Before G.S. Sandhawalia, J.

BALWINDER SINGH, EX-CONSTABLE—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No.4523 of 1999

March 11, 2016

Punjab Police Rules, 1934—Rl.12.21—Entrusted with responsibility to deposit sample with Chemical Examiner, Bathinda—He never went to Bathinda, but choose to go to his village—In such case, the finding of grave act of misconduct not liable to be interfered with.

Held, that petitioner being a uniformed personnel had been entrusted with the delicate and responsible task to deposit the samples with the Chemical Examiner and it has been proved that he never went to Bathinda, but choose to go to his village. In such case the finding recorded that it is grave act of misconduct is not liable to be interfered with.

(Para 16)

Puneet Kansal, Advocate and Rajiv Kawatra, Advocate
for the petitioner.

Avinit Avasthi, AAG, Punjab.

G.S. SANDHAWALIA, J.

(1) The petitioner challenges the charge-sheet dated 15.06.1993 (Annexure P-1) alongwith show cause notice dated 27.10.1993 (Annexure P-4), wherein he was put to notice that why he should not be dismissed from the Police Department. Challenge is also made to the order dated 20.03.1997 (Annexure P-7), whereby he was dismissed from the service by the Senior Superintendent of Police, Ferozepur, respondent No.3.

(2) The facts from the record would go on to show that the petitioner joined the service on 14.08.1992 as a constable. On 14.04.1993 while posted in Police Station Sadar Ferozepur, he was sent to Bathinda vide Rapat No.13 to deposit the samples with the Chemical Examiner. Instead of complying with the directions, he went

home and was involved in a quarrel, due to which FIR No.74 dated 15.04.1993 was registered at Police Station Jalalabad under Sections 324, 323, 148, 149 IPC. On account of the same, statement of charges was served upon on 15.06.1993 (Annexure P-1) that he had shown carelessness and going to his villagewithout informing anybody and the same was condemnable and punishable. Resultantly, an inquiry was initiated against him.

(3) An explanation was given by the petitioner to the show cause notice on 02.08.1993 (Annexure P-2) by taking the plea that he was not well and, therefore, he could not go to Bathinda as he was late and he had gone to Dr. Prem Parkash Bajaj for treatment. As he had been injured in the fight, he had given samples to his brother Havaldar Ramesh Singh for depositing them at Police Station Ferozepur Sadar, which were deposited on 18.04.1993vide Rapat No.11.

(4) In the inquiry proceedings, the allegation of carelessness to his duty was held against him, but the recommendation was that the petitioner was only a recruit and, therefore he had shown carelessness. Resultantly, a show cause notice dated 27.10.1993 (Annexure P-4) was issued to him why he should not be dismissed from service.

(5) Reply to the show cause notice was filed and the same plea was taken that he had never committed any fault and the samples had not been deposited as he was unwell and got late to take the bus to Bathinda. Resultantly, the Senior Superintendent of Police, Ferozepur on 18.01.1994 (Annexure P-6) came to the conclusion that since he had gone to his home instead of depositing the samples and quarrelled and did not have the qualities of becoming a good police officer and did not enjoy good reputation in public. Accordingly, he was discharged under Rule 12.21 of Punjab Police Rules, 1934.

(6) The petitioner challenged the same by filing a civil suit, which was decreed in his favour on 18.05.1996. However, since he was not given interest on the arrears of pay, he challenged the said judgment, whereas the State challenged the same also. The District Judge vide judgment and decree dated 10.12.1996(Annexure R-1) came to the conclusion that the impugned order was stigmatic and it would be an impediment on future employment. Accordingly option was given to the State to proceed further from the stage of holding inquiry and to pass appropriate orders according to the rules. Thus, the punishing authority was given liberty to proceed further to pass appropriate orders, whereas, the appeal of the petitioner was consequently dismissed, since the decree itself was modified.

