2025 INSC 1056

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 312 OF 2012

STATE OF PUNJAB AND OTHERS …APPELLANT(S)

VERSUS

EX. C. SATPAL SINGH …RESPONDENT(S)

J U D G M E N T

VIJAY BISHNOI, J.

1. This appeal has been preferred by the appellants challenging the Judgment dated 04.08.2010 passed in R.S.A No. 3802 of 2004 passed by the High Court of Punjab and Haryana.

2. The facts, in brief, are that the respondent was appointed as a Constable in the Punjab Armed Forces on 04.08.1989. In the year 1992, the respondent was transferred to the Commando Force and was posted at Bahadurgarh, Patiala Headquarter of the 2nd Commando Battalion. The respondent applied for five

days leave, however, was granted leave only for one day. He proceeded to leave on 02.04.1994 but did not join his duties on 04.04.1994, and instead resumed his duties only on 12.05.1994. The allegation against the respondent was that he remained absent from 04.04.1994 to 12.05.1994, i.e., for around 37 days.

3. For the said unauthorized absence, the departmental enquiry was initiated and a chargesheet containing allegations along with a list of prosecution witnesses was served upon the respondent on 07.08.1994. During the enquiry, statements of the prosecution witnesses were recorded, and an opportunity was granted to the respondent to cross-examine those witnesses. The respondent was also granted an opportunity to produce witnesses in defence, but he refused to avail the said opportunity. The enquiry officer concluded the enquiry and submitted his report. Pursuant to the same, a show cause notice dated 25.05.1995 was issued to the respondent by the Commandant, 2nd Commando Battalion, Bahadurgarh, Patiala. However, the respondent did not file any response to the show cause notice within the period as prescribed and the disciplinary authority *vide* order dated 03.05.1996 dismissed

the respondent from the service and ordered for treating the period of absence, i.e., from 04.04.1994 to 12.05.1994 as non-duty period.

4. The order passed by the disciplinary authority was challenged by the respondent by way of an appeal before the appellate authority, though the said appeal came to be dismissed. The respondent further filed a revision petition before the revisional authority, which was also rejected.

5. Being aggrieved, the respondent instituted a suit for declaration and mandatory injunction praying that the order passed by the disciplinary authority, appellate authority and revisional authority be declared as null & void and illegal; and mandatory injunction be issued for his reinstatement with continuity of service along with back wages with interest @ 12% per annum.

6. The said suit was dismissed by the Additional Civil Judge (Senior Division), Sultanpur Lodhi *vide* judgment dated 18.07.2003. The first appeal, that was preferred by the respondent before the District Judge, Kapurthala, also came to be dismissed *vide* judgment dated 01.06.2004. Thereafter,

the respondent preferred second appeal before the High Court, wherein following substantial questions of law were framed: -

1. *Whether the action of the defendants-respondents in dismissing the appellant from service by taking into consideration the previous conduct of the plaintiff which was not a part of the charge-sheet can be said to be just and fair?*
2. *Whether the disciplinary proceedings against the appellant in violation of the provisions of Rule 16.2 of Punjab Rules, 1934 are liable to be vitiated?*

7. Learned Single Judge of the High Court by judgment dated 04.08.2010 answered the above referred substantial questions of law against the appellants and in favour of the respondent, solely relying on the decision of this Court rendered in the case of ***State of Mysore vs. K. Manche Gowda***[1]. The relevant portion of the impugned judgment is reproduced hereunder: -

> ***"****...Adverting to the instant case one, in the impugned order Ex.P-1 dated 03.05.1996, it has been observed that 17 years approved service of Constable Satpal Singh (referring to the plaintiff) has already been forfeited and that the absence period of 224 days has already been considered as non-duty period and four punishments have already been inflicted and he has remained under suspension from 23.01.1993 to 13.09.1993 and two more departmental enquiries are pending against him. It clearly indicates that the past record of the plaintiff-appellant was actively taken into consideration by the punishing authority while passing the impugned order, though in the show cause notice Ex.D-2/A the above referred record has not been disclosed at all. In such circumstances, the question*

