

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

RSA No.2366 of 1990 (O&M)

Date of decision:23.09.2016

Balwant Singh

....Appellant

Versus

Union of India

....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Paramjit Singh Goraya, Advocate,
for the petitioner.

Mr. Aseem Aggarwal, Advocate,
for respondent- UOI.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, the appellant has questioned the validity of the order passed by the Trial Court dated 01.10.1988 and appellate Court order dated 03.09.1990.

The appellant was a Constable. When he was working, on 12.8.1984 he remained absent from the lines, was under intoxication and entered into an altercation with a civilian. Due to scuffle between the appellant and the civilian, the appellant sustained lacerated injury on his above left eye and bruises on the other parts of the body. On these two allegations he was subjected to disciplinary proceedings. In the disciplinary proceedings, the prosecution examined seven witnesses and three documents. The inquiring officer held that the charge of unauthorized absent and the appellant being under intoxication were proved. Charge of quarrel with a civilian was not proved. Based on the inquiring officer's report and finding, the disciplinary authority proceeded to pass an order of dismissal

from service on 29.11.1984 which was effective from 30.11.1984.

In this background the learned counsel for the respondent was directed to file an affidavit as to whether the appellant has been provided inquiring officer's report, show-cause notice and after receipt of explanation to the show-cause notice and on inquiring officer's report whether the disciplinary authority has considered the contentions of the appellant or not. Learned counsel for the UOI submitted that records are not available and they have been weeded out. The respondents are aware that suit was pending consideration in the year 1985, therefore, they should not have weeded out the record pertaining to this particular case. As such the present appeal has to be decided, based on the available records of the lower Court.

Perused the lower Court record. Reading of the dismissal order dated 29.11.1984, there is no material to show that after receipt of the inquiring officer's report by the disciplinary authority, the disciplinary authority furnished copy of the inquiring officer's report along with show-cause notice to the appellant and so also explanation if any submitted by the appellant before passing the order of the dismissal. In the absence of materials made available by the respondent-UOI only office order dated 29.11.1984 i.e. dismissal order is required to be examined. In the dismissal order nowhere the disciplinary authority has stated that copy of the inquiry report and show-cause notice and explanation has been obtained and so also consideration if any, is not forthcoming from the dismissal order.

Therefore, order dated 29.11.1984 is liable to be set aside. The matter could have been remanded for non-compliance of furnishing inquiring officer's report and show-cause notice. Since the respondents have admitted that records are not available therefore, question of remanding the matter to the disciplinary authority to proceed from the defective stage do not arise.

In view of these facts and circumstances, order dated 29.11.1984 by which the appellant has been dismissed from service is set aside. Consequently, decisions of the trial Court dated 01.10.1988 and the appellant Court dated 03.09.1990 are set aside.

No order as to costs.

23.09.2016
PA

(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No