

In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 2254 of 2000 (O&M)
Date of Decision: 02.2.2016.

Baljinder Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Simranjeet Singh, Advocate
for the petitioner.

Mr. Saurav Goel, Advocate
for the respondents.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India challenging the orders dated 3.4.1997 and 2.12.1997.

Case of the petitioner, in brief, is that he was selected as a Constable in the year 1991 in 12th Battalion of Indo Tibetan Border Police Force. On account of a land dispute, petitioner submitted his resignation on 2.3.1995 and requested for its immediate acceptance. However, no action was taken on the said request. Petitioner left for his house after informing the superior officer on 8.4.1995. Petitioner was under the impression that his resignation would be accepted and started residing at Bathinda. However, petitioner received a show cause notice dated 14.2.1997 describing him as a deserter and petitioner was asked to report at 12th Battalion, Head Quarter Tigri Camp, New Delhi within 30 days of the issuance of the notice otherwise petitioner would be

dismissed from service with effect from 8.4.1995. Petitioner reported for duty on 26.2.1997 and was placed under suspension on 25.2.1997. The order declaring the petitioner a deserter was cancelled on 7.3.1997 vide Annexure P-2. However, petitioner was ordered to be dismissed from service with effect from 2.4.1997 vide order dated 3.4.1997. Petitioner filed Civil Writ Petition No. 10856 of 1997 in this Court and vide order dated 20.8.1997, the same was dismissed as withdrawn to enable the petitioner to pursue his alternate remedy. The order dated 3.4.1997 Annexure P-3/A was also upheld by the Appellate Authority vide order dated 2.12.1997 (Annexure P-6). Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that the respondents had declared the petitioner a deserter and proper procedure had not been followed before ordering the dismissal of services of the petitioner.

Learned counsel for the respondent, on the other hand, has submitted that the order whereby petitioner had been declared a deserter was recalled vide order Annexure P-1. Since the petitioner had remained absent from duty for 682 days, he was ordered to be dismissed from service after holding enquiry.

Admittedly, petitioner while working as a Constable with the respondents had submitted his resignation. However, petitioner left for his residence without waiting for the acceptance of his resignation. Admittedly, petitioner was declared a deserter with effect from 8.4.1995 vide order dated 11.2.1997. In this regard, show cause notice Annexure P-1 dated 14.2.1997 was issued to the petitioner. Thereafter the order whereby petitioner was declared a deserter was recalled vide order Annexure P-2 as he had reported

for duty on 20.2.1997. Thus, the argument raised by the learned counsel for the petitioner that the departmental proceedings were liable to be carried against the petitioner by treating him a deserter, is without any basis as the order whereby petitioner was declared a deserter, was cancelled.

Para 7 of the reply filed by the respondents reads as under:-

“That the contents of para No. 7 of the writ petition is denied as the statement of the petitioner in the record of the evidence were recorded along with two others (Rattan Chand, Inspector and Hav. Puran Chand) and before the commencement of record of evidence. Copy of the same along with charge sheet was also served to the petitioner vide order No. 604 dated 26.2.97 and the statement was also taken in the presence of the petitioner and specifically asked the petitioner for the cross-examination of the witnesses. But the petitioner did not cross-examine the witnesses and signed the statements. However, there is no any provision in the ITBP Act and Rules to provide the defending counsellor to the accused during the course of recording of evidence. After completion of recording of evidence a copy of the same was given to him vide memo No. 1468 dated 10.3.97 to take further action and submit any witness on his behalf. Shri S.C. Thaliyal Asstt. Comdt. was nominated as Defending officer of the petitioner but at the time of Summary Force Court held on 2.4.97 Shri Thapliyal AC was away on Govt. Duty. Hence

Sh. S.R.Roy, Asstt. Comdt. was detailed as Friend of petitioner who attended the Summary Force Court on 2.4.97 Order No. 12 BN/ITBP/Estt 4/Disc./B.S.97905 dated 3.4.97 was issued after hearing the petitioner at the time of record of evidence and after thorough scrutiny of documentary proof and statements, the petitioner was found guilty. The petitioner remained absent for 682 days without any valid reason. This shows that the petitioner was not interest in service and remained absent willfully. He did not wait for decision on his application of resignation and deserted from the campus without permission which is an offence under the rules and this had invited due punishment for him.”

No replication was filed to the written statement filed by the respondents. A perusal of para 7 of the reply, reproduced above, reveals that the charge sheet was served on the petitioner and statements of the witnesses were recorded in the presence of the petitioner. Petitioner had failed to cross-examine the witnesses. Thereafter the petitioner was afforded opportunity to enable him to examine witnesses in his defence. Opportunity of hearing was also afforded to the petitioner and after scrutiny of the evidence, petitioner was ordered to be dismissed from service as he had remained absent from duty for 682 days. Petitioner was a member of disciplined force but had remained absent for 682 days without getting his leave sanctioned. In these circumstances, the respondents had rightly ordered that the petitioner be dismissed from service.

No ground for interference by this Court while exercising

jurisdiction under Article 226 of the Constitution of India is made out.

Dismissed.

(SABINA)
JUDGE

February 02, 2016
Gurpreet