[1] AIR 1964 SC 506

arises as to from where the plaintiff would have presumed that his bad record would be taken into account by the punishing authority. It appears that the punishment inflicted vide Ex.P-1 was mainly based upon the previous record, which was withheld from the knowledge of the plaintiff. If the record pointed out above had been brought to the notice of the plaintiff, he in all probabilities would have taken the pains to explain it. In this explanation, he would have given certain mitigating circumstances or some other explanation as to why the earlier punishments were inflicted upon him or that subsequent to these punishments, he had served to the satisfaction of the authorities concerned till the time of the present enquiry. Besides this, he may have come forward with many other explanations. The thing is that it is to be seen whether he has been given an opportunity to explain the past record being taken into consideration while passing the impugned order. The plaintiff having not been afforded the stated opportunity, he has been condemned unheard with respect to his past record, which seems to have sufficiently weighed with the mind of the punishing authority, while passing the impugned order. Rule 16.2 of the Punjab Police Rules reads as under:-

*"**16.2 Dismissal**. (1) 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) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed.

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal.

Provided further that in case the conviction of an enrolled 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 from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-

employed elsewhere a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette."

It has been manifested in the language of this rule that while passing the dismissal order under this rule, regard shall be had to the length of service of the delinquent employee as also his claim to pension. As noted before, in the impugned order Ex.P-1 itself, it has been mentioned that 17 years approved service of the plaintiff has already been forfeited. It is thus, inferable that he has put in a long service, which fact has not been taken into consideration, while passing the impugned order. Thus, the punishing authority has acted in utter violation or derogation of the mandatory provisions of Rule 16.2 ibid.

In ***Mohinder Paul Ex Constable's case (supra)*** *as mentioned in paragraph 20 of the judgment, the petitioner had never appeared before the disciplinary authority, nor he had filed reply challenging the findings recorded in the enquiry report. It was held that the appellate authority has also noticed that the petitioner had been absent from duty wilfully for a total period of 4 months 14 days and 11 hours and 15 minutes. This point was not argued before the Appellate or the Revisional Authority, whereas in the case at hand, the plaintiff had approached the Deputy Inspector General of Police, Commando (Admn.&Ops.) BHG, Patiala who had dismissed his appeal vide order Ex.P-2. Thereafter, he filed the revision, which also met the same fate vide order Ex.P-3. Furthermore K. Manche Gowda's case does not say that it is obligatory upon the constable to raise a contention before the Appellate or Revisional Authority that his past record without disclosing it in the show cause notice served upon his has been taken into consideration by the punishing authority. As Article 141 of the Constitution of India postulates, the rule laid down by the Hon'ble Supreme Court in K. Manche Gowda's case is binding on this Court. Thus to my mind, the defendant-appellant cannot derive any mileage from the case of Mohinder Paul Ex Constable case (supra).*

In view of the above discussion, both the substantial questions of law are decided against the defendants-respondents and in favour of the plaintiff-appellant……..

In view of the preceding discussion, the impugned judgments/decrees recorded by both the courts below are hereby set aside and suit of the plaintiff is partly decreed for declaration to the effect that the orders impugned are illegal, null and void and ineffective upon the rights of the plaintiff, who shall be entitled to all consequential service benefits including seniority but not the back

wages. In the peculiar circumstances of the case, the parties are directed to bear their own costs..."

8. The relief of back wages was denied to the respondent by the High Court since the respondent had filed an affidavit in the department whereby, he had forgone the relief of back wages.

9. Assailing the impugned order, the learned counsel for the appellants has vehemently argued that the High Court has grossly erred in setting aside the judgment and decree passed by the Trial Court as well as the Appellate Court, whereby the suit filed by the respondent for declaration and mandatory injunction was dismissed. It is contended that the High Court has come to an erroneous conclusion that while passing the termination order, the disciplinary authority had taken into consideration the previous misconduct of the respondent which was not put to him in the show cause notice.

