(9) In view of the above, the writ petition is allowed. The petitioner shall also be entitled to her costs, which are assessed at Rs. 10,000.

R.N.R.

Before K.K. Srivastava and J.S. Khehar, JJ.

BISHAN SINGH,—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

CWP No. 2049 of 1999

11th October, 1999

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 16.2—Petitioner absent from duty after consuming liquor—Dismissed from service—Challenge thereto—Dismissal order upheld—Act of consuming liquor while on duty and absenting himself from duty is the gravest act of misconduct committed by a member of the disciplined force.

Held, that the act of the petitioner in consuming liquor and absenting himself from duty is the gravest act of misconduct committed by a member of the disciplined force and this has been duly taken note of by respondents No. 2 to 4. The mere fact the petitioner had put in some years of service and should have been considered for termination of service and not for dismissal of service is of no consequence.

(Para 10)

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 16.2(2)—Appraisal of evidence—Well established principle that High Court will not sit as a Court of appeal and re-examine evidence of witness examined during departmental proceedings—Ample opportunity given to the petitioner to cross-examine witnesses—Enquiry report duly considered by the Punishing authority—Presenting authority and Inquiry officers have requisite jurisdiction in law to appraise facts and evidence in coming to the conclusion about charge being against the delinquent official.

Held, that this Court will not sit as a court of appeal and re-examine the evidence of the witnesses recorded during the course of departmental enquiry. The Inquiry Officer and the Punishing Authority are the competent authorities having requisite jurisdiction in law to appraise the material, including the evidence of the

prosecution witnesses recorded during the enquiry and considering the other material on record in coming to the conclusion about the charge being proved against the delinquent official.

(Para 8)

S.K. Bansal, Advocate, *for the petitioner.*

Atul Mahajan, DAG, Haryana, *for the respondents.*

JUDGMENT

K.K. Srivastava, J.

(1) The petitioner was enrolled in the Haryana Police as a constable and was appointed on 29th August, 1977, he was posted at T-point barrier, Ladwa Road, Indri, district Karnal. Shri Balwant Singh, Assistant Sub Inspector, was posted at the said barrier as Incharge. On 4th September, 1992 the petitioner was given santri duty at the barrier aforesaid from 6.00 p.m. to 9.00 p.m. The Inspector Incharge aforesaid called the roll of the employee posted at the barrier and found the petitioner to be absent. An entry in this regard was made in the Daily Diary Register,—*vide* report No. 5 (time 6.00 p.m.). However, on search of the area, the petitioner was found lying in a drunken state under a mango tree in Mehta Farm, Indri. He was got medically examined at Primary Health Centre, Indri. The Medical Officer reported that he had consumed liquor. Consequently the petitioner was charge-sheeted on the aforesaid allegations,—*vide* Annexure P-1. The petitioner was accused of consuming liquor during duty hours and by absenting from duty, he had committed negligence and indiscipline, which was treated to be highly condemnable being a member of the disciplined force. Annexure P-2 is the summary of charge, signed by the Inquiry Officer. The petitioner was duly informed about the enquiry being held into the said charges against him, but he is defaulted himself inasmuch as he did not appear before the Inquiry Officer, who made a written request to the Disciplinary Authority, i.e. Superintendent of Police, Karnal on 25th December, 1992 for proceeding *ex parte* against the delinquent official, i.e. the petitioner. On 5th January, 1993 the Superintendent of Police granted permission to the Inquiry Officer to proceed *ex parte* against the petitioner. However, on 6th January, 1993, the petitioner appeared before the Inquiry Officer *suo-motu*, when the summary of allegations, list of documents, list of prosecution witnesses were supplied to him and he was given time to admit or deny the allegations and was directed to appear on 8th January, 1993. The petitioner appeared before the Inquiry Officer on 8th January, 1993 and denied the allegations levelled

