
(29) In view of the above, present petition is allowed. The findings recorded by the learned Courts below on issue No. 3, are hereby reversed. The respondent is directed to hand over the vacant and peaceful possession of the demised premises to the petitioner. No costs.

(30) At this stage, Mr. S. D. Bansal, has made a prayer that since the demised premises are shops, it will take some time for the tenant to make the alternative arrangements. He, therefore, prays that some time be granted for handing over the possession to the landlord-petitioner.

(31) In view of the above, the respondent-tenant is granted two months time for handing over the vacant and peaceful possession of the demised shops i.e. the premises be handed over to the landlord-petitioner on or before 9th July, 2003. This extension in time is granted to the respondent-tenant on his furnishing usual undertaking as required by law before the learned Rent Controller, Charkhi Dadri, within a period of two weeks from today.

R.N.R.

Before M.M. Kumar, J.

JAGBIR SINGH,— *Petitioner*

versus

STATE OF HARYANA AND OTHERS,— *Respondents*

CWP No. 6478 OF 1988

9th April, 2003

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rls. 16.2 and 16.21—Criminal case against a member of disciplinary force—Department placing him under suspension—Rl.16.2 provides that punishment of dismissal could be awarded only for the gravest act of misconduct—Whether absence from duty during suspension period without any sanctioned leave constitutes a gravest act of misconduct—Held, yes—Petitioner also not entitled to pensionary benefits as he had not rendered qualifying service—Petition dismissed while upholding order of dismissal from service.

Held, that a perusal of Rule 16.2 shows that the punishment of dismissal could be awarded only for the gravest act of misconduct proving incorrigibility and complete unfitness for police service. It has been further provided that while passing the order of dismissal, the competent authority shall take into consideration, the length of service of the defaulting officer and his claim to pension. Rl.16.21 makes it absolutely clear that a police officer during suspension shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he has not been suspended. On transfer to Lines, he is required to attend roll calls and perform all such duties as may be directed by the Superintendent of Police.

(Para 8)

Further held, that absence from duty during suspension or otherwise would not stand on a different pedestal because of the specific language of Rule 16.21 of the Rules. Even otherwise, single act of absence from duty may be viewed as an act of grave misconduct. Repeated absenteeism may constitute a gravest act of misconduct proving incorrigibility especially for a member of a disciplinary force.

(Para 9)

Further held, that the argument that length of service of the petitioner was required to be kept in view by virtue of Rule 16.2 of the Rules would not require any detailed consideration because of the fact that the petitioner would not acquire any pensionary rights as he joined service on 1st January, 1972 and he was placed under suspension on 17th May, 1979. His total length of service in the department is just over seven years which would hardly constitute any basis for the department to take a lenient view by giving him lesser punishment like stoppage of increments with cumulative effect etc.

(Para 12)

Ashish Kapoor, Advocate, for the petitioner.

N. K. Joshi, AAG, Haryana, for the respondents.

JUDGMENT

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing of order dated 17th June, 1980 passed by the Superintendent of Police, Sonapat dismissing the petitioner from the post of Constable on the ground of absence from duty. The order passed by the Superintendent of Police has been affirmed by the Deputy Inspector General of Police, Gurgaon Range, Gurgaon and Inspector General of Police, Haryana,—*vide* order dated 6th September, 1981 and order 20th March, 1986 passed in appeal and revision respectively. The aforementioned orders Annexures P-2 and P-3 have also been made subject matter of challenge in the instant petition. Thereafter, the memorial filed by the petitioner Annexure P-7 has also been rejected by His Excellency the Governor of Haryana.

(2) Brief facts of the case are that the petitioner joined as Constable in Sonapat district on 1st January, 1972. On 15th May, 1979, FIR No. 88 was registered against him at Police Station Gohana accusing him with the commission of offence under Sections 354 and 109 of the Indian Penal Code. He was placed under suspension on 17th May, 1979 and his headquarters was fixed at Police Lines, Sonapat. On account of his absence from duty, respondent No. 4 served a charge-sheet on him levelling allegations that he remained absent from duty without any sanctioned leave. A regular departmental enquiry was held and the Enquiry Officer gave categorical findings that the petitioner was guilty of the charges of absence from duty from 5th October, 1979 to 6th October, 1979, 8th January, 1980 and 26th February, 1980. However, he was not awarded any punishment for the other two periods for which he was alleged to be absent i.e. 17th October, 1979 and 20th/21st October, 1979 as punishment had already been awarded. The Superintendent of police,—*vide* order dated 17th June, 1980 dismissed the petitioner from service. The aforementioned order reads as under :—