10. The learned counsel for the appellants has argued that as a matter of fact, the dismissal order of the respondent was not based on the previous misconduct but was solely based on the misconduct for which the disciplinary enquiry was initiated against him, which was for unauthorised absence of around 37 days from 04.04.1994 to 12.05.1994. The learned counsel

for the appellants has submitted that the reference of the previous conduct of the respondent in the dismissal order was only for adding the weight to the decision of imposing the punishment of dismissal.

11. It is contended that this Court in ***K. Manche Gowda's case (supra)*** had ruled that a dismissal order based on the past conduct must precede a show cause notice detailing out the previous misconduct which is to be considered by the disciplinary authority while imposing the punishment. However, in the present case, the previous misconduct of the respondent was not the basis for imposing the punishment of dismissal and reference of the previous misconduct was only mentioned, apart from the indiscipline for which punishment was imposed. In support of the above argument, learned counsel for appellants has placed reliance on the decision of this Court rendered in ***India Marine Service Private Ltd. vs. Their Workmen***[2] and ***Union of India & Ors. vs. Bishamber Das Dogra***[3]**.**

[2] AIR 1963 SC 528
[3] (2009) 13 SCC 102

12. The learned counsel for the appellants has further argued that the High Court had also erred in observing that the respondent had put in a long period of service and therefore as per Rule 16.2 (1) of the ***Punjab Police Rules, 1934*** (hereinafter, referred to as **"the Rules of 1934"**), the duration of service has to be taken into consideration while passing the impugned order.

12.1 It is contented that as a matter of fact, the respondent has served only for a brief period from 04.08.1989 to 03.05.1996, i.e., less than 07 years. The High Court had misconstrued the mentioning of the forfeiture of 17 years of the service of the respondent in the dismissal order dated 03.05.1996. It is contended that the said mentioning of 17 years was only in respect of forfeited service of the respondent based on the orders passed by the departmental authority for unauthorised absence of the respondent for the afore-stated period. The mentioning of 17 years of service was only to indicate that his service period of 17 years was already ordered to be forfeited and pursuant to that, the respondent was not entitled to any increment during his service tenure up to 17 years if he would have remained in the service.

13. The learned counsel for the appellants has further submitted that Rule 16.2 (1) of the Rules of 1934 consists of two parts. The first part is in relation to the gravest acts of misconduct, which result in awarding punishment of dismissal and the second part speaks about 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 to pension should be taken into account in an appropriate case. The learned counsel for the appellants has contended that the disciplinary authority had exercised its power under the first part of Rule 16.2 (1), which is in relation to the gravest acts of misconduct, and therefore there is no question of taking into consideration the length of service of the delinquent for his claim for pension. The learned counsel for the appellants has also submitted that being a member of the disciplined force, the respondent remained absent for a considerably long period without seeking permission and even without informing, and therefore, in the facts and circumstances of the case, the punishment of dismissal from service cannot be said to be illegal in any manner. The

appellants, therefore, prayed for the impugned order passed by the High Court to be set aside.

14. *Per contra*, the learned counsel appearing for the respondent has opposed the civil appeal and has argued that the High Court had not committed any illegality in passing the impugned order because the disciplinary authority while inflicting the punishment of dismissal had relied upon the past misconduct of the respondent without disclosing the same in the show cause notice and the same is not permissible as per the law laid down by this Court in ***K. Manche Gowda's case (supra)***. The learned counsel for the respondent has also argued that as per the mandate of Rule16.2(1) of the Rule of 1934, the disciplinary authority ought to have taken into consideration the length of service of the respondent and his claim of pension.

15. The learned counsel for the respondent has placed reliance on the decision of this Court rendered in ***Mohd. Yunus Khan vs. State of Uttar Pradesh & Ors.***[4] Consequently, he has prayed

[4] (2010) 10 SCC 539

that there is no force in this appeal and the same may kindly be dismissed.

