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

CWP No.2409 of 2016

Date of decision: March 17, 2016

Narinder Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K. Arya, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the order dated 19.09.2012 (Annexure P-2) and order dated 04.01.2003 (Annexure P-3).

The case of the petitioner, in brief, was that he was working as a Constable with the respondent and had applied for 30 days earned leave w.e.f. 04.04.2012 to 03.05.2012 on account of his domestic problems. Petitioner could not join his duty on completion of leave period as his brother had died and had left behind two minor children. Due to this reason, petitioner submitted representation to respondent No.3 for extension of his leave but no decision was taken on the said representation. Court inquiry was initiated against the petitioner and the Court recommended that suitable disciplinary action be taken against the petitioner. Show-cause notice was issued to the petitioner by defendant No.4

proposing the punishment of dismissal from service. Thereafter, the impugned order dated 19.09.2012 was passed by defendant No.4, whereby, services of the petitioner were terminated on account of his unauthorised absence from 04.05.2012 to 18.09.2012. Appeal filed by the petitioner against the said order was dismissed by the Appellate Authority vide order dated 04.01.2013. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that the absence of the petitioner was on account of domestic reasons. Petitioner had served the respondents for 10 years. However, the impugned orders had been passed without considering the domestic problems of the petitioner.

In the present case, admittedly, petitioner had failed to join his duty w.e.f. 04.05.2012. Consequently, show-cause notice dated 19.07.2012 (Annexure P-1) was issued to the petitioner on account of his unauthorised absence w.e.f. 04.05.2012. Petitioner, however, did not submit any reply to the show-cause notice nor reported for duty. In these circumstances, the punishing authority was left with no other alternative, but to order the dismissal from service of the petitioner vide the impugned order dated 19.09.2012 (Annexure P-2). Appeal filed by the appellant was dismissed vide order dated 04.01.2013. The Appellate Authority while dismissing the appeal filed by the petitioner has noticed that the petitioner had earlier also received five punishments

besides twice overstaying from leave.

Para 6 of the order dated 04.01.2013 passed by Appellate Authority reads as under:-

“During his short span of 8 years service in BSF the individual received 05 punishment for following offences besides twice overstaying from leave, which was illegally regularised:-

- i) U/s 19(a) 61 Days AWL w.e.f. 01.01.2005 to Dated 02.03.2005. Punishment awarded 07 04.03.2005 days RI in force custody
- ii) U/s 19(a) 19 Days AWL w.e.f. 01.05.2005 to Dated 20.05.2005. Punishment awarded 14 21.05.2005 days RI in force custody.
- iii) U/s 19(a) 51 Days AWL w.e.f. 03.09.2008 to Dated 29.10.2008. Punishment awarded 14 14.11.2008 days RI in force custody.
- iv) U/s 19(a) 22 Days AWL w.e.f. 05.07.2009 to Dated 27.07.2009. Punishment awarded 14 12.08.2009 days pay fine.
- v) U/s 19(b) 95 Days OSL w.e.f. 17.10.2011 to Dated 20.01.2012. Punishment awarded 7 10.02.2012 days pay fine.”

Although, appeal filed by the petitioner was dismissed in January 2013, but, the present writ petition has been filed in the year 2016. This also shows that the petitioner was not interested in resuming his duty. Petitioner was a member of disciplined force and had remained absent from duty for a considerable period.

Thus, in the present case, the impugned orders call for no interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India.

Dismissed.

(SABINA)
JUDGE

March 17, 2016
mahavir