

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

**CWP 14657 of 2008
DATE OF DECISION :- October 06, 2015**

Jagtar Singh

...Petitioner

Versus

Union of India and others.

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. Kamaljeet Singh Mamrat, Advocate for the petitioner.

Mr. Arun Gosain, Advocate for respondents 1 to 3.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Aggrieved by the imposition of penalty of compulsory retirement by the Disciplinary Authority and confirmed by the Appellate Authority for the unauthorized absence from duty, the petitioner moved an Original Application before the learned Central Administrative Tribunal, Chandigarh Bench. As his prayer was

declined by the learned Tribunal, he has filed the present Writ Petition.

2. The petitioner was serving as a driver in the Military Engineering Service. He was charge sheeted on 17.7.2004 for his absence from duty from 23.12.2003 to 17.7.2004. The petitioner submitted reply to the charge sheet stating that he was under treatment and the doctor had advised him to take complete rest. He produced medical certificate from SV Clinic and Nursing Home, Mani Majra. The petitioner joined duty on 21.7.2004 and continued till 24.8.2004 but no salary was paid to him. He again fell sick and was declared as unfit to join duty for the period from 25.8.2004 to 18.1.2005. He resumed duty on 14.1.2005. It was his further contention in the explanation submitted by him to the charge sheet that he was not paid salary by the respondents right from 19.1.2005 onwards.

3. Disciplinary Authority appointed Sh. R.S. Thakur as an Inquiry Officer to enquire into the charges levelled against the petitioner. He conducted inquiry having given due opportunity to the petitioner and submitted a finding that the petitioner was guilty of misconduct. The Disciplinary Authority accepted the findings and imposed penalty of compulsory retirement from service.

4. It was contended by the counsel appearing for the petitioner that due opportunity was not afforded by the Inquiry Officer. It is his further submission that the medical certificates

produced to show that the petitioner was mentally ill were not properly considered either by the Inquiry Officer or by the Disciplinary Authority.

5. Per contra, learned counsel appearing for the official respondents contended that due opportunity was given to the petitioner by the Inquiry Officer. The Disciplinary Authority accepted the finding and rightly imposed the above penalty on the petitioner. The appeal preferred by the petitioner also was rejected by the Appellate Authority. Therefore, there is no scope for judicial review, it was submitted.

6. It is a well settled proposition of law that there is no scope for judicial review of the disciplinary proceedings initiated against an employee for misconduct, unless it is established that the decision arrived at by the Disciplinary Authority suffered from procedural impropriety or the quantum of penalty imposed was shocking to the conscience of the Court. The Court in the guise of judicial review shall not substitute the decision taken by the Disciplinary Authority, when the decision so taken was supported by relevant materials.

7. The entire original file was produced before us for perusal. We went through the entire original records maintained by the Disciplinary Authority and found that the petitioner was afforded sufficient opportunity to rebut the charges. It is true that the Presenting Officer nominated to conduct the case on behalf of the

department had submitted all the relevant documents to establish the unauthorized absence of the petitioner. The petitioner admitted his absence from duty at least for the period from 23.12.2003 to 20.7.2004 and 25.8.2004 to 18.1.2005. The petitioner responded to the opportunity afforded by the Inquiry Officer during the inquiry proceedings that he did not challenge the documents produced and relied upon by the department nor did he examine any witness on his side. The department thought it fit not to adduce any oral evidence as the documents produced themselves speak of the unauthorized absence of the petitioner. It is not necessary that the department should adduce oral evidence giving the delinquent an opportunity to cross examine such a witness. When the relevant documents which speak of the unauthorized absence of the petitioner have been produced by the department. The delinquent should have summoned the official of the department concerned to rebut the documents. But, surprisingly, the petitioner has admitted his absence from duty. He chose not to examine any witness on his side. He had in fact pleaded before the Inquiry Officer that the period of absence might be regularized as he was suffering from some mental problem.

8. The Inquiry Officer rejected the medical records produced by the petitioner as they had not originated from an institution of repute.

9. In our considered view, the Inquiry Officer had conducted the enquiry entrusted to him only after affording sufficient opportunity

to the petitioner to rebut the charges. The finding recorded by the Inquiry Officer and the final order passed by the Disciplinary Authority were backed by relevant materials. The penalty imposed also was not shocking to the conscience of the court. Therefore, the Writ Petition fails and it stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

October 06, 2015

p.singh