16. Having heard the learned counsel for the parties, it is to be noted that the respondent was appointed as a Constable on 04.08.1989 in the Punjab Armed Forces. In the year 1992, the respondent was transferred to the Commando Force and was posted at Bahadurgarh, Patiala Headquarter of the 2nd Commando Battalion. The respondent remained absent from duties for the following periods: -

1. *From 04.06.1993 to 11.08.1993 (for 68 days)*
2. *From 06.09.1993 to 04.03.1994 (for 180 days)*
3. *From 12.12.1993 to 04.01.1994 (for 20 days)*

And lastly, he remained absent from 04.04.1994 to 12.05.1994 (37 days), for which the departmental enquiry was initiated, and he was dismissed from the service. The chargesheet dated 27.07.1994 served upon the respondent on 07.08.1994 is reproduced hereunder: -

CHARGE SHEET/ANNEXURE P-12

I, Inspector Darshan Singh, 2nd Commando Bn. Bahadurgarh, (Patiala) after recording the statements of prosecution witnesses and after examination, hereby charge you that you Constable Satpal Singh 2/280, when you were posted at Battalion Headquarters, then you were departed on one day sanctioned

casual leave. Your departure was recorded vide Rapat No. 19 dated 2-4-94 in the Roznamcha, 2nd Commando Bn. You were to return before noon on 4.4.94. After availing the leave, instead of coming present in time, became absent. Your absence was recorded vide Rapat No. 12 dated 4.4.94 in the Roznamcha of Battalion Headquarters. Then TPM No. 4846-47/O.H.C. dated 7.4.94, Attendance Notice No: 5158/OHC dated 12.4.94, and TPM No. 5831-32/OHC, dated 27.4.94 were sent at your home address. Then on 12-5-94 after remaining absent for 37 days 23 hours 10 minutes came present at Battalion Headquarters vide Rapat No.10.

You being a member of discipline force, and well aware about discipline, remaining willful absent from 4.4.94 to 12-5-94 for 37 days 23 hours 10 minutes, which is great indiscipline of police discipline. Which has also been proved clearly and correctly by prosecution witnesses. Your such absence, is great violation of police discipline, irresponsible, negligence has been proved, which is condemnable and punishable.

Put up for approval please.

Sd/- Commandant Singh,
Approved.
Copy of charge sheet has been received free of costs.
(Patiala)
Sd/- Ct. Satpal Singh 2/280

Sd/- Inspector Darshan
Inquiry Officer,
2nd Commando Bn.
Bahadurgarh,
Dated : 27.7.94

17. During the course of the enquiry, as many as four prosecution witnesses were examined on behalf of the department and the respondent was granted an opportunity to cross-examine them, but it appears that he had not cross-examined the said witnesses. The respondent was also granted opportunity by the enquiry officer to produce evidence in defence but the respondent refused in writing to produce any evidence in

defence. The enquiry officer submitted his report and found the respondent guilty. The disciplinary authority, thereafter, issued a show cause notice to the respondent on 25.05.1995. The said show cause notice dated 25.05.1995, is reproduced hereunder: -

SHOW CAUSE NOTICE/ANNEXURE P-16

No. 6191/Steno
Dated 25.05.1995

You, Constable Satpal Singh, No. 2-C/280, were posted at Battalion Headquarters. You were preceded on one day casual leave on 02.04.1994 as per DDR No. 19. You had to resume your duty on 04.04.1994 before noon. But you did not resume your duty and you were marked absent on 04.04.1994 as per DDR No. 12. A number of notices/TPMs were served on your home address vide nos. 4846-47/OHC, Dated 07.04.1994, 5158/OHC, dated 12.04.1994 and 5831-32/OHC, dated 27.04.1994. But you resumed duty on 12.05.1994 vide DDR No. 10 after remaining absent for 37 days 23 Hours and 10 Minute. Being a member of discipline force, remaining willful absent for such a long period from casual leave without informing any reason to department or without getting permission from department is a grave indiscipline, which is a condemnable and punishable.

