

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

**RSA No.1379 of 1988 (O&M)
Date of Decision: 28.08.2015**

KARNAIL SINGH	Appellant
Vs	
STATE OF HARYANA	Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.K. Panwar, Advocate
for the appellant.

Mr. Siddharth Sanwana, D.A.G., Haryana.

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

RAJ MOHAN SINGH, J.

[1]. This appeal has arisen from the judgment and decree dated 17.12.1987 passed by Additional District Judge, Karnal whereby judgment and decree dated 31.07.1987 passed by sub-Judge IIIrd Class, Karnal was upheld.

[2]. Brief facts of the case are that the plaintiff Karnail Singh filed a suit for declaration to the effect that orders dated 25.05.1985 and 13.05.1986 are illegal, arbitrary, void and against the principle of natural justice and against the Rule 16.24 of Punjab Police Rules and Article 311(2) of Constitution of India.

[3]. Plaintiff joined Haryana Police Force as a Constable in the year 1981. In the month of November 1984, he was posted at Kala Titar for undergoing some refresher course. On 17.11.1984, he got sanctioned casual leave for 3 days and proceeded on leave. He was

to report back on duty on 19.11.1984 by 7.00 p.m., but he did not report and absented himself from duty for 33 days continuously. During the absence period, plaintiff had prayed for extension of leave vide his letter dated 01.12.1984, but his request was declined and he was informed vide letter dated 04.12.1984, that leave could not be extended and he was directed to join the duties at the earliest. Plaintiff reported for duty on 22.12.1984.

[4]. Departmental inquiry was held against the plaintiff. *Prima facie* he was found to be guilty and a summary of allegations was served upon him. After framing formal charges, a regular inquiry was held. After the inquiry, Inquiry Officer vide report dated 03.05.1985 had reached a conclusion that plaintiff had wilfully absented from duty. Thereafter show cause notice was issued regarding proposed punishment to be inflicted upon plaintiff i.e. as to why he should not be dismissed from service. Plaintiff filed reply and thereafter order of dismissal was passed on 25.05.1985.

[5]. Feeling aggrieved against the aforesaid order, plaintiff filed appeal before the Appellate Authority, but the same was also dismissed on 13.05.1986.

[6]. After dismissal of the appeal, plaintiff filed the present suit seeking declaration that the order of dismissal passed by the Commandant, 2nd Battalion, HAP Madhuban and the order passed by Appellate Authority are null and void, illegal and are not binding upon him. Suit was contested by the defendant/respondent thereby taking all customary pleas and it was submitted that the plaintiff was proved

to have absented from duty wilfully and the impugned order of dismissal was claimed to be legal and binding upon the plaintiff.

[7]. After the pleadings, following issues were framed by the trial Court:-

- “1. *Whether the order dated 25.5.1985 is illegal, against the rules of natural justice, arbitrary, not binding on the plaintiff, void ab-initio and against the provision as contained under the Punjab Police Rules 16.24 and Art.311 of the constitution of India as alleged in the plaint? OPP.*
2. *Whether the order dated 14.5.1980 is also illegal, null and void and not binding on the plaintiff's right as alleged in the plaint? OPP.*
3. *Whether the civil court has got no jurisdiction to try the present suit? OPD.*
4. *Whether the plaintiff has got no cause of action to sue? OPD.*
5. *Whether the plaintiff is estopped by his own act and conduct to sue? OPD.*
6. *Whether the suit time barred ? OPD.*
7. *Relief.”*

[8]. The parties led evidence in support of their case. Trial Court vide impugned judgment and decree dated 31.07.1987 dismissed the suit holding that absence of 33 days without proper justification was held to be unexplained. Trial Court saw no reason to interfere in the order of punishment passed by the Commandant as well as by the Appellate Authority.

[9]. Aggrieved by the judgment and decree of the trial Court,

appellant filed first appeal before the Additional District Judge, Karnal, who also affirmed the judgment and decree of the trial Court without any modification.

[10]. With the dismissal of the first appeal before the Court of Additional District Judge, Karnal, present appeal has been filed by the plaintiff/appellant.

[11]. I have heard the rival contentions of both the sides and with their assistance have gone through the record of this case.

