A STATE OF PUNJAB AND ORS.

v.

RAM SINGH EX. CONSTABLE

JULY 24, 1992

B [A.M. AHMADI, M.M. PUNCHHI, AND K. RAMASWAMY, JJ.]

Civil Services : Punjab Police Manual 1934 :

Vol-II Rule 16.2(1)—Dismissal for gravest acts of misconduct—Misconduct—What is—Police personnal on duty found heavily drunk—Held—Misconduct.

C

The respondent while working as Gunman of the Deputy Commissioner of Police was dismissed from service by order dated 'February 11, 1980 on the charge that he was found heavily drunk and roaming at the D **bus stand wearing the service revolver. Traffic Constable brought him to the police station and the revolver was deposited in the malkhana. When the respondent was sent for medical examination, he was declared as heavily drunk. An enquiry was conducted as per prescribed procedure in this behalf and found him to have contravened Rule 16.2(1) of the Punjab** E **Police Manual 1934 Vol. I. The Departmental appeal ended against the respondent.**

Thereon the respondent filed the suit for declaration that the said order was null & void, unconstitutional, illegal ultravires and opposed to the principles of natural justice. He sought for consequential relief of F **reinstatemcnt and other benefits.**

The trial Court decreed the said suit and the appeal was affirmed stating that the order of dismissal was vitiated by not giving reasonable opportunity due to non supply of the documents and the disciplinary G **authority did not keep in view the mandatory provisions of Rule 16.2(1) of the Rules.**

The High Court in second appeal held that the enquiry was not vitiated but affirmed the decree on the ground, that Rule 16.2(1) contemplates that the dismissal shall be awarded only for the gravest acts of H **misconduct. Taking drink is a single act and is not a gravest act, so the**

Superintendent of Police was not alive to the mandate of Rule 16.2(1) which envisages dismissal only for gravest acts of misconduct and the respondent had put in 17 years of service and would have qualified for pension after putting another 3 to 4 years of service and that was not kept in view. A

Granting the special leave setting aside the decree of the courts below restoring the dismissal order, the Court, B

HELD: That the word misconduct is though not capable of precise definition, its reflection received connotation from the context. The deliquency in performance and its effect in the discipline and nature of duty. It may involve moral terpitude, it must be improper or wrong behaviour, unlawful behaviour willful in character, a forbidden act, a transgression of established and definite rule of action or Code of Conduct. But not mere error of judgment carelessness and negligence in performance of duty. Its ambit has to be construed as to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and its requires to maintain strict-discipline causing serious effect in the maintenance of Law and Order. [639 E-G] (Black's Law Dictionary Sixth Edition P.999. P. Ramanatha Aiyer's *Law Lexicon,* Reprint Edition 1987 P.821 referred). C D

Rule 16.2(1) Consists of two parts. The first part is referable to gravest-acts of misconduct entailing orders of dismissal, undoubtedly there is a distinction between gravest misconduct and grave misconduct so before awarding the dismissal order it shall be mandatory that such order should be made only when there are gravest acts of misconduct and that too when it impinges the pensionary rights of the deliquent. Thus though the first part relates to gravest acts of misconduct but under the General Clauses Act singular include plural acts. It is not the repetition of the acts complained but its quality insideous effect and gravity of situtation that ensures from the offending act. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Thus even a single act of corruption is sufficient to award an order of dismissal under the Rule 16.2(1) as gravest act of misconduct. [639H-640D] E F G

The second part of the Rule 16.2(1) cannot is the cumulative effect of continued misconduct proving cumulative and complete unfitness of the offender and his claim for pension, which should only be taken into account in an appropriate case. So the contention of the respodent that both parts of Rule 16.2(1) must be read together appears to be illogical H

when the deliquent officer is proved to be incorrigible and therefore unfit to continue in service. For the length of service and his claim for pension or compulsory retirement, it is the second part of rule which operates and thus the very order of dismissal from service for gravest misconduct may entail forfeithere of all the pensionary benefits. Therefore the 'word' 'or' cannot be read as 'and'. It must be disinjunctive and independent. The common link that connects both clause is "The gravest act/acts of misconduct." [640E-641A]

The question whether the single act of heavy drinking of Alchohol by the respondent while on duty is a gravest misconduct. It may be stated that taking to drink by itself may not be a misconduct but being on duty in the disciplined service like police service and having heavy drink, then seen roaming or wandering in the market with service revolver and even abusing the medical officer when sent for medical examination shows his depravity or deliquency due to his drinking habit. Thus it would constitute gravest misconduct warranting dismissal from service. Thus authorities were justified in imposing the penalty of dismissal. The Courts below failed to properly appreciate the legal incidence and the affect of the rules. The ratio in *Bhagwal Pershal* v. *Inspector General of Police & Ors.* is approved as the correct Law. AIR 1970 (Punjab & Haryana) 81. [641B-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2651 of 1992.

From the Judgment and Order dated 10.3.1989 of the Punjab and Haryana High Court in RSA No. 1159 of 1986.

H.S. Munjral and G.K. Bansal for the Appellants.

Harbans Lal and R.S. Sodhi for the Respondent.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Special leave granted.

