

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 6167 of 2010

Date of Decision : February 19, 2016

Yograj Ex-EHC

.... Petitioner

vs.

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. S. K. Redhu, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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DEEPAK SIBAL, J. :

Through the present petition, challenge is made to the Inquiry Report dated 11.02.2007 (Annexure P-1), order dated 10.05.2007 (Annexure P-2), through which punishment of dismissal has been inflicted upon the petitioner, order dated 15.01.2008 (Annexure P-3), through which the petitioner's appeal against his dismissal order has been rejected and to the order dated 03.07.2008 (Annexure P-4), dismissing the petitioner's revision petition against the aforementioned order of dismissal.

After hearing counsel for the parties and perusing the record, the relevant facts, which need to be noticed for adjudicating upon the present petition are that the petitioner, who served the Haryana Police as a Head Constable, on account of willful absence, was served with a charge-sheet. The petitioner never responded to the same, as a result whereof, he was subjected to a regular departmental inquiry. Several notices were served upon the petitioner informing him about the pending departmental inquiry against him, but he failed to respond to the same. Having left with no other option, the Inquiry Officer conducted ex-parte proceedings against him, in which his guilt for being unauthorizedly absent for 515 days was proved.

After receiving the Inquiry Report, the disciplinary Authority, through a special messenger, sent a notice to the petitioner, which was served upon him through his wife Smt. Nirmala Devi. In spite of the same, he never responded. Resultantly, after going through the Inquiry Report and the fact that the petitioner had been unauthorizedly absent for 515 days, the disciplinary Authority was of the view that nothing short of dismissal from service could be awarded to the petitioner as punishment. The dismissal order woke up the petitioner from his slumber as against the same, he filed his appeal, which was considered and rejected by the Inspector General of Police. Being dissatisfied, he challenged the aforesaid orders through a revision petition before the Director General of Police,

Haryana, which was also dismissed. It is thereafter that the present petition has been filed for the aforementioned reliefs.

The record reveals that the petitioner was issued several notices to join duty, to which he never responded to. He further was served a charge-sheet, to which also, he never submitted any reply. The inquiry proceedings also were held ex-parte as the petitioner, despite service, never bothered to appear before the Inquiry Officer. The same was the position before the disciplinary Authority. Once the petitioner never bothered to respond to the innumerable notices sent to him at different stages, it does not lie in his mouth to even plead violation of principles of natural justice, as sought to be submitted by learned counsel appearing on his behalf.

Learned counsel for the petitioner submits that the petitioner was unwell, and therefore, did not join his duty, the inquiry and punishment proceedings. I am not inclined to accept this plea.

The petitioner belonged to the disciplined force, where, being off-duty for even a few seconds can be fatal, not only for him, but also the public at large. In the case in hand, the petitioner has been proven to be on unauthorized leave for a mammoth period of 515 days. Before and during the period of unauthorized absence, at no point of time, what to talk of seeking leave for medical or any other reason, the petitioner never even bothered to inform the Authorities about his absence. The consistency of being non-responsive continued even during the inquiry and punishment

proceedings as in spite of service of notices, he never bothered to join them.

The medical certificates, as appended with the present petition, make interesting reading. The first one is dated 16.07.1996, which is about ten years prior to the initial date of unauthorized absence. The other certificates (Annexure P-8 to P-12), which pertain to period from 10.12.2005 to 03.06.2006, show that the petitioner had been suffering from distinct ailments like Typhoid, Bronchitis and Pneumonia. What is more interesting is that for the aforesaid period of 16 months, when the petitioner says that he was unwell with the aforesaid serious ailments, for treatment he only went to one Rajnish Gupta, who is not even a qualified doctor or even a Registered Medical Practitioner. The petitioner, at that time, was serving as a Head Constable in the Haryana Police and there was no reason for him not to go to any qualified doctor for medical help.

Annexures P-13 to P-15 are medical certificates showing the petitioner to be down with Typhoid and Hepatitis. It is surprising that a serving Government servant suffering from ailments like Typhoid and Hepatitis would not avail of the best medical treatment, when he knows that he would be, under the policy of the Government, entitled to medical reimbursement.

Even otherwise, none of the afore-referred medical certificates form the basis of any application by the petitioner seeking leave on medical grounds. They were also never produced either during the inquiry

proceedings or before the punishment Authority and were produced, for the first time, during the appellate proceedings, casting a serious doubt on their authenticity.

Learned counsel for the petitioner then argues that under Rule 16.2 of the Punjab Police Rules, 1934, since the petitioner has put in 20 years of service, he was entitled to a lesser punishment viz. compulsory retirement. To buttress his submission, he relied upon the following judgments of the Apex Court as well as this Court :-

1. **Rajinder Kumar vs. State of Haryana and another – 2015 (4) SCT 507 ;**
2. **State of Punjab and others vs. Mohinder Singh – 2005 (12) SCC 182 ;**
3. **State of Punjab vs. Dharam Singh - 1997 (2) SCC 550 ;**
4. **SI Surinder Singh vs. State of Punjab and others – 2008 (4) SCT 72.**

I have gone through the aforementioned judgments. In **Rajinder Kumar's** case (*supra*), the absence from service was only 37 days; in **Mohinder Singh's** case (*supra*), the period of absence was 5½ months; in **Dharam Singh's** case (*supra*), the period of absence was during the suspension period, when the respondent therein did not mark his attendance. In the Division Bench judgment of this Court in **SI Surinder Singh's** case (*supra*), the period of absence was just about five months.

Thus, the facts of all the aforesaid judgments are completely distinguishable from the facts of the case in hand, wherein, the petitioner was found to be unauthorizedly absent for 515 days.

In view of the aforesaid, finding no merit in this writ petition, I order dismissal of the same with no order as to costs.

(DEEPAK SIBAL)
JUDGE

February 19, 2016
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