

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

**RSA No.2652 of 2012 (O&M)
Date of decision : 15.07.2015**

Bir Singh

...Appellant

versus

Haryana State & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. P.L.Verma, Advocate for the appellant.

Mr. Mukesh Kaushik, DAG, Haryana.

RITU BAHRI, J (Oral)

CM No.7244-C of 2012

There is a delay of 117 days in re-filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 117 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.2652 of 2012

The plaintiff has come up in regular second appeal against
the judgment of the trial Court dated 16.12.2010 and the lower
appellate Court dated 03.09.2011, whereby his suit for declaration that
the finding of the inquiry dated 22.07.2006 and punishment order
dated 14.09.2006 passed by the defendants rejecting his appeal and
subsequent order rejecting revision vide order dated 24.09.2007 is null
and void, has been dismissed.

The plaintiff joined the police service in the year 1991 and he remained absent from service for a period of 556 days. While imposing the punishment, defendant No.2-Superintendent of Police, Faridabad had taken into consideration past punishments. On notice, defendants filed written statement and took the plea of suit being time barred. On merits, it was submitted that the plaintiff was posted at Civil Lines, Faridabad on 18.10.2004. On that day, he was sent to District Police Office to deliver some urgent letter but thereafter he did not report till 21.10.2004. Accordingly, his absence was recorded vide DD No.28 dated 21.10.2004. Subsequently, the plaintiff reported back on duty on 10.04.2006 i.e. after a gap of 556 days 20 hours and 20 minutes. It was submitted that departmental inquiry was initiated against the plaintiff due to his absence from duty without prior permission or his leave from competent authority. It was further asserted that before initiating the departmental inquiry the plaintiff was requested vide notice No.92/OASI dated 16.01.2005 to join his duty. The said notice was received by his wife on 17.01.2005. She informed that the plaintiff has already left for joining his duties. It was next maintained that another notice dated 04.12.2005 was sent to the plaintiff requesting him to join his duties. The same was served upon his uncle Dharam Singh. It was next maintained that the notice to join the departmental inquiry was also sent to the plaintiff on 16.03.2006 vide notice No.158. The same was received by the plaintiff personally on 21.03.2006 but the plaintiff did not join the inquiry. Subsequently,

another notice bearing No.246 dated 28.03.2006 and 266 dated 05.04.2006, were also sent to the plaintiff to join the departmental inquiry. They were also received by the plaintiff personally. Thereafter the plaintiff joined the departmental inquiry on 10.04.2006. Memo of allegations alongwith list of witnesses and all other relevant documents were supplied to him free of cost on 10.04.2006. The statements of witnesses were recorded by the Inquiry Officer and after that charge sheet was prepared against the plaintiff/delinquent on 12.05.2006 which was got approved from Superintendent of Police, Faridabad i.e. defendant No.2 on 13.05.2006. It was a holiday on 13th and 14th of May, 2006. The Inquiry Officer underwent training of crime analysis at New Delhi w.e.f. 15th and 16th May, 2006. The plaintiff absented himself w.e.f. 29.05.2006. Subsequently, notice No.314 dated 04.06.2006 was sent to him to join the departmental inquiry. However, its service was refused by the wife of plaintiff. Thereafter another notice dated 08.06.2006 was sent to him which was served upon him. But the plaintiff did not join the departmental inquiry. Again a notice No.324 dated 16.06.2006 was sent to him which was received by his brother. Subsequently, a notice dated 22.06.2006 alongwith copy of charge sheet was sent to the plaintiff which was received by his wife. Notice dated 29.06.2006 was also personally served upon the plaintiff. The plaintiff submitted in writing that he will join the departmental inquiry, however, he did not join. Hence, a notice bearing No.342 dated 07.07.2006 was served upon the

plaintiff alongwith exparte orders but the plaintiff did not join the departmental inquiry. Thus, the inquiry officer submitted his report vide which the allegations against the plaintiff were found proved. A show cause notice No.645-ST dated 27.07.2006 alongwith a copy of inquiry dated 22.07.2006 was sent at the residence of the plaintiff which was received by the wife of the plaintiff. A copy of the same was sent at the home address of the plaintiff through registered post. Again a notice No.727/ST dated 29.08.2008 was sent at the house of the delinquent/plaintiff which was received personally by him. Plaintiff submitted his written reply and he was afforded with an opportunity of being heard in person on 05.09.2006. After considering all the fact and circumstances as well as also the length of the service of the plaintiff, he was dismissed from service on 14.09.2006.