Due to remaining absent for 37 days 23 hours and 10 minute Departmental Enquiry was initiated against you vide this office Order No. 726874/Steno Dated 25.05.1994 which was further handed over to Inspector Darshan Singh of 2nd Commando Battalion. List of allegation along with list of prosecution witnesses was served upon you without free of cost by the Inquiry Officer on 22.07.1994. Inquiry officer gave you full opportunity to defend yourself. Inquiry Officer recorded the statements of prosecution witnesses on different-2 dates. Inquiry Officers also gave you full opportunity to cross-examine the prosecution witnesses. Then, Inquiry Officer prepared the charge-sheet, got it approved and served to you free of cost on 07.08.1994. Inquiry Officer given 48 hours time to you to produce list of defence witnesses. But you denied in written application to produce list of defence witnesses. Inquiry Officer given you 7 days more time to

produce your defence, but you did not submit your written defence. Inquiry officer then prepared the conclusion report as per rules. Inquiry Officer then put the conclusion report and Departmental Inquiry before me. I examined the Departmental Inquiry and conclusion report thoroughly.

Inquiry Officers held you guilty. I am agrees with the conclusion report of the Inquiry Officer.

Due to above allegation, I propose, why you should not be dismissed from service and absent period from 04.04.94 to 12.05.94 (37 days 23 hours and 10 minutes i.e. 38 days) be treated as Non-duty period. But before passing such order, I want to give you one more chance to defend your case. After receiving this notice, within 10 days, you can produce your defence before me either in writing or orally after appearing before me. Your oral defence will be considered accordingly. If you do not submit your reply within the stipulated period, it will be presumed that you don't want to say anything in your defence and you are also accepting the allegation against you and orders regarding punishment referred in show cause notice will be passed.

One copy of show cause notice be served to Constable Satpal Singh, No. 2/280, free of cost.

Sd/-
Commandant,
2nd Commando Battalion,
Bahadurgarh Patiala.

18. The show cause notice was duly served upon the respondent. However, the respondent did not file any response. Ultimately, the disciplinary authority passed the dismissal order dated 03.05.1996, which is reproduced hereunder:

ORDER/ANNEXURE P-17

"Constable Satpal Singh, No. 2-C/280, was posted at Battalion Headquarters, Bahadurgarh Patiala. He was preceded on one day casual leave on 02.04.1994. He had to resume his duty on 04.04.1994 before noon. But he did not resume his duty in time and was marked absent on 04.04.1994 as per DDR No. 12. A number of

notices/TPMs were served on his home address vide nos. 484647/OHC, dated 07.04.1994, 5158/OHC, dated 12.04.1994 and 5831-32/OHC dated 27.04.1994. But he resumed duty on 12.05.1994 vide DDR No. 10 after remaining absent for 37 days 23 Hours and 10 Minute. His being a member of discipline force, remaining willful absent for such a long period from casual leave without informing any reason to department or without getting permission from department is a grave indiscipline, which is a censurable and punishable. Due to above allegation Department Enquiry was initiated against Constable Satpal Singh, No. 2-C/280 vide this office Order No. 7268-74/Steno, dated 25.05.1994 and was further handed over to Inspector Darshan Singh of 2nd Commando Battalion. Gist of allegation alongwith list of prosecution witnesses was served to him without cost by the Inquiry Officer on 22.07.1994. Inquiry had given him full chances to defend himself. Inquiry Officer after recording statements of prosecution witnesses on different-2 dates, given these to him and given him a full chance to cross examined the prosecution witnesses. Then, Inquiry Officer prepared the charge-sheet, got it approved and served to him without cost on 07.08.1994. Inquiry Officer also given him 48 hours time to produce defence witnesses, but he denied in writing, to produce defence witnesses. Inquiry Officer given him 7 days time to produce his defence, but he did not submit his defence statement. Inquiry Officer then prepared the conclusion report as per rules. Inquiry Officer then put the conclusion report and Departmental Inquiry before me. I examined the Departmental Inquiry and conclusion report thoroughly in which Inquiry Officers held Constable Satpal Singh, N. 2-C/280 guilty. I am agrees with the conclusion report of the Inquiry Officer.

