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**(2001) 07 P&H CK 0196**

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

**Case No:** Civil Writ Petition No. 5152 of 1987

Badlu Ram

APPELLANT

Vs

Director General of Police

RESPONDENT

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**Date of Decision:** July 16, 2001

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227

**Hon'ble Judges:** S.S. Sudhalkar, J

**Bench:** Single Bench

**Advocate:** R.K. Malik, for the Appellant; Amol Rattan, AAG, for the Respondent

**Final Decision:** Partly Allowed

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**Judgement**

S.S. Sudhalkar, J.

The petitioner was working in the Haryana Police Force as a Head Constable. He was sent for refresher course at Kala Teetar when the incident in question took place. He was called for special roll call at 10.30 p.m. on 26.1.1985. It is alleged that he was found under the influence of liquor and uttered flighty words against the officers. He was found to have consumed alcohol. Enquiry was held against him and the punishment of dismissal from service with effect from 6.6.1985 i.e. from the date of passing of order Annexure P/3 was imposed.

2. Learned counsel for the petitioner has argued that the petitioner was not on duty at the time when the incident took place. He also argued that the punishment awarded to the petitioner is disproportionate to the charges alleged against him.

3. So far as the charge of being found under the influence of liquor is concerned, it is not shown that the petitioner had consumed liquor in the barrack or in the official premises. The petitioner was on training and it is nobody's case that he was on actual duty when the roll call was made. It was a special roll call. It is also nobody's case that the petitioner was confined only to the barrack and could not go out. Therefore, the fact that he could have consumed liquor outside also cannot be ruled

out.

4. Now the question is whether he was under the influence of liquor. The medical examination did prove that the petitioner had consumed liquor. However, that by itself does not show that he was under the influence of liquor.

5. Counsel for the respondents vehemently argued that the uttering of filthy words against the officers itself go to show that the petitioner was under the influence of liquor. This cannot be accepted. It was special roll call at 10.30 p.m. At that time a man may be under the influence of sleep also when the roll call was made. There is no evidence before me to show that the percentage of liquor was such or the behaviour for the petitioner was such that he Could be treated under the influence of liquor.

6. The next question is regarding using of filthy words against the officers. The petitioner was police Head Constable and belonged to a disciplined force. He cannot be expected to use filthy words against the officers even though he may be under the influence of sleep. The behaviour of the petitioner cannot be said to be in any way in conformity with the duties and responsibility he carried as a Head Constable. He did not defeat (befit ?) his position as a Head Constable. There is nothing on record from which this finding against the petitioner can be assailed. Moreover this Court is not sitting in appeal to re-examine the evidence. Therefore, the finding of uttering filthy words against the officers is said to have been established against the petitioner.

7. The question now remains to be considered is whether the punishment awarded to the petitioner was disproportionate to the charge of his misbehaviour. Counsel for the petitioner argued that the punishment awarded to him was disproportionate. Counsel for the respondents relied on the case of [Bhaqwat Parshad Vs. Inspector General of Police, Punjab and Others](#), . The petitioner in that case was found under the influence of drink and was noisy and did not desist even when told to do so by Foot Constable Kuldeep Raj. It has been held by this Court in that case that the behaviour of the petitioner in that case was such that required the imposition of punishment of dismissal.

8. Learned counsel for the petitioner has relied on the case of Ram Kishan v. Union of India and Ors., JT 1995(7) S.C. 43 : 1995(4) SCT 657 (SC). It has been held in that case that when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. It is further held in that case that the each case has to be considered on its own facts.

9. In view of the above observation of the Supreme Court, I also found that the present case should be decided on its own facts. It is of course not on the record as

to what were the exact words which amounted to misbehaviour used against the officers. In the absence of the same, gravity of the same cannot be ascertained. Therefore, I find that the punishment of dismissal can be termed in this case of disproportionate to the misdeeds of the petitioner. In the case of Ram Kishan v. Union of India and Ors. (supra), the punishment of dismissal was set aside and imposition of stoppage of two increments with cumulative effect was ordered. In this case counsel for the petitioner has fairly conceded that such a small punishment may not be ordered in this case and suggested that little lighter punishment to the punishment of dismissal of service is compulsory retirement and the petitioner may be compulsorily retired from the date of dismissal of service. I find that the suggestion given by learned counsel for the petitioner is proper.

10. As a result, this petition is partly allowed. The punishment awarded to the petitioner is substituted by that of compulsory retirement from the service from the date of awarding of punishment of dismissal. It is clarified that this judgment has been delivered in the light of the facts of the present case, and in the light of the judgment of the Supreme Court in the case of Ram Kishan v. Union of India and Ors. (supra). Consequently it shall not be used as a precedent.

11. Petition partly allowed.