(7) Resultantly, the dismissal order was came on 20.03.1997. Respondent No.3, accordingly, came to the conclusion that the samples had not been deposited in time and it proved petitioner's carelessness and indiscipline and accordingly came to the conclusion that it would be fit to remove him from police service. The right of the petitioner for pension was also considered. The defence that he was ill was rejected on the groundthat Dr. Prem Parkash Bajaj who examined the petitioner and had written that he was unable to travel being so ill, whereas, he had enclosed the medical certificate issued by Civil Hospital, Jalalabad of the next day. Thus, the medical certificate was discarded.

(8) Resultantly, the present writ petition has been filed.

(9) Counsel for the petitioner has argued that reasoning given in the dismissal order is not justified. The medical certificate was of 10.05.1993 and not of the next date. Reliance has been placed upon the medical certificate issued by Dr. Prem Parkash Bajaj, who was also produced as a witness before the Inquiry Officer. Accordingly, it has been argued that the petitioner had a valid reason for which he could not go to Bathinda and, therefore, went to his village. The argument is accordingly raised that there was no such act of grave misconduct and the act was not so grave that the dismissal order should have been passed. Accordingly, the issue of quantum of punishment was projected by contending that it was a very harsh order.

(10) Counsel for the petitioner has placed reliance upon the judgment of the Division Bench of this Court in ***The State of Punjab*** *versus* ***Parkash Chand***[1] and the judgment of the Apex Court in ***Krushnakant B. Parmar*** *versus* ***Union of India and another***[2] and ***S.R. Tewari*** *versus* ***Union of India and another***[3]**.**

(11) Counsel for the State on the other hand submitted that the petitioner was a uniformed personnel having less than a year's service when the misconduct had occurred and from the inquiry proceedings charges had been proved and accordingly supported the order of dismissal.

(12) After hearing counsel for the parties, this Court is of the opinion that the argument raised is liable to be rejected. It is not

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[1] 1992 (1) SCT
[2] (2012) 3 SCC 178
[3] (2013) 6 SCC 602

disputed that it has been proved as a matter of fact that the petitioner instead of taking the samples to Bathinda for which he had been entrusted had preferred to go to his village. He had been put on duty but he opted to go to his village and only on account of the involvement in the fight and lodging of the FIR his presence was recorded there, due to which the departmental proceedings were initiated against him. If he was unwell, he should have proceeded firstly for the Civil Hospital and got his treatment done there, but he had chosen to fall back on a private practitioner to whom he reported by reaching at 3.30 P.M and he was advised to rest there. At that point of time he had the option to report back at the Police Station instead of proceeding to his village.

(13) The respondent No.3 has rightly rejected the said certificate by noticing that in his reply the petitioner had relied upon a certificate issued on 12.04.1993 by the Civil Hospital Jalalabad. A perusal of the reply of the petitioner dated 29.10.1993 (Annexure P-5) would also go on to show that a specific plea by enclosing the certificate issued by the Civil Hospital, Ferozepur had been taken to contend that he was not well and was getting treatment from the Government Hospital. Thus, it would be clear that the petitioner was getting treatment from the Civil Hospital and he would have gone back to the same hospital, but he choose to fall back on a private practitioner for a certificate of his convenience. The Division Bench of this Court in ***Ex. Constable Sat Pal*** *versus* ***State of Haryana***[4] while dealing with the issue of absence has held that the uniformed personnel are to act responsibly and once an application for leave has not been given, the order of dismissal would be justified.

(14) The factum that the petitioner was not liable for payment of pension was noticed by respondent No.3 in the present case and the fact that he had only one year's service when the initial order of discharge was passed. Rule 16.2 also talks about the claim of pension, which was duly considered by the punishing authority. This Court in ***Prithi Pal Singh*** *versus* ***State of Haryana***[5] has also held that it is for the police officer who judged the infraction of the police rules to determine the seriousness of the misconduct and to decide upon the suitability of the punishment. A Division Bench in ***Constable Jagmal Singh*** *versus*

[4] 1998 (2) RSJ 491
[5] 2000 (2) SCT 68

State of Haryana[6] held that the purpose of the rule whereby the length of the service is to be taken intoaccount is for keeping in mind the right of the employee to get pension. It was noticed that since the employee had only 7 years of service in that case and he had no right of pension, even reference to the length of service is not required to be made.

