

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

**RSA No.1679 of 2015 (O&M)
Date of Decision: 18.08.2015**

Naresh Kumar

.....Appellant

Vs.

State of Punjab and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present:- Mr.Vishal Munjal, Advocate for the appellant.

K.KANNAN, J.

CM No.4631-C of 2015

For the reasons stated in the application, delay of one day in filing the appeal is condoned.

Application stands disposed of.

RSA No.1679 of 2015

The departmental proceedings which had culminated in dismissal, was for the delinquency of unauthorized absence from 26.08.2004 to 01.03.2005. The proceedings were initiated after notice to show cause why appropriate action shall not be taken for the misconduct of unauthorized absence. The notices had been sent to the address of the plaintiff as recorded in the service book but it would appear that the notice was only served on the mother and when it could not be personally served, it was affixed at the house. The plaintiff did not participate in the inquiry. The charge of unauthorized absence was taken as proved and a punishment of dismissal from service was made.

The plaintiff had preferred an appeal and the appeal also failed and the suit came to be filed contending that rules of the natural justice had not been followed by serving notice and ensuring participation of the plaintiff at the departmental proceedings. The plaintiff would also state that his younger brother had died on 28.02.2005 and his mother was depressed and he had therefore to take appropriate care of his mother and was compelled to be absent. The further explanation offered was that he had a matrimonial dispute with his wife and dispute got settled by divorce by mutual consent subsequently and his own absence was only on account of domestic problems.

A person in a uniformed service ought to observe discipline about the way he conducts himself and if he is absent for any domestic reasons, it ought to be cited as a ground for applying for leave. A matrimonial discord with his wife cannot provide any justification for unauthorized absence. Again I cannot make any favourable observation to the benefit of the plaintiff that he was not personally served. The employer is only expected to serve a notice at the place where the plaintiff had given was a permanent residence, and if the service was sought to be made at that address and the notice had been received on the plaintiff's mother, who was present at the house or if it was affixed at his residence, the service must be deemed to have been properly made. A complaint of violation of rules of natural justice has therefore, no place, when the plaintiff left no other manner of

service of notice possible, with any disclosure of the particular place where he was residing to the employer. Even the plea that his mother was depressed on account of the death of the plaintiff's younger brother does not appear to be good ground for his absence since the period of absence which the plaintiff had to explain was from 26.08.2004 to 01.03.2005 and the death of the brother only 28.02.2005 and the absence was only till the immediate next date i.e. 01.03.2005. It would appear that he had returned to house and to office immediately after the death of his brother. Far from providing an explanation for absence, it probably gives an explanation for his presence in his office. I do not think there is any error for reconsideration in second appeal. The counsel pleads with passion that the plaintiff had put in 12 years of service and the dismissal from his services operates seriously to his prejudice.

I do not think there is anything left for consideration in the suit or appeal for the plea that he is making and he is free to look for himself a job elsewhere in the large free India.

Dismissed.

18.08.2015
anil

(K.KANNAN)
JUDGE