Due to above allegation a Show Cause Notice vide No. 6191/Steno, Dated 25.05.1995 to dismiss him from service and treat absent period w.e.f. 04.04.1994 to 12.05.1994 as Non Duty Period was served upon Constable Satpal Singh No. 2-C/280, which was received by Constable Satpal Singh, No. 2-C/280 himself. He was given 10 days time to submit his reply but till date he did not submit his reply, which shows that said Constable accepts the allegations against him. Besides above his 17 years service has forfeited, 224 days absent period has treated as Non Duty Period, 04 Censures, suspension period w.e.f. 23.01.1993 to 13.09.1993, two Departmental Enquiries are pending in this office and one Departmental Enquiry is under process due continue absent w.e.f. 04.03.1996.

After examining above facts I reached at conclusion that Constable Satpal Singh, No. 2-C/280, has neither interest in service nor he is capable of serving in Police Department. Therefore I dismiss Constable Satpal Singh, No. 2-C/280 from the service of Police Department w.e.f. 03.05.1996 forenoon and absent period w.e.f. 04.04.1994 to 12.05.1994 marks in Non Duty Period.
Order should be booked".

Sd/-
Commandant

19. This Court, in ***K. Manche Gowda's case (supra)***, has held that if the past conduct of an employee is the basis for imposing punishment, the department is obliged to disclose that his past record will also be taken into consideration while inflicting punishment. Now, the question arises for consideration is whether the disciplinary authority had taken into consideration the past conduct of the respondent while passing the dismissal order. From careful reading of the dismissal order reproduced hereinabove, it appears that the disciplinary authority had clearly observed that it had perused the report of enquiry and conclusion thoroughly, whereby the respondent was held guilty for the unauthorized absence and agreed with the conclusion of the enquiry officer. The disciplinary authority had further mentioned regarding the issuance of show cause notice to the respondent and had observed that despite the receipt of the show cause notice, the

respondent did not submit his reply, which shows that the respondent accepted the allegation against him. Thereafter, the disciplinary authority had noted that 17 years of service of the respondent were forfeited as a result of his absence for 224 days and for which he was punished accordingly.

20. To properly understand the controversy in the light of question framed, it is necessary to examine the relevant judicial precedents, as discussed below. This Court in the case of ***India Marine Services Private Ltd.*** (supra), dealt with the case of punishment awarded to an employee in a similar situation, as follows: -

> ***"7.*** *It is true that the last sentence suggests that the past record of Bose has also been taken into consideration. But it does not follow from this that that was the effective reason for dismissing him. The Managing Director having arrived at the conclusion that Bose's services must be terminated in the interest of discipline, he added one sentence to give additional weight to the decision already arrived at. Upon this view it would follow that the Tribunal was not competent to go behind the finding of the Managing Director and consider for itself the evidence adduced before him. The order of the Tribunal quashing the dismissal of Bose and directing his re-instatement is, therefore, set aside as being contrary to law.***"**

21. In the case of ***Director General, RPF & Ors. vs. Ch. Sai Babu,***[5] this Court in appeal while setting aside the order of Division Bench of High Court, which had affirmed the order of Single Bench setting aside the order of removal of respondent, observed in para 6 as under: -

> ***"6.*** *... Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.****"***

22. Similarly, in ***Bharat Forge Co. Ltd. vs. Uttam Manohar Nakate,***[6] wherein the respondent employee was dismissed from service on account of misconduct having been found fast asleep on an iron plate during working hours and had also been earlier imposed with minor punishment on three occasions, this Court observed as under: -

> ***"32.*** *... In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct*

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[5] (2003) 4 SCC 331

[6] (2005) 2 SCC 489

*during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary.***"**

23. Likewise, in the case of ***Govt. of A.P. and Ors. vs. Mohd. Taher Ali,***[7] where the respondent who was employed as police constable was imposed with a punishment of compulsory retirement on the account of unauthorized absenteeism from election duty, this Court had held that: -