The plaintiff admitted in his cross-examination that he had received the notice to appear in the inquiry and he joined the departmental inquiry after joining his duties on 10.04.2006. The medical certificates filed by the plaintiff were duly considered while passing the order of punishment and it was observed by the competent authority that the medical certificates produced by the plaintiff are not legally authentic until or unless it is counter signed by the Chief Medical Officer. Moreover, the said documents were not produced during the inquiry. Further more the concerned doctors who issued the medical certificates produced by the plaintiff were not examined by him during the inquiry.

The trial Court examined the case of the plaintiff as per the provision of Rules 16.2 of the Punjab Police Rules. As per the punishment order Ex.P2, the same was passed in view of the unauthorised absence of the plaintiff from duty for 556 days 20 hours and 20 minutes coupled with the fact that he had also remained absent from duty without intimation on previous occasions and the punishment of stoppage of future increments earlier imposed by him had no deterrent effect on the plaintiff and he is a habitual absentee. The suit of the plaintiff was dismissed in view of the judgment of the Hon'ble Supreme Court in the case of **Maan Singh Vs. Union of India & ors. AIR 2003 SC 1800.** The lower appellate Court on appeal has affirmed the findings of the trial Court.

Counsel for the appellant has referred to the judgment of of this Court in the case of **Dhan Singh Vs. State of Haryana & ors. 2009 (1) RSJ 62** to contend that the appellant had served since 1991 to till 2005 for a period of more than 15 years when the order dismissing him from the services was passed. As per Rule 16.2, the length of service should have been taken into consideration before imposing the punishment of dismissal from service. Judgment of Dhan Singh (supra) is not applicable to the facts of the present case. In that case, the absence of the petitioner-Dhan Singh from service was on account of two occasions for 22 days and 100 days. As per Rule 16.2 (1), absence from service would not amount to gravest act of misconduct as per explanation given to Rule 16.2 sub clause (i) to (vii). In the

explanation, absence from service would not amount to gravest act of misconduct. However, cumulative effect of continued misconduct would lead an employee to be incorrigible and completely unfit for police service. Hence, absence on two occasions would not amount to a continued misconduct sufficient to prove that the petitioner was incorrigible and unfit for police service and neither absence from service would amount to gravest act of misconduct as per explanation. While imposing the punishment of dismissal some earlier punishments were taken into consideration which were not part of the charge framed against the petitioner. After rendering service of 12 years, the order was set aside and a direction was given to the disciplinary authority to reconsider the question of punishment keeping in view the service rendered.

In the judgment of trial Court, reference has been made to a Supreme Court judgment in the case of **Maan Singh Vs. Union of India 2003 (2) SCT 84**. In the case before the Hon'ble Supreme Court appellant-Maan Singh had been absented from duty on 21 occasions. In spite of several punishments he did not improve himself and hence he was treated to be a habitual absentee. Keeping in view the above facts, the disciplinary authority dismissed the appellant from service on 13.03.1992. After dismissal from service his period for absence was treated to be leave without pay. The question before the Hon'ble Supreme Court was whether once the department had treated the period as leave without pay, dismissal order on account of some

absence period be sustainable? The Constitution Bench of the Hon'ble Supreme Court was examining the view of this Court in the case of **State of Punjab Vs. Bakshish Singh, 1997 (3) SCT 401**, once the period of absence having been regularised as leave without pay would automatically set at naught the order of dismissal whereas in the case of **State of Madhya Pradesh Vs. Harihar Gopal, 1969 SLR 274** took the view that the period of absence has been regularised was not automatically set at naught the order of dismissal. On this account the matter was referred to the Constitution Bench. The Hon'ble Supreme Court upheld the view given in the case of Harihar Gopal's case (supra) and dismissed the appeal filed by Maan Singh and in paragraph 11, the Hon'ble Supreme Court observed as under:-

“Relying on State of Punjab & Ors. vs. Ram Singh Ex-Constable, 1992 (4) SCC 54, one of the arguments advanced before us is that it is only in cases where the misconduct is of gravest kind an order of dismissal shall be made. This case was decided in the context of Rule 16.2(1) of the Punjab Police Manual, 1934, Vol. II. The said Rule reads as follows :-

"Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service, in making such an award regard shall be had to the length of service of the offender and his claim to pension."