against him. Thereafter in the enquiry, statements of nine prosecution witnesses were recorded. The petitioner was given full opportunity of cross-examining them and also to take down the notes of their statements. Thereafter he was asked to lead defence evidence as well as to submit any reply in defence and the case was fixed for 15th April, 1993 for the said purpose. The petitioner defaulted and did not put in appearance on the said day. Thereafter Parwanas were issued for his presence, which were duly noted by him but he did not appear before the Inquiry Officer for leading any defence evidence or for submitting defence reply. The Inquiry Officer again sought permission from the Superintendent of Police on 26th April, 1993 for proceeding *ex parte* against the petitioner, which was granted on 27th April, 1993. The Inquiry Officer submitted his findings on 28th April, 1993, holding the petitioner guilty of the chrages levelled against him. The Disciplinary Authority, i.e. the Superintendent of Police, after perusing the enquiry report as well as the evidence recorded during the enquiry agreed with the findings of the Inquiry Officer and issued a show-cause notice to the petitioner, which was sent at the address of the petitioner alongwith a copy of the enquiry report, which was received by the petitioner on 18th May, 1993. He was given 15 days time to submit reply to the show cause notice, but he did not submit any reply within the stipulated period. However, a reminder was issued to him, giving further time of 5 days to appear before the Disciplinary Authority on 16th June, 1993 at 9.00 a.m. to explain his case. This reminder was received by Smt. Shakuntla, wife of the petitioner in the presence of Shri Krishan Dahiya Sarpanch of the village. The petitioner did not appear before the Superintendent of Police, who inferred that the petitioner had nothing to say in reply to the show cause notice and affirmed the findings of the Inquiry Officer and held the petitioner guilty of the charges. The Superintendent of Police found that in 16 years of service, the petitioner earned six bad entries in his character roll. He was awarded the punishment of 15 days PD on four occasions and one punishment of censure besides the punishment of stoppage of five future increments with permanent effect. The Superintendent of Police noticed that all these punishments were awarded to the defaulter for remaining wilfully absent from duty and that the present case is an act of misconduct of the gravest nature on the part of the defaulter and shows his incorrigibility. The Disciplinary Authority/ Superintendent of Police imposed the punishment of dismissal from service on the petitioner and consequently dismissed him from service forthwith,—*vide* order dated 12th July, 1993, copy Annexure P6.

(2) An appeal was preferred against the order of the Superintendent of Police, which was filed being time barred, by the

Deputy Inspector General of Police,—*vide* order copy Annexure P7. Thereafter a revision petition was filed before the Director General of Police, who found no merit in the revision petition and rejected the same.

(3) Feeling aggrieved, the petitioner has approached this Court by filing this writ petition under Articles 226 and 227 of the Constitution of India praying for quashing of the impugned orders Annexures P6, P7 and P8, being illegal, void and for issuance of a mandamus to the respondent/authorities to re-instate him in service with continuity of service and all consequential service benefits, including arrears of salary etc.

(4) In the writ petition, the petitioner made averments of bias and ill-will against the Inspector Incharge of the barrier aforesaid, Shri Balwant Singh, Assistant Sub Inspector and alleged, *inter alia,* that the said ASI had been nursing a grudge against him and was out and out to harm him. He alleged that he was seriously ill and had been taking rest in Mehta Farm. He alleged that he had informed the ASI Incharge that he would not be in a position to attend to his duty at the barrier in the evening and requested for leave. It was further alleged that in the night at about 10.30 p.m. on 4th September, 1992 itself when the petitioner was taking rest, he was malafidely removed to the Primary Health Centre, Indri and was got medically examined. He alleged that he was served with an illegal and false charge-sheet (Annexure P1) on 19th April, 1993 by the ASI, Karnal. He contended that he denied all the allegations and explained the facts to the Inquiry Officer. A summary of charges was served on him,—*vide* letter Annexure P2, the contents of which were totally different from those of the charge-sheet/Annexure P1. According to the petitioner, in the summary of charge new allegation was inserted that Constable Dharam Pal was sent for search of the petitioner and that the word 'Gross' was inserted prior to the words 'negligence and indiscipline', which was not mentioned in the charge-sheet. Further in the charge-sheet, the duty hours of the petitioner were alleged from 6.00 p.m. to 9.00 p.m. while in the summary of charge the said period was alleged from 6.00 p.m. to 10.00 p.m. The petitioner referred to the statement of PW-5 Charanjit Singh, who had stated that he had neither seen the petitioner taking liquor nor heard so from any colleague. Balwant Singh ASI PW 7 stated only that at about 9.30 p.m. Constable Dharam Pal informed him that the petitioner was lying under a Mango tree in Mehta Farm in a drunken condition, meaning thereby that he did not state that the petitioner was lying in an unconscious state. PW 9 Dharam Pal had stated that he found the petitioner lying under a Mango tree in Mehta Farm and on return he informed so to the ASI.