“In view of the above discussion, I hold the defaulter constable Jagbir Singh, No. 467 guilty to the charges of his three absence period i.e. of dated 5th and 6th October, 1979, 8th January, 1980 and 26th February, 1980 framed against him. So far as the two absence periods of the

defaulter constable i.e. 17th October, 1979, 20th/21st October, 1979 is concerned I exonerate the defaulter constable of these charges as he had already been awarded the punishments of drill for these two absences.

So far as the punishment regarding his three above referred absence is concerned, I am of the view that no punishment other than the dismissal from the police force should be awarded to the defaulter constable as the police department is not surai where a person can come at any time with his own sweet will rather it is a disciplined force and the discipline in the force cannot be maintained, if such police officials having a long experience of service continue to remain absent from duty without obtaining any leave or the permission from his senior police officers. Remaining absent from the disciplined force so many times within a short period of about 4.1/2 months and inspite of repeated warnings by the DSP/Hqrs. without any reasonable cause and without obtaining the leave or permissions from his senior police officla (sic?) undoubtedly constitutes a gravest act of mis-conduct and such type of incorrigible and in-disciplined police official who does not consider his duty to be duty is totally unfit for the retention in the Police Force and as such no punishment other than a penalty of dismissal from the force will meet the ends of justice in this case. I, therefore, dismiss the defaulter constable Jagbir Singh No. 467 from the police force with immediate effect.”

(3) Thereafter, the appeal, revision and the memorial filed by the petitioner have been rejected,—*vide* orders Annexures P-2, P-3 and P-7 respectively.

(4) In the written statement filed by respondents 1 to 3, the stand taken is that the police force is a disciplinary force and no indiscipline can be favourably viewed. Reliance has also been placed on the provisions of Rule 16.21 of the Punjab Police Rules, as applicable to Haryana (for brevity, 'the Rules') which provides that a suspended police officer is under an obligation to the same responsibilities, discipline and penalties and to the same authorities as if he has not been

suspended. It further provides that once he was posted to the lines by virtue of sub-rule (2) of Rule 16.21 of the Rules, he was under an obligation to attend all roll calls and to perform all such duties as the Superintendent of Police might direct.

(5) Mr. Ashish Kapoor, learned counsel for the petitioner has vehemently argued that absence from duty during suspension without any sanctioned leave would not be an act of grave misconduct as contemplated by Rule 16.2 of the Rules. In support of his submission, the learned counsel has placed reliance on a Division Bench judgment of this Court in the case of **Ramesh Chander Chug, Assistant Engineer (Civil) versus The Haryana State Electricity Board (1)**. According to the learned counsel, the act of absence would not fall under any of the clauses of explanation which defines the gravest act of misconduct in disciplinary proceedings. The learned counsel has further pointed out that the respondents have failed to consider the length of service of the petitioner as is mandated by Rule 16.2 of the Rules.

(6) Mr. N.K. Joshi, learned State counsel has argued that absence from duty even during suspension is a gravest act of misconduct and it cannot be assumed that a suspended police officer is entitled to remain absent without any sanctioned leave. According to the learned counsel, allowing a suspended police official to remain absent without the sanctioned leave would palpably result into infraction of Rule 16.21 of the Rules which imposes an obligation on such a police officer to attend all roll calls when transferred to lines. In support of his submission, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of **Union of India and others versus Narain Singh (2)**.

(7) After hearing learned counsel for the parties, I am of the considered view that this petition is liable to be dismissed. A reference may be made to Rules 16.2 and 16.21 of the Rules which read 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

(1) 1986 (3) S.L.R. 1

(2) AIR 2002 S.C. 2102

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 regard 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 the 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 Government ; and
- (viii) causing riots and the like.”

