CASE NO.:
Appeal (civil) 928 of 2007

PETITIONER:
Harjit Singh & Anr

RESPONDENT:
The State of Punjab & Anr

DATE OF JUDGMENT: 23/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (C) No. 12390 of 2006]

S.B. SINHA, J.
Leave granted.

Appellants were appointed as Constables in the Police Department of the State of Punjab. They had been put on a duty to keep a watch on Bhagu Ram who was admitted in a hospital. He was allegedly shackled to the bed. At about 9 p.m. on the intervening night of 19th/20th May, 1984, the appellants alongwith one Parminder Singh (since deceased) were found to be absent by the Inspector of Police. He made enquiries whereupon, he came to know that all the three constables were absent from duty from 9 p.m. onwards. Other constables from the police lines had to be requisitioned. They reported to Police Lines at about 3 a.m. on the same day. They were charge sheeted and a departmental proceedings was initiated against them. The Enquiry Officer found them guilty. The enquiry report was accepted by the Superintendent of Police, the Disciplinary Authority. A second Show Cause Notice was issued to which all the delinquent officers replied. By an Order dated 21.1.1985, the disciplinary authority, however, having found the cause shown by the delinquents to be unsatisfactory, passed orders of dismissal from service against them. Appellants and said Parminder Singh filed a suit. One of the contentions raised in the said suit was that in passing the order of punishment, the disciplinary authority had not complied with the provisions of Rule 16.2 of the Punjab Police Rules. It reads as under:-

"16.2 Dismissal \026 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.

(2) An enrolled police officer convicted and sentenced to imprisonment on a criminal charge shall be dismissed :

"Provided that in case the conviction of a police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government in this behalf."

Whereas the learned Trial Judge was of the opinion that the misconduct committed by the delinquents was of grave nature, the first Appellate Court held:

"\005.I find force in the contention of the learned counsel for the appellants because admittedly all the three constables, who are

plaintiff-appellants because admittedly all the three constables, who are plaintiff-appellants before me were on duty in the T.B. Hospital, to escort and prisoner, where at least one person could have been present because as per Rule 18.5 and 6 a constable can be on duty for three hours only and the department had put three persons on duty and therefore, they could not be present for 24 hours. So they had committed slight delineation in duty. Thus we can say that one of them was atleast absent, who was on duty at that time and it has been admitted that Parminder Singh alias Bhola was on duty at that time when the absence of the plaintiff-appellants was marked, but that absence cannot be taken to be serious lapse which merits dismissal from service. It is well settled that the punishment of dismissal is not proper in case of absence from duty and I am supported on this point by a case State of Punjab Vs. Ahhar Singh, reported as 1991(4) SLR 539 wherein it was held as under:-

"Mere absence from duty for a few days does not amount to an act of gravest misconduct and the cumulative effort of which may go to prove incorriginiety and complete unfitness of the employees for police service and dismissal from service was held illegal."

Even otherwise, I am of the considered view that if a person committed negligence of being absent from duty that should not go to the root of his service because in that case it will be too harsh not only for him, but for the children who are dependent on him\005.."

A second appeal preferred by the State of Punjab as also the Disciplinary Authority was allowed by the High Court by reason of the impugned judgment.

The High Court in its judgment noticed some decisions of this Court including Hombe Gowda Educational Trust v. State of Karnataka [(2006) 1 SCC 430] where inter-alia it was held:-

"This court has come a long way from its earlier view points. The recent trend in the decisions of this court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this court it has been noticed how discipline at the workplaces/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore must be taken in accordance with law."

Hombe Gowda (supra) has been noticed by this Court in large number of cases including the following:-

L.K. Verma v. HMT Ltd. [(2006) 2 SCC 269], State of U.P. v. Sheo Shankar Lal Srivastava [(2006) 3 SCC 276], Maharashtra State Seeds Corp. Ltd. v. Hariprasad Srupadrai Jadhao [(2006) 3 SCC 690], A. Sudhakar v. Postmaster General [(2006) 4 SCC 348], Anand Regional Coop. Oil Seedgrowers' Union Ltd. v. Shaileshkumar Harshadbhai Shah [(2006) 6 SCC 548], North-Eastern Karnataka RTC v. Ashappa [(2006 ) 5 SCC 137].

Mr. Jawaharlal Gupta, learned senior counsel appearing on behalf of appellants took us through the impugned order passed by the Disciplinary Authority and submitted that from a perusal thereof, it would appear that it had failed to consider the implication as also the effect and purport of the provisions of Rule 16.2 of the Punjab Police Rules.

