not call for any interference by the Writ Court.

(5) I have heard respective counsel for the parties at length.

(6) The common case of the parties is that the dismissal of the petitioner has been ordered in terms of Rule 16.2 of the Punjab Police Rules, which reads as under:-

16.2: Dismissal.

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 purposes 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 classes 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 abstentions;*
- (vii) spreading disaffection against the Govt. and*
- (viii) causing riots and the life."*

(7) Rule 16.2 sub clause (1) provides for dismissal for the "gravest acts of misconduct" or for the cumulative act of continued misconduct proving incorrigibility and complete unfitness for police service. Under the first part of the rule, gravest act of misconduct entails dismissal, whereas under the second part of the rule, cumulative effect of continued misconduct also invites the penalty of dismissal. However, in both the cases incorrigibility of the delinquent official and complete unfitness for police service has to be established. There is another 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.

(8) The impugned order imposing the penalty of dismissal dated 3.5.1999 has been perused carefully. The punishing authority has held that the action of the delinquent by not filing a reply to the show cause notice in time amounts to be a 'grave misconduct'. Still further, it has been observed that the petitioner is a habitual absentee and such conduct may put a bad impression on the other employces of the department and as such the opinion has been formed to award the penalty of dismissal.

(9) Learned counsel appearing for the petitioner has placed heavy reliance upon a Division Bench judgement of this Court rendered on 14.5.1996 in **CWP No. 205 of 1996** titled as **Tarlok Singh versus State of Punjab and others** (Annexure P-5), wherein it had been categorically held that absence from duty cannot ordinarily be treated as an act of grave misconduct. The Division Bench in case of Tarlok Singh's case (supra) had even noticed an earlier Division Bench judgement rendered in case of **Daljeet Singh versus State of Punjab & another** in **CWP No. 6597 of 1994** decided on 23.8.1994, wherein it had been held that prior to the competent authority exercising power under Rule 16.2 of the Punjab Police Rules, it was imperative for such an authority to record a finding that the employee is guilty of the gravest act of misconduct or that he is guilty of continued misconduct which proves his incorrigibility and complete unfitness for police service. Absence of such a finding would lead to a conclusion that the competent authority has not applied its mind to the nature of misconduct before passing of the order of punishment.

(10) A bare perusal of the impugned order (Annexure P-1) passed by the Senior Superintendent of Police would clearly reveal that no finding has been recorded that the petitioner is guilty of an act of gravest misconduct. It has also not been held that the petitioner is guilty of a continued misconduct proving his incorrigibility and complete unfitness for police service. As has been held by the Division Bench in Tarlok Singh's case (supra) even in the facts of the present case, there is no reference to the service record of the petitioner and the impugned order of dismissal does not even reveal the application of mind at the hands of the punishing authority on the question whether any other penalty could be imposed upon the petitioner keeping in view his past service record. That apart, the mandate of Rule 16.2 has also been given a go by in as much as the length of the service of the present petitioner has not been taken into account while passing the impugned order. Suffice it to notice that even the appellate authority as also the revisional authority have not gone into the aspect of non-consideration of the provisions of Rule 16.2.

(11) There is yet another aspect of the matter. In the impugned order it has been noticed that the delinquent had not filed a reply to the show cause notice and such action would amount to be a gravest misconduct. Such stand is also reflected in the written statement filed on behalf of the State and in para 3 of the reply a clear stand has been taken to the effect that the action of the delinquent by not filing the reply in time is a grave misconduct of the department of police. Even on such aspect the Division Bench in Tarlok Singh's case (*supra*) held in the following terms:-

“We are also of the opinion that the respondent nos. 2 and 3 were greatly influenced by the fact that the petitioner did not submit reply to the show cause notice and he failed to appear for personal hearing. These factors have also been incorporated in the reply to highlight the conduct of the petitioner. In our opinion, these factors could not legitimately be taken into consideration for awarding more severe punishment to the petitioner. Even if the petitioner has not participated in the inquiry, it was duty of the competent authority to direct its attention to the requirement of Rule 16.2 of the Punjab Police Rules and then pass the order of punishment. Since the respondent no.3 has failed to comply with the mandate of Rule 16.2 the impugned order is liable to be quashed.”

(12) In view of the reasons referred to herein above, I find that the present petition is squarely covered in terms of the Division Bench judgement in Tarlok Singh's case (*supra*) at Annexure P-5. The impugned order of dismissal has been passed in clear violation of the mandate of Rule 16.2 of the Punjab Police Rules. Accordingly, the impugned order of dismissal (Annexure P-1), the order passed by the appellate authority (Annexure P-2) as also the order dated 15.3.2000 passed by the revisional authority, are set aside. The petitioner is directed to be reinstated in service forthwith with all consequential benefits. The petition is, accordingly, allowed.