“16.21. Status and treatment of officers under suspension.—(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 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.

xx xx xx xx”

(8) A perusal of Rule 16.2 shows that the punishment of dismissal could be awarded only for the gravest act of misconduct proving incorrigibility and complete unfitness for police service. It has been further provided that while passing the order of dismissal, the competent authority shall take into consideration, the length of service of the defaulting officer and his claim to pension. Rule 16.21 makes it absolutely clear that a police officer during suspension shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he has not been suspended. On transfer to Lines, he is required to attend roll calls and perform all such duties as may be directed by the Superintendent of police. Rule 16.21 of the Rules came up for consideration of the Supreme Court in the case of **State of Punjab and others versus Dharam Singh (3)**. While interpreting the rule, their Lordships observed as under :—

“A reading of it would clearly indicate that even during the period of suspension the police officer is required to attend to roll-call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one facet of it and his duty to be present is another. Non-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowance, go to the office and collect subsistence allowances and if it is not paid, necessary representation to the higher authorities and, if the grievance is not redressed, to the appropriate forum seeking payment,

may be made. But that does not mean that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was wilfully absent from duty is well justified.....”

(9) It is evident from the aforementioned observations of the Supreme Court in **Dharam Singh's** case (*supra*) that absence from duty during suspension or otherwise would not stand on a different pedestal because of the specific language of Rule 16.21 of the Rules. Even otherwise, it is well settled that single act of absence from duty may be viewed as an act of grave misconduct. Repeated absenteeism may constitute a gravest act of misconduct proving incorrigibility especially for a member of a disciplinary force. In the present case, the petitioner was awarded punishment of drill for remaining absents on 17th October, 1979 and 20th/21st October, 1979. He still remained absent without any sanctioned leave on 8th January, 1980 and 26th February, 1980. Rule 16.2 of the Rules came up for consideration of their Lordships of the Supreme Court in the case of **State of Punjab and others versus Sukhwinder Singh**, (4) and for repeated absence it has been observed as under :—

“The High Court was right in noting that the respondent was a member of a disciplined force and that absence from duty was unbecoming of a member of such force. It was in that light that the High Court should have looked at the repeated acts of the respondent's absence from duty. The fact that the respondent is a member of the Scheduled Castes is neither here nor there for the purposes of considering whether or not he is guilty of misconduct and breach of discipline, nor the fact that he had gone to give his pay to his mother and was detained on account of her illness. It is necessary that members of the police forces should attend the duties which they have been allocated and not absent themselves. This is a paramount public interest that must outweigh private considerations. The High Court was, therefore, in patent error in looking benignly at the numerous acts of absence of the respondent.

That the order of dismissal did not use the "Mantra" of "gravest act of misconduct" is not determinative. The substance of that conclusion is to be found in that order. When a policeman is repeatedly absent from duty, it cannot be but be reasonably concluded that there is incorrigibility in his continued misconduct."

(10) Moreover quantum of punishment cannot be interfered with unless it is shown that there is some lapse committed by the enquiry officer. It is appropriate to mention that no argument has been advanced to challenge the legality of findings or procedural lapse on the part of the enquiry officer. This view is supported by the judgment of the Supreme Court in Narain Singh's case (*supra*).

(11) The argument of the learned counsel for the petitioner that absence during suspension would not constitute gravest act of misconduct cannot, therefore, be sustained and is thus liable to be rejected in view of the decision of the Supreme Court in **Dharam Singh's** case (*supra*).

(12) The other argument raised by the learned counsel that the length of service of the petitioner was required to be kept in view by virtue of Rule 16.2 of the Rules would not require any detailed consideration because of the fact that the petitioner would not acquire any pensionary rights as he joined service on 1st January, 1972 and he was placed under suspension on 17th May, 1979. His total length of service in the department is just over seven years which would hardly constitute any basis for the department to take a lenient view by giving him lesser punishment like stoppage of increments with cumulative effect etc. In **Dharam Singh's** case (*supra*) the order of dismissal was converted into an order of premature retirement because the officer has rendered long years of service and his pension would have been adversely affected. This view cannot be taken in the instant case because the petitioner has not rendered such a qualifying service which may belong enough for him to earn pension. Therefore, there is no substance in the second submission made by the learned counsel and the writ petition is liable to be dismissed.

(13) For the reasons recorded above, this petition fails and the same is dismissed.

R.N.R.