The said witness never stated that the petitioner was lying in an unconsious state by consuming liquor or that he had consumed liquor on that day. The petitioner further alleged that the Inquiry Officer illegally recorded the statement of PW-2 Krishan Kumar C.R.C. regarding the earlier punishment awarded to the petitioner, although the said punishment could not be taken into consideration as neither the said fact was mentioned in the charge-sheet, summary of charge-sheet or otherwise. The Inquiry Officer submitted his report to the respondent No. 2, who without supplying copy of the same to the petitioner and without calling for his explanation illegally accepted the same. The respondent No. 2 on the basis of the said evidence held the petitioner wilfully absent from his duty on 4th September, 1992. The respondent No. 2 did not take into consideration the length of service rendered by the petitioner already. He further contended that the appeal was decided by the Deputy Inspector General of Police/ respondent No. 3 without caring for the principles of natural justice and fair play and by passing a cryptic and non-speaking order. The revision petition was also dismissed by the respondent No. 4/Director General of Police by passing a non-speaking and cryptic order. The impunged orders are challenged on the grounds *inter alia* that under Rule 16.2 (2) of the Punjab Police Rules, punishment of dismissal from service is to 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. While awarding the punishment of dismissal from service, claim for pension has to be taken into consideration keeping in view the length of service rendered by the delinquent official.

(5) Notice of motion was issued on a limited point (contended by learned counsel for the petitioner), that the length of service of the petitioner was not kept into consideration while passing the order of dismissal from service, the contention of learned counsel for the petitioner was noted as under :

"Mr. S.K. Bansal, Advocate

Contends that even if petitioner is held guilty of the charge levelled against him, yet keeping in view the length of his service an order of termination could have been passed and not an order of dismissal.

Notice of motion on this limited point for 30th March, 1999."

(6) A joint reply was filed on behalf of respondents No. 1 to 4. In the preliminary submissions, it was contended that the petitioner was dismissed from service on 12th March, 1993 but the writ petition had

been filed in the year 1999, which was liable to be dismissed on the ground of delay and laches. On merits, the respondents denied the allegations made by the petitioner. The respondents defended the action taken against the petitioner and contended that the charge-sheet duly approved by the Superintendent of Police was served on the delinquent, wherein it was clearly mentioned that the delinquent had committed 'gross' negligence and indiscipline. The Medical Report prepared by the Medical Officer, Primary Health Centre, Indri, showed that the petitioner had consumed liquor. It was contended that the petitioner had consumed liquor during the period when he was deputed for duty at the barrier. It was denied that the length of service of the petitioner was not taken into consideration at the time of imposing the punishment of dismissal from service. The appellate authority as well as the revisional authority duly considered the matter and passed appropriate orders, rejecting the appeal as well as the revision respectively. The allegations regarding the petitioner applying for leave on the day of duty were denied. It was also denied that the petitioner was not afforded any opportunity of cross-examining the witnesses and to produce the defence.

(7) Learned counsel for the petitioner vehemently argued that the respondents/authorities have not taken into consideration the provisions of Rule 16.2(1) of the Punjab Police Rules, as applicable in the State of Haryana, inasmuch as length of service rendered by the petitioner was not taken into consideration while awarding the punishment of dismissal from service, which could be awarded only for the gravest act of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

