

CWP No.25290 of 2013 (O&M)

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Manoj Kumar
2017.05.10 17:29
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.25290 of 2013 (O&M)

Date of decision: 25.07.2016

Onkar Singh

....Petitioner

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Rahul Sharma-I, Advocate for the petitioner.

Mr. Vaibhav Sharma, DAG Punjab.

Jaswant Singh, J

The petitioner, who was working as a Constable and posted with the then Deputy Superintendent of Police at 4th IRB, Jalandhar, by way of filing the present writ petition, has sought a writ of Certiorari for quashing the impugned orders dated 4.2.2012 **(P.9)** passed by the DIG, IRB, Patiala partly allowing his appeal thereby setting aside the dismissal and reinstating him while awarding a warning and considering the period of his suspension along with absence as 'no duty no pay'; and revisional order dated 13.7.2012 **(P.11)** passed by the I.G, IRB, Patiala upholding the order dated 04.2.2012 **(P.9)** thereby dismissing the revision.

A department inquiry was initiated against the petitioner under the provisions of Punjab Police Rules, 1934 (for short "PPR") by way of charge sheet for his continuous absence from duty w.e.f 17.3.2011, which led to appointment of an Inquiry Officer; but the petitioner did not join the inquiry proceedings. Consequently an

ex parte inquiry report was submitted against him and charges levelled against the petitioner were held to be duly proved. The Punishing Authority while agreeing with the inquiry report issued a show cause notice dated 25.10.2011 and ultimately, he was dismissed from service thereby treating his suspension period upto the date of dismissal as "No duty No pay". An appeal thereagainst was preferred by the petitioner and which was partly allowed while setting aside the dismissal and the rest of the punishment remained intact. Needless to say that the revision petition was also dismissed against the order passed by the Appellate Authority.

It is contended by learned counsel for the petitioner that the petitioner was performing his duties as Gunman with Sh. Parminder Singh, DSP w.e.f 17.3.2011 to 08.11.2011; but the Commandant knowing well about this fact and against the orders of senior officers treated the petitioner as absent from duty. It is further contended that the petitioner did not remain wilful absent even for a single day, rather he was on duty with the DSP yet this aspect of the matter has not been considered by both the Authorities below.

On the other hand, learned counsel for the respondent-State has argued that the impugned orders passed by both the Authorities below are well reasoned and in favour of the petitioner, thus do not require any interference by this Court.

A perusal of the paper book reveals that during the alleged absent period, the petitioner was asked by Parminder Singh, DSP 4th IRB to remain posted with him on account of shortage

of man power, which led to the recording of the absence of the petitioner on 17.3.2011. Although the petitioner was intimated to join the Battalion Headquarter; but in view of the fact that Parminder Singh, DSP with whom he was already attached as a Security Personnel vide letter dated 24.1.2011 had requested to the Addl.DGP Security Punjab for the posting of the petitioner as Gunman along with two others for his security on permanent basis. In response thereto, the Addl.DGP gave his consent, although verbally, but the same was duly conveyed to the Commandant vide Communication dated 28.3.2011 (P.2) with reference to a letter dated 17.3.2011 issued by the Commandant himself. A perusal of the paper book also reveals that there is another letter dated 18.4.2011 written by said Parminder Singh, DSP to the DGP, Armed Battalion, Punjab as well in this regard, which was again conveyed to the Commandant vide letter dated 13.4.2011 (P.4). Again said Parminder Singh, DSP had sent a similar letter to the DGP, Armed Battalion on 17.5.2011 (P.5) in this regard, and thereafter, even the posting order of the petitioner were issued by the said Parminder Singh vide order dated 18.5.2011; but the same were cancelled by the Commandant on 31.10.2011 (P.6).

The narration of all the aforesaid circumstances clearly reveal that there was either some misunderstanding or lack of co-ordination among the senior officers and the petitioner has been made only a scapegoat of the same. As it could be well understood that the petitioner being a member of a disciplined force was expected to obey the order of his superiors faithfully; but in view of the facts and circumstances of the present case, it is

clearly established that he was in a quandary as to whether he should comply with the order of the DSP or the Commandant? One thing is clear that at least, the petitioner has, in good faith, obeyed the orders of his immediate superior Officer i.e DSP and thus, he cannot be held responsible for wilful absence from duty for the period during which he discharged his duty as a Security Personnel with the said DSP.

Be that as it may, this Court is convinced that the impugned order thereby awarding a warning to the petitioner and considering his suspension along with absence as "No duty No Pay", is wholly unjustified and liable to be set aside.

In view of the aforesaid discussion, writ petition is allowed and the impugned orders are quashed and the service record of the petitioner be rectified accordingly.

July 25, 2016
manoj

(JASWANT SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>