

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

CWP No. 4058 of 2012 (O&M)

Date of decision: 30.03.2015

Subhash Gakhar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Rajbir Sehrawat, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Jitendra Chauhan, J. (Oral)

By way of the instant writ petition, under Articles 226/227 of the Constitution of India, the petitioner seeks quashing of the order dated 16.02.2010 (Annexure P-3) and order dated 09/10.11.2010 (Annexure P-5) and further directions to the respondents to make the payment of leave encashment to the petitioner for the remaining earned leave along with interest @ 9% per annum.

It is contended that the petitioner was appointed as Clerk on 06.1.1981 and he continued to be in service upto 31.07.2010.

Since, the mental health of the petitioner was not permitting him to work properly, the petitioner sought voluntary retirement on 31.07.2010. Due to his illness, the petitioner could not attend to the office and had submitted medical leave application duly supported by the Medical Certificate. However, the petitioner was served with a charge sheet under Rule 7 of the Punishment and Appeal Rules, 1987, on the ground that the Medical Certificate was not issued from a Govt. Hospital. Thereafter, punishment of stoppage of one increment without cumulative effect was inflicted upon the petitioner, vide order dated 23.12.2009 and the absence of duty period of the petitioner was treated as leave of the kind due without having regard to the leave of other kind due in the account of the petitioner. It is contended that the respondent cannot straight away adjust the earned leave of the petitioner just to deprive him of the benefit of leave encashment.

On the other hand, the learned State counsel submits that the petitioner had absented himself from duty without getting permission of the competent authority. He refers to Annexure R-1, whereby the petitioner was directed to appear before the Chief Medical Officer, General Hospital, Sector-16, Chandigarh for his medical examination. The Chief Medical Officer constituted a Board of doctors, who declared the petitioner fit to join duty as reflected in Annexure R-2.

Heard.

Admittedly, the petitioner absented himself from duty 16.07.2008 to 27.08.2008, 01.09.2008 to 07.09.2008 and 11.09.2008 to 26.01.2009. The ailment of the petitioner was not proved on record as alleged by him. The doctor had found him fit for duty, vide Annexure R-2. The disciplinary action was taken against the petitioner after the charges were found to be true against him by the Inquiry Officer. The plea of the petitioner that his earned leave has been adjusted just to deprive him the benefit of leave encashment is not tenable. The petitioner remained absent from duty without prior permission for a long time and he had been sending leave applications on the pretext of his ailment, which is not proved on record. No medical certificate from the Govt. hospital was ever submitted by the petitioner.

Keeping in view above fact and circumstances, the present petition being without any merit is hereby dismissed as such.

30.03.2015

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(JITENDRA CHAUHAN)
JUDGE