The respondent, while working as Gunman of the Deputy Commissioner of Police, Ropar, was dismissed from service by Order dated February 11, 1980 by the Superintendent of Police, Ropar, on the charge that he was found heavily drunk in the evening of September 6, 1979 and was roaming at the bus stand wearing the service revolver. Traffic Con-

stable, Gurbhachan Singh, brought him with difficulty in a jeep to the police station and the revolver was deposited in the malkhana and sent the respondent to the Civil Hospital for medical examination. The Doctor declared him as heavily drunk. He also had a quarrel with the doctor on duty and abused him. An enquiry into his conduct was conducted after following the prescribed procedure in this behalf and found him to have contravened Rule 16.2(1) of the Punjab Police Manual 1934, Vol.II for short 'the rule. The departmental appeals ended against the respondent. Thereon he laid the suit for a declaration that the order of dismissal as confirmed in the departmental appeals was null and void, unconstitutional, illegal, ultra vires and opposed to the principles of natural justice. He also sought for consequential relief of reinstatement into the service with all consequential benefits. The trial court decreed the suit. On appeal it was affirmed. The Civil Courts found that the order of dismissal was vitiated by not giving reasonable opportunity due to non-supply of the documents and the Inquiry Officer cross-examined the witnesses produced by the respondent. The disciplinary authority did not keep in view the mandatory provisions of Rule 16.2(1) of the Rules. The High Court in Second Appeal No.1159 of 1986 dated March 10, 1989 while holding that the respondent was supplied with the required documents and that the enquiry was not vitiated by corss-examination done by the Inquiry Officer, however, affirmed the decree on the ground that Rule 16.2(1) contemplates that "dismissal shall be awarded only for the gravest acts of misconduct"; taking drink is a single act and it is not a gravest act and the Superintendent of Police was not alive to the mandates of Rule 16.2(1) which envisages dismissal only for gravest acts of misconduct and the respondent had put in 17 years of service and would have qualified for pension after putting in another 3 to 4 years of service and that was not kept in view.

Sri Harbans Lal, learned Senior Counsel for the respondent, did not canvass before us that the enquiry was vitiated for any infraction due to non supply of the copies of the statements or the Inquiry Officers participation in the examination of the witnesses. The finding that there is no violation of the procedure laid down in Rule 16.2(4) and the Government instructions dated October 16, 1972, thus remained unquestioned. The finding that the respondent was heavily drunk on that day while on duty and that he was caught while wandering in the market with service revolver and when he was taken into custody by the traffic constable and was sent to the doctor, he abused the doctor on duty in the hospital, was not

canvassed. The only question on those facts is whether the conduct of the respondent is gravest misconduct within the meaning of Rule 16.2(1) of the Rules, which reads thus :-

> "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."

The contention of Sri Harbans Lal is that taking alcolohic drink as such is not a misconduct. The solitary act of drinking alcohol *per se* is not gravest misconduct. The respondent had put in 17 years unblemished record of service. Had he not been dismissed from service within two or three years, he would have qualified for pension; without taking these factors into consideration, the disciplinary authority or the appellate authorities have violated the mandatory requirements. Therefore, awarding the punishment of dismissal from service is vitiated by manifest error of law violating Rules 16.2(1) of the Rules.

Misconduct has been defined in *Black's Law Dictionary,* Sixth Edition at page 999 thus :-

> "A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence but not negligence or carelessness."

Misconduct in office has been defined as :

> "Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

P. Ramanatha Aiyar's the *Law Lexicon,* Reprint Edition 1987 at p.821 'misconduct' defines thus:-

"The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion if left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some established, but indifinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, if must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory

A that dismissal order should be made only when there are gravest acts of misconduct, since it impinges upon the pensionary rights of the deliquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under general clauses Act singular includes plural, act includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is festidious. The word "acts" would include singular "act" as well. It is not the repetition of the acts complained of but its quality, insideous effect and gravity of stituation that ensues from the offending 'act'. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness of police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct of minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found complete unfit to remain in service than to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of re-employment, if any, may meet the ends of justice. Take for instance the deliquent officer who is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his long length of service and his claim for pension he may be compulsorily retired from service so

as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word 'or' cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct". A

The next question is whether the single act of heavy drinking of alcohol by the respondent while on duty is a gravest misconduct. We have absolutely no doubt that the respondent, being a gunman having service revolver in his possession, it is obvious that he was on duty; while on duty he drunk alcohol heavily and became uncontrolable. Taking to drink by itself may not be a misconduct. Out of office hours one may take to drink and reamin in the house. But being on duty in a disciplined service like police service, the personnel shall maintain discipline and shall not resort to drink or be in a drunken state while on duty. The fact is that the respondent after having had heavy drink, was seen roaming or wandering in the market with service revolver. When he was sent to the doctor for medical examination he abused the medical officer on duty which shows his depravity or delinquency due to his drinking habit. Thus it would constitute gravest misconduct warranting dismissal from service. The authorities, therefore, were justified in imposing the penalty of dismissal. The courts below failed to properly appreciate the legal incidence and the affect of the rules. B C D

The ratio relied on by learned counsel for the respondent in *Gurdev Singh* v. *State of Haryana & Ors.*, (1976) 2 S.L.R. 443; *Rattan Lal Ex-Constable* v. *State of Haryana & Ors.*, (1983) 2 SLR 159 and *Sukhdev Singh* v. *State of Punjab & Ors.*, (1983) 2 SLR 645 turned on their peculiar facts and would render little assistance to the respondent. We approve the ratio in *Bhagwat Parshad* v. *Inspector General of Police, Punjab & Ors.*, AIR 1970 (Punj. & Har.) 81 as correct law. E F

The appeal is accordingly allowed. The decree of the courts below is set aside and the dismissal order is restored. But in the circumstances, parties are directed to bear their own costs throughout.

S.B. Appeal allowed. G