(15) This Court in ***State of Haryana*** *versus* ***Lakhan Lal***[7] has held that the words 'gravest act of misconduct' would not mean that there have to be various acts of the police officials and it could include singular gravest act of misconduct. The reasoning given was that the delinquent police official could commit one heinous crime and then contend that he would not fall within the mischief of Rule 16.2 (1). The relevant portion reads as under:-

> "7. Having gone through the entire case law cited at the Bar and having given thoughtful consideration to the entire matter, this Court is of the considered view that even one act of misconduct would be sufficient to attract the applicability of R. 16.2(1) provided the act is gravest. The gravest act, of course, is incapable of any strict definition. The distinction has to be drawn by the punishing authority between misconduct and grave misconduct. Misconduct should notbe of an ordinary nature and it always has to be of a serious nature. The use of the word 'gravest' only means that it hasto be of a superlative degree than what a particular act can just be described to be 'grave'. The gravest act does not mean that the number of acts complained of should be more than one. The use of the word 'acts' in R. 16.2(1) can be said to include a single gravest act of misconduct. It has to be held in order to give effect to the legislative intendment that the word used in plural in R. 16.2(1) would be deemed to include the 'singular'. If the punishing authority comes to the conclusion that a particular act of the police official was one of the gravest, surely it would not be necessary to wait for the commission of a second act of grave nature by the police official. If such an interpretation is to be taken of the words 'gravest acts of misconduct', the delinquent police official would commit a heinous crime in order to contend that he does not fall

[6] 1998 (1) RSJ 151
[7] 1991 (3) RSJ 530

> within the mischief of Rule 16.2(1). In view thereof a Single act of misconduct of gravest nature is good enough for invoking the aid of Rule 16.2(1) to award punishment of dismissal. However, a single act or number of acts of misconduct of a police official must prove incorrigibility and complete unfitness for police service. This seems to be the mandate of R. 16.2(1). A particular act may be grave or the gravest but the act complained of may not besuch that it must necessarily prove incorrigibility andcomplete unfitness for police service."

(16) As noticed above, the petitioner being a uniformed personnel had been entrusted with the delicate and responsible task to deposit the samples with the Chemical Examiner and it has been proved that he never went to Bathinda, but choose to go to his village. In such case the finding recorded that it is grave act of misconduct is not liable to be interfered with.

(17) The judgment relied upon by the counsel for the petitioner in ***Parkash Chand*** *(supra)* is not applicable to the facts and circumstances of the present case as the Court came to the finding that there was no finding recorded that the act of the respondent amounted to the gravest act of misconduct and upheldthe judgment of the lower Appellate Court. The said case was of absence of duty for a period of 3 months and the suit had been decreed by the lower Appellate Court.

(18) Similarly, the judgment of the Apex Court in ***Krushnakant B. Parmar*** *(supra)* does not pertain to the charge of carelessness of a uniformed personnel. The Court came to the conclusion that the absence was not willful and, therefore, it did not amount to misconduct.

(19) Similarly, the judgment in ***S.R. Tewari*** *(supra)* wherein quantum of punishment would not be applicable in the facts and circumstances, since in the said case the extreme order of dismissal was substituted by stoppage of withholding two increments for one year, keeping in view the fact that the petitioner had a service of 28 years.

(20) The Apex Court in ***State of U.P.*** *versus* ***Ashok Kumar Singh***[8] has held that modifying the punishment imposed in the case of a Police Constable who was serving on a disciplined post was not justified. It was held that there should be strict adherence to the rules

[8] 1996 (1) SCC 302

and procedure more than any other department.

(21) Resultantly, keeping in view the above discussion, this Court does not feel that it is a fit case for interference with the order of the dismissal passed by respondent No.3. Accordingly, the present writ petition is dismissed.

Shubreet Kaur