> ***"5.*** *....In our opinion there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often [necessary] only to reinforce the opinion of the said authority.***"**

24. This Cout in ***Bishamber Das Dogra's case (supra),*** has examined a similar issue and, after taking into consideration the judgment of this Court rendered in ***K. Manche Gowda's case (supra)*** held as under: -

> ***"24.****In State of Mysore v. K. Manche Gowda, this Court held that the disciplinary authority should inform the delinquent employee that it is likely to take into consideration the past conduct of the employee while imposing the punishment unless the proved charge against the delinquent is so grave that it may independently warrant the proposed punishment. Though his*

[7] (2007) 8 SCC 656

previous record may not be the subject-matter of the charge at the first instance.

xx xx xx xx

30.*In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require.* **[Emphasis Supplied]**

31.*It is settled legal proposition that habitual absenteeism means gross violation of discipline [vide Burn & Co. Ltd. v. Workmen (AIR p. 530, para 5) and L&T Komatsu Ltd. v. N. Udayakumar (SCC p. 226, para 6).]*

32.*The instant case is required to be examined in the light of the aforesaid settled legal propositions.*

33.*Admittedly, the respondent employee has not completed the service of six years and had been imposed punishment three times for remaining absent from duty. On the fourth occasion when he remained absent for ten days without leave, the disciplinary proceedings were initiated against him. The show-cause notice could not be served upon him for the reason that he again deserted the line and returned back after fifty days. Therefore the disciplinary proceedings could not be concluded expeditiously. The respondent submitted the reply to the show-cause notice and the material on record reveal that during the pendency of the enquiry he further deserted the line for ten days. There is nothing on record to show any explanation for such repeated misconduct or absenteeism. The court/tribunal must keep in mind that such indiscipline is intolerable so far as the disciplined force is concerned.*

34. *The respondent was a guard in CISF. No attempt had ever been made at any stage by the respondent employee to explain as to what prejudice has been caused to him by non-furnishing of the enquiry report. Nor had he ever submitted that such a course has resulted in failure of justice. More so, the respondent employee had never denied at any stage that he had not been punished three times before initiation of the disciplinary*

proceedings and deserted the line twice even after issuance of the show-cause notice in the instant case. No explanation could be furnished by the respondent employee as under what circumstances he has not even considered it proper to submit the application for leave. Rather, the respondent thought that he had a right to desert the line at his sweet will. It was a case of gross violation of discipline. Appeal filed by the respondent employee was decided by the statutory appellate authority giving cogent reasons.

35. *The facts of the present case did not present special features warranting any interference by the Court in limited exercise of its powers of judicial review. In such a fact situation, we are of the view that the High Court should not have interfered with the punishment order passed by the disciplinary authority on such technicalities...***"**

25. As observed, in the present case, the absence of the respondent from the duty on various occasions in a short tenure of service of around 7 years, is a gross indiscipline on the part of the respondent and therefore, we do not find any illegality in the order passed by the disciplinary authority whereby the services of the respondent have been dismissed.

26. The facts of ***Mohd. Yunus Khan's case (supra),*** upon which the learned counsel for the respondent has placed reliance, is based on different facts and therefore, is of no help to the respondent. In that case, the Administrative Tribunal, examining the punishment order, had concluded that the absence of the delinquent for a short period was *bona fide* and legally permissible, but on account of his subsequent

misconduct and disobedience, held that the dismissal order was justified. In that situation, this Court had held that the Tribunal, before taking into consideration the past conduct of the delinquent, must give notice to the delinquent. In such circumstances, the facts of the case of ***Mohd. Yunus Khan's case (supra)*** are distinguishable from the case of the respondent.