[12]. Learned counsel for the appellant submitted that both the Courts have not appreciated the fact that the Inquiry Officer had mis-conducted himself while becoming prosecutor himself. No presenting officer was appointed. Inquiry Officer of his own performed the duties of presenting Officer in the capacity of complainant and that action of the Inquiry Officer was in utter disregard to mandatory provisions of Punjab Police Rules in terms of Rule 16.4. The factum of Inquiry Officer becoming prosecutor is a gross violation of inquiry proceedings. The Inquiry Officer cannot act as a prosecutor as he cannot be a judge of his own cause and this fact itself vitiated the inquiry and made the order of punishment wholly unsustainable.

[13]. Learned counsel further submitted that the plaintiff/appellant remained ill for a long time and Dr. K.K. Dhawan was examined by him in inquiry proceedings as witness No.3 and the Inquiry Officer did not appreciate the plausible explanation of the plaintiff for remaining absent from duty on account of prolonged illness. If this fact is taken into consideration vis-a-vis the gravest

punishment inflicted upon the appellant, then it will be culled out that the mis-conduct of the plaintiff/appellant was not such which could have attracted severest punishment. Whether wilful absence from duty is a mis-conduct and whether this mis-conduct is of gravest nature or not, is a question of fact depending upon facts of each case.

[14]. In a given case, even absence from duty for one day may amount to be the gravest act of mis-conduct. At the same time in another case, absence from duty for many days may not attract such a phenomenon. The plaintiff/appellant went for casual leave for 3 days. Contingency factors are always attached to human life. Plaintiff became ill and could not make proper application for leave in time, rather his application for extension of leave was subsequently dismissed. On account of this, he might not have been able to get the leave sanctioned prior in point of time before proceeding to his house on account of given circumstances. In such a situation, his absence from duty may be for a long time, but it may not be considered to be a gravest act of mis-conduct attracting applicability of Rule 16.2 of Punjab Police Rules. The requirement of Rule in terms of 16.2 of Punjab Police Rules lays down that dismissal shall be awarded only for the gravest act of mis-conduct or as the cumulative effect to continued mis-conduct, proving incorrigibility and complete unfitness for police service. In making such award of punishment due regard shall be given to the length of service of the delinquent and his claim towards retiral benefits should have been

given due attendance. It is also a settled principle of law that punishment awarded must be in proportion to the offence proved.

[15]. Learned counsel further states that since the plaintiff was a Constable and there is no material on record that he was on emergency duty. Plaintiff was on a refresher course. In such circumstances his absence from duty for 33 days should not have been considered as a gravest act of mis-conduct, warranting dismissal from service. Learned counsel states that the penalty in departmental disciplinary proceedings must commensurate with the gravity of mis-conduct. Any punishment disproportionate to the gravity of mis-conduct is violative of Article 14 of Constitution of India. In support of his arguments, learned counsel relied upon **1997 (1) SCT 256, State of Punjab v. Aman Kumar, 1996(2) SCT 758, Malkiat Singh v. State of Punjab and others** and **2000(3) SCT 177, State of Punjab v. Jagtar Singh.**

[16]. In view of facts involved in the present case, over stay beyond the sanctioned leave on account of illness of the plaintiff cannot be held to be gravest mis-conduct and the same does not commensurate to the mis-conduct of the plaintiff, proved in inquiry proceedings. The alleged satisfaction of the punishing authority to reach at the conclusion of gravest mis-conduct does not stand to reasons particularly when no application of judicious mind in terms of Rule 16.2 of Punjab Police Rules is forthcoming. Plaintiff may or may not have requisite service for retiral benefits, but the punishing authority was legally required to have due consideration with regard

to length of service at the time of passing of order of punishment. A due regard has to be given towards the length of service and findings to that effect are also required to be given.

[17]. I have considered the submission of respondent as well. According to learned State counsel, once the departmental proceedings are found to be not suffered with any material irregularity the same cannot be assailed in civil Court. Once a lawful procedure has been adopted and there is no violation of principle of natural justice, in such situation jurisdiction of civil Court is barred. On a pointed question of participation of Inquiry Officer as presenting officer, the stand of the State is evasive and not specific.

