

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 12170 of 2011 (O&M)
Date of decision : May 08, 2015

Daljit Singh,

..... Petitioner

v.

Union of India and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Davinder Lobana, Advocate
for the petitioner.

Mr. Indresh Goyal, Advocate
for the respondents.

1. **Whether Reporters of Local Newspapers 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 ?**

Ajay Tewari, J (Oral)

By this writ petition, the petitioner has challenged the order of his removal from service dated 01.12.2008 (Annexure P-5), as well as the order dated 24.03.2009 (Annexure P-14) rejecting his appeal.

The petitioner joined service as Constable in the Central Reserved Police Force in the year 2000. After having availed leave, he was supposed to join back on 4.3.2008. He, however, went absent without leave. Notices were issued to him to join back but to no avail. He was ultimately arrested on 29.9.2008 after a period of almost 7 months. Regular

inquiry was launched against him. The only ground taken by the petitioner was that his wife suddenly fell ill and due to that he lost his mental balance. The Disciplinary Authority noticed the fact that even if the wife of the petitioner had fallen sick, nothing prevented him from informing about the same to his superior/s. It was further noticed that in the years 2006, 2007 and 2008 also, the petitioner had 63 days, 113 days and 52 days respectively of unauthorized absence. It was in these circumstances that the Disciplinary Authority came to the conclusion that the petitioner was not found fit to be retained as a member of the Disciplined Force.

Counsel for the petitioner has argued that in the circumstances of the case, some lesser punishment should have been imposed. He has relied upon Mohd. Yunus Khan v. State of Uttar Pradesh and others, (2010) 10 SCC 539.

In Mohd. Yunus Khan's case (supra), the petitioner therein while on guard duty left the same for 25 minutes. The Commandant imposed a punishment of 10 days' drill. The petitioner protested and the punishment was enhanced to 10 days' confinement. It was also refused by the petitioner, which was taken as a delinquency. After inquiry, he was dismissed from service. The Appellate Authority considered his past conduct and decided the appeal. In para 17 of the decision in Mohd. Yunus Khan's case (supra), their Lordships held as follows :-

“ 17. The Tribunal has categorically held that absence of the appellant from duty for such a short span of time was permissible in view of the statutory rules and was bona fide. That finding was not challenged by the respondents any further and attained finality. This finding of the Tribunal leads us to the questions that in case the first punishment of 10 days' punishment drill was unwarranted and illegal; whether any protest against such

punishment, authorized the Commandant to enhance the punishment to 10 days' confinement in a cell; and whether further disobedience thereof, ought to have enabled the Commandant to initiate the disciplinary proceedings against the appellant. These questions have to be considered keeping in mind that the appellant was a member of a disciplined force and the appellate authority as well as the Tribunal had very heavily relied on the past conduct of the appellant for considering the proportionality of the punishment, though it had not been a part of the charge-sheet nor was the appellant informed of the same while issuing the second show cause notice, giving him the opportunity to make his representation against the enquiry report.”

Ultimately, their Lordships held in para 34 as under :-

“34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.”

Counsel for the respondents, on the other hand, has defended the impugned orders and has relied upon the decision in Govt of A.P and others vs Mohd. Taher Ali, (2007) 8 SCC 656, wherein the Hon'ble Supreme Court held as follows :-

“5. Learned counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges levelled against him. In support of his submission learned counsel for the respondent has invited our attention to the judgment of this Court titled *State of Mysore v. K Manche Gowda* AIR 1964 SC 506 but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions

also. 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 only to reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement.”

Counsel for the petitioner has further argued that the provisions of Section 11 of the Central Reserve Police Force Act, 1949 have been wrongly invoked and that only a minor punishment can be awarded.

A reading of Section 11 of the said Act does not support this contention because the words mentioned are ‘..... may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal.....’. This provision has been interpreted by their Lordships in Union of India and others v. Gulam Mohd Bhat, AIR 2005 SC 4289 and it has been held as follows :-

“5. A bare perusal of Section 11 shows that it deals with minor punishment as compared to the major punishments prescribed in the preceding section. It lays down that the Commandant or any other authority or officer, as may be prescribed, may, subject to any rules made under the Act, award any one or more of the punishments to any member of the force who is found guilty of disobedience, neglect of duty, or remissness in the discharge of his duty or of other misconduct in his capacity as a member of the force. According to the High Court the only punishments which can be awarded under this Section are reduction in rank, fine, confinement to quarters and removal from any office of distinction or special emolument in the force. In our opinion, the interpretation is not correct, because the section says that these punishments may be awarded in lieu of, or in addition to, suspension or dismissal.”

In my opinion, the punishment of dismissal from service of the

petitioner is not so dis-proportionate as to shock the conscience of this Court. In Union of India and another vs S.S.Ahluwalia, 2007(7) SCC 257, the Hon'ble Supreme Court held as follows :-

“.... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty.....”

Consequently, finding no merit in this writ petition, the same is dismissed.

May 08, 2015
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(AJAY TEWARI)
JUDGE