27. So far as the finding of the High Court that the disciplinary authority should have taken into consideration the long service period of the respondent is concerned, we agree with the submission of the learned counsel for the appellants that the said observation of the learned Single Judge is erroneous because as per the materials on record, the respondent had served only for a brief period of less than 7 years as a Constable and therefore, it cannot be said that he served for a long period in the department. The mentioning of the forfeiture of 17 years of service in the dismissal order was in relation to the punishments imposed upon the respondent in the various proceedings for his unauthorised absence, for which he would not have been able to get any increment, if he would have been in service for a longer period.

28. The reliance on Rule16.2(1) of the Rules of 1934 by the High Court is also misplaced while observing that for the purpose of inflicting the punishment period of service is required to be taken into consideration. For ready reference Rule 16.2 (1) of Rules of 1934 is quoted hereunder:

> ***"****Rule 16.2 (1) 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.****"***

29. A plain reading of Rule 16.2(1) of the Rules of 1934 suggests that it consists of two parts, the first part where the punishment of dismissal can be awarded to the delinquent for the gravest act of misconduct. However, in the second part, the punishment can be awarded as a cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. While imposing punishment for such continued misconduct proving incorrigibility and complete unfitness for police service, the length of service of the offender is required to be taken into consideration, which is missing in the case of the first part of Rule 16.2(1) of the Rules of 1934.

30. This Court, in the case of ***State of Punjab & Ors. vs. Ram Singh Ex- Constable***[8] while interpreting Rule 16.2(1) of the Rule of 1934 has held as under: -

> ***"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 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.*
>
> ***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*

[8] (1992) 4 SCC 54

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."

31. In light of the judicial precedents cited above, when the factual matrix of the present case is appreciated, it is seen that the reference to the fact of forfeiture of 17 years of service of the respondent as a result of his absence from service on previous occasions was in exclusion or independent of the misconduct for which the enquiry officer has found him guilty. The consideration of the past misconduct of the respondent was not the effective reason for dismissing him from the service. The disciplinary authority had mentioned the past misconduct

of the respondent only for adding the weight to the decision of imposing the punishment.

32. We have perused the show cause notice and the order of dismissal passed against the respondent. After going through the same, it is clear that penalty of dismissal is a consequence of proved misconduct. Therefore, the order impugned is within the first part of Rule 16.2 (1) of the Rules. While passing the order dismissing the appeal, the disciplinary authority recorded the finding that the act of absence of the respondent from duty is a grievous act of misconduct. The respondent was appointed as a constable in the Punjab Armed Forces and then transferred to the Commando Force, which is a disciplined force. The authority while passing the order has referred to his previous act of absence from duty besides proving an gravest act of misconduct leading to the order of dismissal.

33. In the facts of the present case, it is clear that the respondent was dealt by the department earlier on three occasions having remained absent from duty and the penalties were inflicted for the same. It is the fourth time when he remained absent to which, a chargesheet was issued and his guilt was found

proved. He himself had not cross-examined the departmental witnesses and also had not produced any witness in his defense. Considering all these aspects and having found proved his misconduct, notice to show cause from dismissal was issued to the respondent. The disciplinary authority, while imposing the penalty, had merely referred the past conduct and also given weight to the gravest act of misconduct. The order of dismissal is not based on the charge of "cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service". Therefore, mere reference of the past conduct would not amount to constitute dismissal of the respondent based on the second limb of Rule 16.2(1). In our view, the High Court was not justified to apply the principle of ***K. Manche Gowda (supra)*** while setting aside the judgment passed by the two Courts. As such, it is concluded that the dismissal of the respondent was based on gravest act of misconduct, for which he was dealt with by the disciplinary authority following the procedure as prescribed and in due observance of principles of natural justice, hence, we do not find any fault in the same. Accordingly, the present appeal stands allowed setting aside

the judgment of the High Court. In consequence, suit filed by the respondent/plaintiff stands dismissed. In the facts, parties to bear their own costs.

34. Pending application(s), if any, shall stand disposed of.

..... J.
(J.K. MAHESHWARI)

..... J.
(VIJAY BISHNOI)

NEW DELHI,
Dated: 29th AUGUST, 2025