[18]. Issue No.3 was specifically framed with regard to jurisdiction of the civil Court. The onus of this issue was on the defendant, but the Government Pleader did not make any argument on this point before the trial Court, rather it was observed that cause of action is of civil nature, therefore, Court at Karnal had jurisdiction to try and decide the case. Issue was accordingly answered in favour of plaintiff. With regard to other issues i.e. issues No.4, 5 and 6, the onus was also on the defendant and were not pressed by the Government Pleader. These issues were decided in favour of the plaintiff. The only contesting issues were issues No.1 and 2. Even though the procedure has been adopted by the department except Inquiry Officer who acted as presenting officer, it was duty of the punishing authority to see whether the alleged mis-conduct warrants gravest punishment? Whether the punishment is commensurate to

the alleged mis-conduct? The decision of issues No.1 and 2 even if not to be disturbed, the Court is certainly empowered to see whether the ultimate punishment inflicted upon the plaintiff is proportional to the mis-conduct of the plaintiff or not.

[19]. The appellant has placed on record the following substantial questions of law:-

- “i) Whether the overstay of 33 days beyond sanctioned leave, on account of illness of the appellant, amounted to gravest act of misconduct and justified the impugned order of dismissal in accordance with the provisions of Rule 16.2 (as applicable to Haryana) of the Punjab Police Rules, 1934?*
- ii) Whether the enquiry officer, by cross-examining witnesses, acted both as a prosecutor and judge and thereby vitiated his enquiry findings and the consequent order of dismissal passed by the punishing authority?*
- iii) Whether the department enquiry was not fairly conducted in accordance with the procedure laid down in Rule 16.24 (as applicable to Haryana) of the Punjab Police Rules, 1934?*
- iv) Whether the extreme punishment of dismissal, the facts and circumstances of the case, is grossly disproportionate to the alleged misconduct and is, therefore, shocking and arbitrary?*
- v) Whether the impugned judgements and decrees of the Ld. lower courts result from misreading of documents and evidence and mis-appreciation of law and are, therefore, perverse?”*

[20]. Question No.1 is in the context of overstay by 33 days while on sanctioned leave on account of illness. As observed in the preceding para, over stay beyond sanctioned leave is a subjective thing based on evidence. Even absence of one day can be gravest mis-conduct, but keeping in view the posting of the plaintiff on refresher course and his illness during sanctioned leave though make it a case of mis-conduct in the event of declining application for extension, but the same cannot be termed to be gravest act of mis-conduct, justifying punishment of dismissal in utter disregard to Rule 16.2 of Punjab Police Rules.

[21]. Question No.2 is with regard to Inquiry Officer becoming prosecutor, the same should have been considered by the punishing authority. This fact itself goes in a long way to show that the prosecutor became judge of his own cause. Participation of the Inquiry Officer as prosecutor vitiates the inquiry and, therefore, consequent order of dismissal is proved to be a farce.

[22]. Question No.3 is also depending upon question No.2 as well as the order in which due regard has not been given to the length of service, while passing order under Rule 16.2 of Punjab Police Rules. Therefore, this question is to be appreciated in the light of findings recorded under question No.2. Since the Inquiry Officer has participated in the capacity of prosecutor, therefore, inquiry itself stands vitiated and the proper procedure has not been followed by respondent. With regard to question No.4, the punishment awarded is apparently disproportionate to the mis-conduct and does not

commensurate to the mis-conduct of the plaintiff.

[23]. Question No.5 is also held to be in affirmative in view of the fact that the findings recorded by the Authorities and Courts below do not answer whether punishment inflicted upon the plaintiff is commensurate to the mis-conduct proved on his behalf. The impugned judgments and decrees passed by the Courts below are also silent about the alleged factum of Inquiry Officer participating in inquiry proceedings in the capacity of prosecutor/presenting officer. Stand of the State remained evasive before this Court.

[24]. Appellant after dismissal of service remained out of job. There is no evidence on record whether he was gainfully employed somewhere. Keeping in view his age, it cannot be presumed that he remained out of job for so long. Therefore, grant of any back wages cannot be considered.

[25]. In view of attending circumstances of the case, this appeal is allowed. Impugned judgment and decrees passed by Courts below are set aside. Plaintiff/appellant is also held entitled for reinstatement in service with all consequential benefits except back wages.

August 28, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**