(8) It is well settled that this Court will not sit as a court of appeal and re-examine the evidence of the witnesses recorded during the course of departmental enquiry. The Inquiry Officer and the Punishing Authority are the competent authority having requisite jurisdiction in law to appraise the material, including the evidence of the prosecution witnesses recorded during the enquiry and considering the other material on record in coming to the conclusion about the charge being proved against the delinquent official. In the instant case, adequate opportunity was given to the petitioner to cross-examine the witnesses during enquiry. The enquiry report was duly considered by the Punishing Authority, i.e. respondent No. 2, who at the time of issuing of show cause notice to the petitioner, enclosed therewith a copy of the enquiry report. The petitioner did not avail the opportunity before the Inquiry Officer to contest his case. The Inquiry Officer considered the record of the petitioner and found that he was habitual

defaulter and was incorrigible and had consumed liquor while he was on duty. It is significant to note that there is not denial of the fact that the Medical Officer of the Primary Health Centre, Indri, had found the petitioner having consumed liquor. There is also no denial of the fact that the petitioner was to perform duty at the barrier with effect from 6.00 p.m. onwards. The petitioner has not placed on record any material to show that he had applied for leave to the Officer-Incharge of the barrier on that day and that the leave had been sanctioned to him. In this view of the matter, no fault can be found inlaw with the respondent No. 2 in finding the charge proved against the petitioner and holding the petitioner guilty of the chrges levelled against him. The petitioner was, thus, found guilty of having consumed liquor during duty hour's and absented himself from duty. No valid reason or explanation was offered for the alleged absence of the petitioner. Respondent No. 3/ the Deputy Inspector General of Police decided the statutory appeal,—*vide* his order copy Annexure P7 and the revision filed by the petitioner was disposed of by respondent No. 4/Director General of Police,—*vide* his order copy Annexure P8, which shows that the averments made against the petitioner were duly noticed and the revision petition was considered. Respondent No. 4 concluded in para 4 as under :

> "I have examined the revision petition and departmental enquiry file. Departmental enquiry has been conducted according to the prescribed rules and procedure and does not suffer from any legal infirmity. Misconduct of the revisionist has fully been proved during the course of departmental enquiry. There is no extenuating or mitigating factor in his favour. In view of the above, I have no reason to interfere with the orders already passed by the authorities below. I, therefore, reject the revision petition of ex. Constable Bishan Singh No. 798/KNL, who may be informed accordingly."

(9) The Hon'ble Supreme Court in a case titled 'State of Punjab and others *versus* Sukhvinder Singh', Civil Appeal No. 4751 of 1998 has recently interpreted the expression "gravest act of misconduct" appearing in Rule 16.2 of the Punjab Police Rules, which are applicable in the State of Haryana as well and held *inter alia* as under :

> "It is necessary that the members of the police forces should attend the duties which they have been allocated not absent themselves. This is a paramount public interest that must over-weigh private considerations. "

> "That the order of dismissal did not use the 'mantra' of "gravest act of misconduct" is not determinative. The susbtance of that

conclusion is to be found in that order. When a policeman is repeatedly absent from duty, it cannot but be reasonably concluded that there is incorrigibility in his continued misconduct."

(10) Keeping into consideration the facts and circumstances of this case, we are of the considered view that the act of the petitioner in consuming liquor and absenting himself from duty is the gravest act of misconduct committed by a member of the disciplined force and this has been duly taken note of by respondent Nos. 2 to 4. The mere fact the petitioner had put in some years of service and should have been considered for termination of service and not for dismissal of service is of no consequence.

(11) Learned counsel for the petitioner relied upon the decision in *Ram Krishan, Constable No. 141 vs. The State of Haryana through the Director General of Police (Inspector General of Police), Haryana at Chandigarh and others* (1), wherein a learned Single Judge of this Court held :

"No doubt, even a single act of misconduct can, in a given situation, amount to the gravest act of misconduct, but the mandate of the rule making authority is clear that the punishment of dismissal from service has not to be awarded in a misconduct of ordinary nature. ...."

(12) The learned Single Judge after noticing the facts of that case, wherein he found that it was single stray case of taking liquor by the petitioner and where it was disputed by the petitioner as to whether he was on duty at 1.30 a.m. (night) on 12th February, 1983, as according to him, he was off duty and further taking into consideration that there was no evidence whatsoever that he was creating nuisance under the influene of liquor and that the petitioner had put in nine years, six months and eleven days service, i.e. less than ten years service, which is the minimum period of qualifying service for the grant of pension under the Punjab Civil Services Rules, Volume II and further noticing that there was no finding by the punishing authority to the effect that the alleged misconduct was proving incorrigibility and complete unfitness for the Police service nor was regard shown to the length of service of the offender and his claim to pension, the impugned order of dismissal from service was quashed.

