

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

R.S.A No. 1825 of 2015 (O&M)

Date of decision:- 18.05.2015

Naveen Kumar

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Dhiraj Chawala, Advocate
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

C.M. No. 4922-C of 2015

For the reasons mentioned in the application, delay of 156 days in filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A No. 1825 of 2015

The present regular second appeal is directed against the judgment and decree dated 04.07.2014 passed by Addl. District Judge, Gurgaon whereby the judgment and decree dated 14.01.2012 passed by the Civil Judge (Jr Divn.) Gurgaon was upheld whereby the suit of the plaintiff/appellant (herein after to be referred as 'the appellant')

was dismissed.

Brief facts of the case put forth by the appellant is that he was posted at P.S. Kotwali. A departmental enquiry was conducted against him with the allegations that on 11.08.2004 ,he along with Ex Constable Samunder Singh No. 2387-FBD picked up the quarrel with Constable Goverdhan and Sant Kumar under the influence of alcohol and gave them beating with lathis, danda and punches and ran away from the spot. The behaviour of the appellant was also not good with public and had also picked up a quarrel with one Vijay Kumar, a hotel owner. He remained absent from duty without any leave or permission or intimation to the competent authority from 26.04.2004 to 28.04.2004, 21.06.2004 to 22.06.2004 , 23.06.2004 to 24.06.2004 and on 01.07.2004. Thereafter, appellant was dismissed from service vide order dated 30.07.2005. The departmental appeal against the said order was also dismissed, vide order dated 13.10.2005. A revision was also submitted by the appellant, which was also rejected vide order dated 11.03.2006. A mercy petition was then submitted to the Financial Commissioner and Secretary to Government of Haryana, Home Department, Chandigarh, which was dismissed on the ground that no second appeal lies in the rules, vide order dated 04.12.2006.

On notice, the respondents filed their written statement

and on merits, the joining of the appellant in police department was admitted and it was stated that he while posted at P.S. Kotwali, he had picked up a quarrel on the gate of police Station with Constable Goverdhan and Sant Kumar under the influence of alcohol and gave them beating with lathis, danda and punches and ran away from the spot. The detail of injury are mentioned MLR No. OP-241-2004 dated 13.08.2004 and was also recorded in the daily diary at 10.20 P.M at P.S. Kotwali. He remained absent from duty without any leave or permission or intimation to the competent authority from 26.04.2004 to 28.04.2004, 21.06.2004 to 22.06.2004 , 23.06.2004 to 24.06.2004 and on 01.07.2004. Thereafter, the punishing authority ordered for regular enquiry against both the defaulters and the same was entrusted to Inspector CIA-III, Faridabad. Both the defaulters were placed under suspension vide order dated 17.08.2004 by the then S.P Faridabad. During the enquiry, the enquiry officer recorded statement of 13 PWs and 3 Dws. The enquiry officer submitted his findings holding the defaulter guilty of the charge levelled against him on 27.06.2005. As there was no written complaint from any public in official relation and as such, the concurrence of District Magistrate was not required. The enquiry officer was of the opinion that a punishment of dismissal from service should be inflicted upon them. Accordingly, show cause

notices dated 20.06.2005 and 09.07.2005 were issued. The reply to the show cause notices were also considered by the then S.P Faridabad.

The trial Court dismissed the suit of the appellant on the ground that there has been no breach of the procedural requirement as is contemplated in Rule of Haryana Civil Services Rules, 1987 and neither is order dated 30.07.2005 devoid of any reasons of violative of the principles of natural justice. It is a speaking order and contains the reason for the decision thereof. Further the reply of the appellant was also considered and he was given due opportunity and the enquiry officer recorded statement of 13 PWs and 3 Dws.

On appeal, the lower Appellate Court dismissed the appeal of the appellant and held that compliance of provisions of Rule 16.38 of Punjab Police Rules, 1934 was not required as there was no written complaint by the public in official relation and as such, the concurrence of District Magistrate was not required. The appellant was given sufficient opportunity to cross examine the witnesses. Hon'ble the Supreme Court in case of ***B.C. Chaturvedi v. U.O.I, 1995(6) SCC 749, U.O.I v. G. Gunayuthan, 1997(7) SCC 463, Bank of India v. Degala Suryanarayana, 1999(5) SCC 762, Higher Court of Judicature at Bombay v. Shashi Kant S. Patil, 2001(1) SCC 416*** has held that the Courts will not act as an appellate Court and reassess the

evidence led in the domestic enquiry nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in the departmental enquiries. Therefore, the Courts will not interfere with the findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or whether they are clearly perverse.

Once the appellant was given due opportunity to cross examine the witnesses, it has been held by Hon'ble the Supreme Court in a case of ***K.L Tripathi vs. State Bank of India and others AIR 1984 SC 273*** that to claim violation of principles of natural justice on the ground of absence of opportunity of cross examine, it must be established that some prejudice has been caused to the appellant by the procedure followed. The appellant had served the department for 5 years when the incident took place but keeping in view the allegations in the charge sheet that the appellant had given beatings to hotel owner on account of the fact that he had demanded money for his meals, no question of interference in the quantum of punishment is made out.

The judgment passed by both the Courts below, calls for no interference by this Court. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

May 18, 2015

G Arora

(***RITU BAHRI***)
JUDGE