

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

R.S.A. No. 2013 of 2015 (O&M)

Date of decision : 20.07.2015

State of Punjab & ors.

...Appellants

versus

Balbir Singh Constable

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab

RITU BAHRI , J.

C.M. No. 5288-C of 2015

For the reasons mentioned in the application, delay of 91 days in filing the appeal is hereby condoned.

The application stands disposed of.

R.S..A. No. 1629 of 2015

State of Punjab (for short 'the appellants') has come up in Regular Second Appeal against the judgment and decree dated 30.09.2014 passed by Addl. District Judge, Ludhiana whereby the judgment and decree dated 04.04.2012 was set aside and the appeal filed by the plaintiff-respondent (for short 'the respondent') was allowed

The respondent was appointed in regular service in the

department of the appellants as Messenger on 28.03.1991 and successfully completed his Basic Recruitment Course at Police Recruitment and Training Centre, Jahan Khela District Hoshiarpur. Later on, the respondent was placed in the cadre of Operators (Wireless) in the year 2004 after successfully passing a test conducted by the appellants. He was again deputed to get the Basic Recruitment Course in the same training centre commencing from 11.04.2004 vide letter dated 09.04.2004 issued by Appellant No. 4. In the middle of the training, he felt some stomach problem and got some ayurvedic medicine for treatment of the acidity. On return from rest of 16.08.2004, he reached at the training centre to attend his duty on 17.08.2008. On reaching the main gate, he was checked by the security staff as per prevailing practice and security staff recovered 60 grams of poppy husk and thus, he was sent back to his original duty vide non speaking order dated 21.08.2004 and was directed to report for duty to DSP, Communication Ludhiana on 22.08.2004. Due to the above mentioned circumstances, the respondent went in the depression and as respondent reached his residence at Mullanpur, Ludhiana, he found that his family had gone to village Gagra to meet his relatives and the respondent went to the village to bring back his family but on the way he fell unconscious and after some time he regained consciousness and attended nearest government dispensary at village Boporai Kalan

District Ludhiana. The doctor gave him some medicines and advised him bed rest for seven day. Under these circumstances, he resumed duties on 28.08.2004 along with medical illness/fitness certificate and applied for the grant of seven days leave of the kind due. On the basis of recovery of alleged contraband and willful absence from the duties, a departmental inquiry was instituted against him and was also served with a show cause notice, which was duly replied by the respondent denying the allegations contained in the show cause notice. Thereafter, the impugned punishment orders were passed against him forfeiting his two years service with cumulative effect.

The trial Court after going through the entire evidence led by the parties, dismissed the suit of the respondent on the ground that a valid enquiry was conducted against the respondent by the appellants and due procedure was followed and on basis of Rule 16.24, 8.2 and 8.5 of Punjab Police Rules, impugned order was passed against him. He was given opportunity of hearing.

On appeal, the Lower Appellate Court re-examined the case of the respondent. Reference was made to charge No. 1 and 2 vide which the contraband was recovered from the respondent while he was on training, it was held that the material/contraband which was recovered from the respondent was not sent for chemical examination and there was no evidence to hold that it was poppy husk. No F.I.R

was lodged against the respondent regarding the alleged possession of 60 grams of poppy husk, thus the charge No. 1 was found to be false and baseless. On 10.03.2006, the respondent appeared before the Inquiry Officer and got recorded his statement in response to the charge framed by Inquiry Officer wherein he stated that he was having some medicine in his possession on 17.08.2005 and security staff at the gate of Jahan Khelan became suspicious that medicine is poppy husk. This statement was not considered by the Inquiry Officer. Further there was no explanation on the part of the dependent that how the alleged contraband was disposed of, which was recovered from the appellant. Accordingly, charge No. 1 and 2 were held to be suffered from patent error.

With regard to charge No. 3, vide which the respondent was found to be willful absence from duty, it was held that the respondent produced the medical certificate issued by Medical Officer, Government Hospital Bopurai vide which he was advised bed rest for seven days from 21.08.2004. This certificate was discarded by the Inquiry Officer on the ground that the respondent got prepared this certificate to justify his absence period only. It is observed that the dispensary is 10 km away from the house of the respondent whereas other government dispensary and private hospitals are in the vicinity of the respondent. Thus, the finding of the enquiry officer on the

charge of the absence was found to be patently erroneous.

Reference was made to Rule 16.1 and 16.5 of the Punjab Police Rules wherein the penalty imposed upon the respondent was not prescribed. Under Rule 16.1, the Police Officer shall be departmentally punished otherwise than as provided in these rules. Rule 16.5 provides that approved service for increment may be forfeited, either temporarily or permanently and such forfeiture may entail the appellants of an increment or increments or a reduction in pay. The order must state whether forfeiture of approved service is to be permanent or if not the period for which it has been forfeited. In the present case, the department vide Ex DA 6 imposed the penalty of forfeiture of two years service with permanent effect.

Rule 16.1(1) of the Punjab Police Rules, 1934 states that no police officer shall be departmentally punished otherwise than as provided in those Rules. Rule 16.5 provides as follows:

"(1) The increment of a police officer on a time-scale may be withheld as a punishment. The order must state definitely the period for which the increment is withheld, and whether the postponement shall have the effect of postponing future increments. The detailed orders regarding the grant and stoppage of increments are contained in rule 13.2.

(2) Approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail either the deferment of an increment or increments or a

reduction in pay. The order must state whether the forfeiture of approved service is to be permanent; or, if not, the period for which it has been forfeited.

(3) Reinstatement on the expiry of a period fixed under sub-rule (1) or (2) above, shall be conditional upon good conduct in the interval. but, if it is desired under this rule not to reinstate an officer, a separate order shall be recorded, after the officer concerned has been given opportunity to show cause why his reinstatement should not be deferred, and the period for which such order shall have effect, shall be stated. Rules regarding the method of recording punishments under this rule in seniority rolls are contained in Chapter X."

Thus, the lower Appellate Court set aside the inquiry report, punishment order dated 20.04.2007, and subsequent orders dated 09.01.2008 and 06.10.2008, order dated 12.1.2009 and 13.11.2009. However, the appellants were given liberty to refer the matter to inquiry officer to give his finding afresh on the charge of absence from duty after taking into consideration the medical certificate produced by the respondent and thereafter, the competent authority shall pass an order in accordance with the law and the prescribed rules after giving opportunity of being heard to the respondent. However, the Court has not granted the liberty to the department consciously to reconsider the charges of recovery of contraband as it will amount to abuse of process as department has no

evidence at all that recovery material was poppy husk. Accordingly, the appeal was partly allowed.

After going through the judgment passed by the Lower Appellate Court, the charge with regard to recovering of 60 grams of poppy husk from the respondent is not at all made out and with regard to charge No. 3 i.e willful absence from the duties, the lower Appellate Court has rightly returned the findings by giving liberty to the department to refer the matter to inquiry officer to give his finding afresh after taking into consideration the medical certificate produced by the respondent.

This finding of fact does not require any interference by this Court

The judgment and decree dated 30.09.2014 passed by Addl. District Judge, Ludhiana do not require any interference by this Court.

No substantial question of law arises for consideration.

The regular second appeal is dismissed.

(RITU BAHRI)
JUDGE

20.07.2015

G Arora