Mr. Swarup Singh, learned counsel appearing on behalf of the respondent, on the other hand, submitted that it was not necessary for the disciplinary authority to specifically state in the order of dismissal of services that the delinquents were guilty of gravest acts of misconduct. Strong reliance in this behalf has been placed in State of Punjab & Ors. v. Sukhwinder Singh [(1999) SCC (L&S) 1234].

A disciplinary proceeding was initiated against the appellants herein as also against the said Parminder Singh inter-alia on the premise that they were absent from duty from 9 p.m. till 2 a.m. on 19th/20th May, 1984. All the three constables were required to watch a convict named 'Bhagu'. It is really a matter of surprise that the patient was shackled although he was 80 years old and a patient of tuberculosis. Why the human right of the prisoner was violated is not known. Absence from duty on the part of all the delinquent officers constitutes a grave misconduct particularly, when the convict was placed on shackles as evidently they knew that he would not be able to move from his bed. It furthermore appears that all the witnesses examined before the enquiry officer categorically stated that all the three delinquent officers had absented from duty together. Their cross-examination was directed only towards the nature of guard duty and the facilities and infrastructure available to those who were posted therefor. The case of the State, however, all along been the appellants had not been put on guard duty. They never said that they were not absent from duty. They were obligated to keep a watch over the convict, particularly, when he was an aged patient suffering from tuberculosis. However, despite the fact that the appellants might have committed a grave act of misconduct, the law requires the disciplinary authority to arrive at such a finding. The disciplinary authority held:-

"\005.They were also asked to report in my office and submit their explanation. The accused constables submitted their replies which is on record. These accused constables for keeping a strict vigil and watch on the prisoners which is a very important duty. But the said accused constables left the prisoners all alone in the night and remained absent from their duties in the Hospital. Such an absence of important duty by the accused constables is a very big mistake\005.."

The decision of this Court in Sukhwinder Singh (supra) is an authority for the proposition that it is not necessary to use the words "gravest act of misconduct" as it can be found out from the factual matrix obtaining in each case.

It is one thing to say that the disciplinary authority accepted the finding of the enquiry officer, but, when a second show cause notice was issued as to why the appellants and the said Parminder Singh should not be dismissed, it was obligatory on the part of the disciplinary authority to arrive at such a positive finding that the respondents have committed gravest acts of misconduct. The opinion formed by a disciplinary authority is very relevant. Ordinarily a Civil Court would not interfere with the findings of the disciplinary authority. The jurisdiction of the Civil Court is limited. The Civil Court in a suit would not ordinarily interfere with the findings of fact; its jurisdiction inter-alia being to find out as to whether the statutory rules respecting the disciplinary enquiry were complied with or the principles of natural justice have been followed or not. The First Appellate Court no doubt exceeded its jurisdiction in substituting its own opinion to that of the disciplinary authority.

We are not oblivious of the fact, that it is not necessary to repeat the wordings of the Section for the purpose of complying with the principles thereof in the fact situation obtaining in a given case. But departmental proceeding is quasi criminal in nature. The procedures laid down therefor were required to be complied with, embodying the principles of natural

justice.

Justice Frankfurter in Vitarelli v. Seaton [359 US 535] stated:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged\005\005 Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. \005..This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

(See Ramana Dayaram Shetty v. The International Airport Authority of India and Others [AIR 1979 SC 1628] )

It is also true as was submitted by Mr. Swarup Singh that in case of habitual absence, a punishment of dismissal of service would be just. [See State of Punjab & Ors. v. Sukhwinder Singh, (1999) SCC (L&S) 1234 and Maan Singh v. Union of India & Ors. 2003 (3) SCC 464]. We are furthermore not oblivious of a decision of this Court in State of Punjab v. Ram Singh Ex-Constable [(1992) 4 SCC 54] wherein interpreting Rule 16.2, this Court stated the law in the following terms:-

"7. 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 that dismissal order should be made only when there are gravest acts of misconduct, since it impinges upon the pensionary rights of the delinquent 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 fastidious. The word "acts" would include singular "act" as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation 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 who put in 29 years of continuous length of service and had unblemished record; in thirtieth year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it men 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.

8. The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for 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 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 and 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 completely unfit to remain in service then 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 delinquent 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."

In the aforementioned situation, ordinarily, we would have asked the Disciplinary Authority to consider the matter afresh, but the occurrence has taken place in the year 1984. Appellants and the said Parminder Singh had worked only for a few years, one of them is dead. In the aforementioned situation, we are of the opinion that we would be justified to fix the quantum of punishment. We are of the opinion that in the facts and circumstances of this case and in particular having regard to the passage of time, punishment of compulsory Retirement will meet the ends of justice. If otherwise eligible, the delinquents would be entitled to retiral benefits. The appeal is allowed to the aforementioned extent.

In the facts and circumstances of the case, there shall be no order as to costs.