(13) In the instant case, there is categorical finding of the Inquiry Officer, which was duly accepted by the punishing authority that the

(1) 1990 (1) Recent Services Judgments 637

petitioner's act of consuming liquor while on duty coupled with his record showed that he was incorrigible and unfit to be retained in service. In these facts and circumstances, he was awarded the punishment of dismissal from service. Even otherwise, with great respect to the learned Single Judge, we are unable to accept that a member of a disciplined force, who consumed liquor once, has to be treated leniently and particularly while he was deputed to perform duty.

(14) The next authority relied upon by learned counsel for the petitioner is in case *Mahipat* v. *The State of Haryana and others* (2), wherein a learned Single Judge of this Court held that absence from duty in a disciplined force would be a grave misconduct, but the mere fact of absence from duty by itself may not amount to gross misconduct and the absence is to be seen from totality of circumstances.

(15) There can be no dispute regarding proposition of law. But in the instant case the facts amply justify the conclusion of the respondents/authorities regarding the charges being proved against the petitioner.

(16) The other authority relied on by learned counsel for the petitioner is a Division Bench judgment in *The State of Haryana and others* v. *Ram Partap* (3), regarding the allegation against a constable of consuming liquor but not under the influence of liquor. It was held in para 4 of the judgment as under :

> "It may, therefore, be noted that the view taken by this Court in the earlier decisions referred above was that a constable found to have consumed liquor but not under the influence of liquor, would not be said to have committed gravest act of misconduct as contemplated under the Rules. That view finds further endorsed by the subsequent amendment in the rules. Under these circumstances, it follows that in cases where a constable happens to have consumed alcohol but not under the influence of alcohol, his case would not come under the phrase "gravest act of misconduct", as the position now stands."

(17) In the instant case, the facts are different from the facts of the case in State of Haryana (*supra*). In the present case the allegations against the petitioner were clear and categorical that he had consumed liquor and he was under the influence of liquor when he was taken to Primary Health Centre, Indri, where he was medically examined and was found to have consumed liquor. The influence of liquor was on

(2) 1994 (3) Recent Services Judgments 132
(3) 1998 (1) RSJ 192

him inasmuch as he was not in full senses and this happened while he was directed to perform duty at a barrier. In our considered view, the facts in the instant case are entirely different and the aforesaid authority would thus not be of any help to the petitioner.

(18) The last authority relied on by learned counsel for the petitioner is a Division Bench judgment of this Court in *Constable Shiv Charan. No. 313* v. *The Superintendent of Police, Gurgaon, District and others* (4). In that case the finding recorded by the Inquiry Officer was based on a total misleading of evidence and perverse and could not form basis for imposing the penalty of dismissal. It was held that failure of the respondent to examine the case of the appellant in correct perspective of Rule 16.2 has caused grave prejudice to him. The impugned order was quashed.

(19) The learned DAG, appearing for the respondent/State of Haryana has placed reliance on a Division Bench judgment of this Court in *Karnail Singh* v. *The State of Punjab and others* (5), wherein it was observed in para 9 as under :

> "The petitioner habitually remained absent from duty. He did not reform himself. The record which has been alluded to by the appellate authority reveals that on previous occasions too the petitioner was awarded punishment on eight different occasions for remaining absent from duty. His absence from duty continuously for 5 months and 5 days was not an isolated act. There had been repeated acts of remaining absent from duty for which he has been awarded punishment and the past record was taken into account while awarding punishment of dismissal from service. On the facts of the instant case, we do not find that the action of the respondents suffers from any infirmity."

(20) We may also point out that now in view of the law settled by the Hon'ble Apex Court in the case of *State of Punjab and others* v. *Sukhvinder Singh (supra),* the absence from duty of a member of the disciplined force is the gravest act of misconduct and sufficient to award the punishment of dismissal from service.

(21) In view of the foregoing discussion, we find no merit in this writ petition, which is dismissed. However, there shall be no order as to costs.

J.S.T.

(4) 1998 (3) RSJ 151
(5) 1993 (4) RSJ 448