

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.15461 of 1995
Date of decision : 30.07.2015

Hoshiar Singh, ASI

...Petitioner

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Tejpal Dhull, Advocate for the petitioner.

Dr. Sushil Gautam, DAG, Haryana.

AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the order dated 08.02.1994 (Annexure P-17), whereby two annual increments have been stopped with permanent effect. However, it has been mentioned that period of absence from 02.08.1992 to 28.07.1993 be treated sanctioned as leave without pay.

Mr. R.K. Malik, learned Senior Counsel submits that once observation has been made, therefore authority could not have imposed the punishment de hors of the fact that Enquiry Officer had been appointed.

Even the appeal and revision filed against the impugned order have also been dismissed.

He further submits that the petitioner while working at Bhiwani was ordered to be transferred to Sirsa on 30.07.1992 and had challenged the order of transfer in Civil Court and obtained status-quo order dated 27.08.1992 (Annexure P-2) and ultimately, the authorities recalled the order of transfer on 28.07.1993 and for the same period, the petitioner has been charge-sheeted as he remained absent without obtaining any sanctioned leave.

Dr. Sushil Gautam, DAG, Haryana submits that petitioner was relieved on 29.07.1992 and DDR No.30 dated 01.08.1992 in this regard was lodged and, therefore, the petitioner remained absent till 28.07.1993 and the status-quo order was obtained on 27.08.1992. Meaning thereby, the order of the transfer had been implemented, much less, the petitioner was relieved and rightly so, the petitioner has been charged for remaining absent for the period commencing from 02.08.1992 to 28.07.1993.

Mr. R.K. Malik, learned Senior Counsel in rebuttal submits that there is procedure prescribed for the purpose of relieving and since the petitioner was working as ASI and he had been allotted a service revolver which had to be surrendered and no objection was required to be given by the authority, therefore the registration of DDR is meaningless. In essence, the petitioner was not relieved and particularly after 27.08.1992, status-quo order was passed.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of brevity, it would be apt to extract the operative part of the impugned order for adjudication of the question raised in the instant writ petition, which reads as under:-

“As regards the quantum of punishment to be awarded to the defaulter, I have gone through all the statements of PWs and the entire evidence placed on the file. The charge has been proved. However, taking a lenient view, I order that two annual increments of the defaulter ASI Hoshiar Singh, No.666/BWN be stopped with permanent effect. The period of absence from 2.8.1992 to 28.7.1993 is also sanctioned as leave without pay.

A copy of this order shall be supplied to the defaulter free of cost and the order be booked accordingly.

Sd/-

Dt. 8.2.1994

Superintendent of Police, Bhiwani”

Mr. R.K. Malik, learned Senior counsel in support of aforenotice, submission has cited judgment of Division Bench of this Court reported in case of *Ex. H.C. Munshi Ram Vs. State of Haryana & ors. 1991 (2) RSJ 345, Constable Om Parkash Vs. State of Haryana and ors. 1995(3) SCT 170*, to contend that once it has been held that period from absent has been treated as leave, the petitioner cannot be treated as absent and, therefore could not be charged, much less, imposed punishment as has been done in the instant case.

I am in agreement with the aforementioned contention and as well as the ratio descendi culled out in the aforementioned judgment. Once authorities have already treated the period of absence as leave without pay, there was no occasion for the authorities to impose the punishment of

stoppage of two annual increments. The Appellate and the Revisional Authority had not taken into consideration the aforementioned fact and thus, the orders passed are fallacious.

It is a matter of record that petitioner was actually and factually not relieved for the reasons that neither any steps were taken by the respondents in writing calling upon him to surrender the service revolver or obtaining no objection. On the contrary, petitioner stated to have made many representation Annexure P-5 to P-7 but no action had been taken and thus petitioner remained to run from pillar to post for vindication, even the order of transfer, subsequently i.e. on 28.07.1993 was withdrawn.

In view of what has been observed above, orders dated 08.02.1994 (Annexure P-17), dated 08.06.1994 (Annexure P-19) and dated 16.02.1995 (Annexure P-28), are hereby also quashed.

Accordingly, the present writ petition is allowed.

30.07.2015

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**(AMIT RAWAL)
JUDGE**