

**(1997) 11 P&H CK 0016**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Letter Patent Appeal No. 1908 of 1989 in Civil Writ Petition No. 5466 of 1985

The State of Haryana and Others

APPELLANT

Vs

Ram Partap

RESPONDENT

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**Date of Decision:** Nov. 4, 1997

**Acts Referred:**

- Punjab Police Rules, 1934 - Rule 16.2

**Citation:** (1998) 118 PLR 204

**Hon'ble Judges:** S.C. Malte, J; N.K. Kapoor, J

**Bench:** Division Bench

**Advocate:** A.C. Chahar, A.A.G, Harish Rathee, DAG and G.S. Sandhu, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

S.C. Malte, J.

The appellants have taken exception to the judgment passed by the single Bench in Civil Writ Petition No. 5466 of 1985, decided on 16th May, 1989. The Single Judge by his judgment set aside the impugned order of dismissal of the respondent who was at the relevant time employed as a Constable. The charges against him were that on 4.8.83 he was assigned the duty at the residence of Deputy Commissioner, Narnaul. He was supposed to report on duty at about 9.00 PM. on 4.8.1983. He did not report. Therefore, Constable Ram Kumar was deputed in search of the respondent. Constable Ram Kumar found that the respondent was standing in front of the office of the Moharrir in the Police Lines. According to Constable Ram Kumar, the respondent was found under the influence of alcohol. The respondent was subjected to departmental enquiry on the charges that he absented from duty, and that he was under the influence of liquor while he was supposed to be on duty. The Enquiry Officer found him guilty. In the result, the Disciplinary Authority (Superintendent of Police) by order dated 3.4.1984 (Annexure P-1) dismissed the

respondent from service. The respondent preferred appeal before the Deputy Inspector General of Police. It was dismissed by order dated 5.2.1985 (Annexure P-6). The respondent preferred departmental Review before the Director General of Police Haryana. That Revision was also dismissed by order dated 26.9.1985 (Annexure P-8). The respondent, therefore, preferred Civil Writ Petition, mentioned above. The main reason assigned by the single Judge is that the provisions of Rule 16.2 of the Punjab Police Rules, as applicable to Haryana, have not been considered while awarding the punishment of dismissal from service.

2. The State preferred this Letters Patent Appeal. It was submitted on behalf of the State that consumption of alcohol while on duty, and absence from duty are the gravest offence which renders a police Constable unfit for service, and, therefore, the respondent was rightly dismissed from service. It was submitted that though the Disciplinary Authority at various stages of proceedings did not specifically mention the Rule 16.2 of the Punjab Police Rules, in substance they have taken into consideration the gravity of the charges, and dismissed the respondent.

3. Before we proceed to consider the Rule 16.2 of the Punjab Police Rules, it would be appropriate to take into consideration the factual finding arrived at by the learned single Judge. In his judgment it is observed by him that the respondent was taken for medical examination. The medical examination indicated that the respondent was only smelling of alcohol, otherwise his pupils and conjunctives were normal, and the respondent was responding to the question as a normal person. Therefore, even if it is granted that the respondent at the relevant time had consumed liquor, that has not rendered him to be under the influence of liquor. In ultimate analysis, the facts proved indicate that the respondent appeared to have consumed liquor, but was not under the influence of liquor. Secondly, he did not report on duty on that day. On this finding of fact, the question remains as to the proportion of penalty to be imposed upon the respondent. The relevant portion of Rule 16.2 of the Punjab Police Rules, as it was applicable to the State of Haryana, before it was amended by notification dated 21st March, 1985, was as follows :

" 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 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 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."

(3) xx xx xx xx"

4. Since the event in this case took place on 4.8.1983 and the order of dismissal of the petitioner was passed by the Superintendent of Police (Disciplinary Authority) on 3.4.1984, the Rule 16.2 as it was then in existence prior to amendment on 21.3.1985, would be applicable. The question, therefore, would be whether the conduct of the petitioner was of such nature as to say that it was a "gravest act of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service". The learned single Judge considered that aspect in the light of Ruling in the case of Rattan Lal v. State of Haryana and Ors. 1983 (2) SLR 159 and Sukhdev Singh v. State of Punjab and Ors 198(2) SLR 645. In case of Rattan Lal (supra) it was found that the said Rattan Lal was the member of the guard force deputed to guard the Malkhana. He was found under the influence of liquor. In that case argument was advanced that at the relevant time the said Rattan Lal was not performing the duty. The Additional Advocate General for the State in that case contended that a Constable is supposed to be on duty for 24 hours, though at the relevant time he was not performing the duty as a sentry at the Malkhana. In that case, the learned Judge, barring the argument as to whether the said constable was or was not on duty at the relevant time, the mere fact that he had consumed alcohol did not amount of misconduct under the above mentioned service rules. Similar view has been repeated by the same learned Judge in case of Sukhdev Singh (supra). That view has been approved by the single Judge. The view thus expressed by his decisions get endorsed in view of the subsequent amendment to the rules which further clarify what amounts to "gravest acts of misconduct" under Rule 16.2. Such amendment was introduced in the State of Haryana by notification dated 21.3.1985. By that amendment, an explanation has been inserted. It is as follows:-  
"Explanation - For the purposes of sub-rule (1) the following shall, inter alia, be regarded 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 communication;
- (iii) damaging public property;
- (iv) causing indiscipline amongst fellow policemen;
- (v) promoting feelings 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."

5. 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 case 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.

6. The learned single Judge further observed that the disciplinary authority and the appellate and the revisional authority under the departmental proceedings, did not seem to have even considered the question whether the act of the petitioner amounted to gravest act of misconduct in terms of Rule 16.2. There does not seem to be application of mind in that direction during the departmental proceeding at the various levels.

7. In view of the discussion made above, we find that there is no substance in this appeal. It is dismissed.