

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14713 of 2012

Date of Decision:-08.12.2016.

Jai Parkash Bhartiya

.....Petitioner

Versus

Union of India and others

.....Respondents

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

Present: Mr. Ashwani Bakshi, Advocate for the petitioner.

Mr. Sourabh Goel, Central Government Counsel for
the respondents-UOI.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has assailed the order dated 19.12.2008 by which he has been removed from service. Further he has challenged the orders passed by the Appellate Authority and Reviewing Authority dated 26.6.2009 and 19.3.2010.

2.) The petitioner was appointed as a Constable in the year 1994. On 19.12.2008, the petitioner was charge sheeted for disobeying the order asking him to go for rotational training camp (in 9th batch) during the period from 4.8.2008 to 16.8.2008 and the other charge is that during the entire service of the petitioner, he was subjected to number of disciplinary proceedings wherein the respondents have imposed the minor penalties.

The petitioner remained absent during the course of inquiry proceedings.

Thus, the Inquiry Officer proceeded to hold an *ex parte* inquiry and submitted his report that the charges levelled against the petitioner got proved. Based on the Inquiring Officer's report, the disciplinary authority imposed the penalty of removal from service. The petitioner aggrieved by the order of removal from service preferred an appeal and review petition which were resulted in affirming the order of removal from service. Thus, the present petition has been presented.

3.) Learned counsel for the petitioner submitted that physically he was not in a position to attend the rotational training camp(in 9th batch) during the period from 4.8.2008 to 16.8.2008 as he was a psychiatric patient. Therefore, he could not obey the order dated 2.8.2008 directing him to attend the rotational training camp. So also he could not attend the inquiry proceedings before the Inquiring Authority so as to defend his case. Learned counsel for the petitioner contended that it is evident on record from 2001 Annual Confidential Report wherein it has been recorded against the state of health that the petitioner is a psychiatric patient and thereafter, he was subjected to Medical Board of the Government Multi-Specialty Hospital, Sector 16, Chandigarh by the respondents wherein it is held that the petitioner is suffering from psychiatric issue. Therefore, the imposition of removal from service penalty would be too harsh having regard to the allegation that the petitioner disobeyed the orders of the superior in not attending the training course and it is not a case of misappropriation so as to impose major penalty of removal from service.

4.) Per contra, learned counsel for the respondents submitted that having regard to the conduct of the petitioner, that during his entire service,

penalized on number of occasions which is also one of the part and parcel of charge. The other contention of the respondents is that vide Annexure R-7, it is held that the petitioner is not a psychiatric patient on the other hand, he is in the medical Shape 2 having regard to determination that he is a Shape 2, there is no hurdle for attending the rotational training camp and his psychiatric problem would not be a hurdle for attending the training and obeying the order of his superior. Therefore, having regard to the charge levelled against the petitioner which has been proved in the disciplinary proceedings, there is no infirmity in passing the order of removal from service.

5.) Heard learned counsel for the parties.

6.) Admittedly, the petitioner is suffering from psychiatric issue as is evident from document Annexure R-2 relating to Annual Remarks for the year 2001. In respect of state of health of the petitioner it has been recorded that he is a psychiatric patient way back in the year 2001. Further from subsequent document Annexure R-8, it is evident that the petitioner is suffering from psychiatric issue so also Annexure R-7. The respondents should have referred petitioner's case for Medical Board in the year 2001 itself and he should have been sent home if he is medically unfit. Psychiatric issue can be identified only by the Specialist. Therefore, the contention of the respondents that the petitioner had psychiatric issue in 2001 and later on he did not have the problem cannot be taken into consideration for the reasons that no Specialist like a Medical Board have taken into consideration that he is suffering from psychiatric issues. Insofar as charge No.2 that the petitioner was subjected to disciplinary proceedings

been taken into consideration by the disciplinary authority while ordering removal from service for the reasons that either of the document which are cited in charge No.2 have not been examined by author of the documents or cross-examined. Perusal of the charge memo is evident that the disciplinary authority has already determined to impose major penalty for the reasons that charge No.2 is a subject matter which has already been examined and the petitioner has been punished. Therefore, now the question is relating to only charge No.1 i.e. disobeying the orders of the superior directing petitioner to attend rotational training camp. Having regard to the fact that the petitioner is suffering from psychiatric issue from 2001, the respondents should have resorted to subjecting the petitioner to Medical Board and, thereafter, necessary action should have been taken. The petitioner was allowed to work since 2001 till removal from service and removal from service is based on disobeying the order dated 2.8.2008. It is not a case for imposing major penalty for the reasons that the allegation is not relating to misappropriation of money. Therefore, imposition of penalty of removal from service shocks the conscious of this Court. Therefore, it is necessary to set aside the order of penalty as well as Appellate Authority and Reviewing Authority and remand the matter to the disciplinary authority to reconsider the same insofar as imposition of penalty of removal from service to any other penalty like compulsory retirement. In view of the above facts and circumstances, the order of removal dated 19.12.2008, Appellate Authority order dated 26.6.2009 and Reviewing Authority order dated 19.3.2010 are set aside. The matter is remanded to the disciplinary authority to re-consider imposition of penalty other than dismissal and removal from service. Such action shall be taken within a period of four

months from today and communicate the decision to the petitioner.

7.) Petition stands allowed.

8.) The respondents are further directed to treat the intervening period from the date of removal from service till passing of fresh order as deemed to be under suspension in view of the decision of the Supreme Court in the case of Managing Director, ECIL, Hyderabad Vs. B. Karunakar 1993 (4) SCC 727. The respondents are directed to pay subsistence allowance within a period of three months from today. Further regulate suspension period after passing fresh order. It was also directed that monetary benefits shall be worked out with reference to passing of fresh order and disburse financial benefits at the earliest.

(P.B. BAJANTHRI)
JUDGE

December 08, 2016.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.