After analysing the said provision, this Court in Ram Singh's case held that Rule 16.2(1) consists of two parts, firstly, dismissal shall be awarded for the gravest acts of misconduct and secondly, cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The second part is referable to a

misconduct which, by itself, may not warrant an order of dismissal and may be a ground to take a lenient view of giving an opportunity to reform and even after giving such opportunities, if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then in order to maintain discipline in the service appropriate punishments can be given. Therefore, when the charge against the appellants in each of these cases is habitual absence for long periods on several occasions unauthorisedly, the view taken by the disciplinary authority is justified.”

The view taken by the Constitution Bench in Maan Singh's case (supra) had been followed recently in the case of **Om Parkash Vs. State of Punjab, 2011 (4) SCT 341**. In this case the appellant-Om Prakash was facing the enquiry on account of absence for 39 days from duty. However, as per his past record he had been punished for 527 days on different occasions. The appellant was dismissed from service after conducting regular enquiry as per law. Absence of 527 days was sufficient to treat him as a habitual absentee and even if the period of absence had been regularised it would not amount to setting aside of order of dismissal. In paragraph 11, 12 and 13, the Hon'ble Supreme Court has observed as under:-

“11. A similar issue came to be raised in this Court several times. In the case of State of M.P. Vs. Harihar Gopal 1969 SLR 274(SC), this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly; that, on the finding of the enquiry officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due

to the delinquent officer and for regularising his absence from duty. This Court in the said decision held that it could not be accepted that the authority after terminating the employment of the delinquent officer intended to pass an order invalidating that earlier order by sanctioning leave so that he was to be deemed not to have remained absent from duty without leave duly granted.

12. Our attention is also drawn to the decision of this Court in Maan Singh Vs. Union of India and Others 2003(3) SCC 464 wherein a similar situation and proposition has been reiterated by this Court. There are a number of decisions of this Court where it has been held that if the departmental authorities, after passing the order of punishment, passes an order for maintaining a correct record of the service of the delinquent officer and also for adjustment of leave due to the delinquent officer, the said action cannot be treated as an action condoning the lapse and the misconduct of the delinquent officer.

13. There is yet one more factor which stands against the appellant herein. It is indicated from the counter affidavit filed by the respondents 1 to 4 that the appellant had also been punished earlier to the aforesaid incident also with a punishment for leave without pay for total of 527 days on different occasions in service as per details below:-

<i>13.11.1965 to 05.01.1996</i>	<i>-</i>	<i>54 days</i>
<i>25.07.1973 to 28.07.1973</i>	<i>-</i>	<i>4 days</i>
<i>04.10.1977 to 12.01.1978</i>	<i>-</i>	<i>120 days</i>
<i>13.01.1978 to 09.05.1978</i>	<i>-</i>	<i>118 days</i>
<i>25.10.1979 to 31.10.1979</i>	<i>-</i>	<i>6 days</i>
<i>10.02.1981 to 14.08.1981</i>	<i>-</i>	<i>185 days</i>
<i>13.10.1984 to 22.11.1984</i>	<i>-</i>	<i>40 days”</i>

In the facts of the present case, the appellant Bir Singh was dismissed from service as he had been absented for 556 days

during his service career. The plaintiff was issued show cause notices to participate in the enquiry. Copy of the enquiry report was sent to him which was received by his wife. After affording the opportunity of hearing on 05.09.2006, he was dismissed from service on 14.09.2006. Since the absence period is of 556 days, the ratio of the judgment of Om Prakash (supra) is fully applicable to the present case. The absence of 556 days from the service would render him incorrigible and completely unfit for police service as per Rule 16.2. No substantial question of law arises in this appeal for adjudication.

Dismissed.

15.07.2015
Vinay

(RITU BAHRI)
JUDGE