

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 3682 of 2016

Date of Decision : February 24, 2016

Ex. EHC Ramesh Kumar Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Sat Narain Yadav, Advocate
 for the petitioner.

* * *

DEEPAK SIBAL, J. :

Through the present petition, challenge is made to order dated 25.06.2015 (Annexure P-15), through which the petitioner, by way of a penalty, has been ordered to be compulsorily retired.

A few facts may be noticed.

The petitioner, who was serving the Haryana Police as an Exemptee Head Constable, was departmentally proceeded against for having claimed false Traveling Allowance. Having been found guilty in the inquiry proceedings, he was ordered to be dismissed from service. The order of dismissal was taken up in appeal by the petitioner. During the course of personal hearing of his appeal, the petitioner, while admitting his

guilt in writing that he had claimed false Traveling Allowance and would not file any further appeal/representation, pleaded for leniency to the extent that his punishment be converted to such, which would protect payment of pension to him. On the basis of written admission made by the petitioner, the Appellate Authority ordered for conversion of his punishment of dismissal to that of compulsory retirement, making him eligible for pension, by holding as under :-

“The appellant has taken the plea in his appeal that there was a dispute between appellant and one Smt. Bharmo Devi regarding his plot. One SI Ram Kishan, SHO P.S. City Ballabgarh registered a false FIR against the appellant. The appellant made a complaint SI Ram Kishan and SI Ram Niwas who were posted as SHO P.S. City Ballabgarh and incharge PP Chawla colony respectively before Lokayukta. Thereafter, a criminal case was registered against SI Ram Kishan etc. due to the above said reason these officials have grudge with the appellant. SI Ram Niwas gave an orally complaint that the appellant was present at Faridabad on 12.10.2006 to 14.10.2006 and he claimed false TA. The appellant has pleaded that there is no single PW against the appellant regarding the claiming of false TA. The star witness i.e. cashier Lakhi Ram (PW9), who gave the statement before the enquiry officer that the appellant did not get the TA for the above said period (12.10.2006 to 14.10.2006). The appellant has quoted the

decisions of Hon'ble Punjab and Haryana High court against the dismissal also.

*I have perused the departmental enquiry file minutely and also heard him in on 14.05.2015. While availing this opportunity he narrated that the present punishment is wrong and he is not faulty in this matter. The punishing authority did not take the length of his service in to the consideration while issuing the order of dismissal from service. This order has ruined his entire family. Appellant has stated that his right to pension should be restored keeping in view of his family circumstances and length of service in the department. The appellant has also given in writing that he has claimed the TA which was found false during the course of enquiry while availing the opportunity of personal hearing. Further, he requested that keeping in view the welfare of his family and length of service he may be allowed pensioner benefit as he is willing to go on pension. He has also given in writing that he will not **make** further any appeal/representation to the higher authority in the regard.*

I have gone through the appeal, departmental enquiry and other relevant record of this case. The departmental enquiry has been conducted as per prescribed rules and procedures and it does not suffer from any legal infirmity. However, the punishment of dismissal from service awarded to the appellant is too harsh because while deciding the punishment, the Punishing Authority has not taken into consideration his

length of service before passing the order of dismissal. As per record the appellant has qualified more than 20 years of service. The appellant was enrolled as Constable in Police Department on 20-07-1992 and put more than 20 years of qualified service. No doubt the appellant cannot be retained in service keeping in view of the charges leveled against him in the said departmental enquiry which have been proved fully. During the personal hearing of appeal, the, appellant, admitted his guilt and requested for welfare of family and further submitted an application requesting therein that he has he may be retired voluntarily and pleaded for leniency.

The Hon'ble Punjab & Haryana High Court has passed the following order on 20.07.2012 in CWP No. 702 of 1994. The operative para of judgment is as under :-

“Accordingly keeping In view the settled proposition of law and in view of the fact that the petitioner's length of service has not been taken into consideration by the disciplinary authorities, it would be appropriate that the order of dismissal and the subsequent orders passed in appeal and revision are set aside and the same are converted into an order of compulsory retirement w.e.f. 25.2.92 when the order of dismissal were passed, in view of the facts that the petitioner had completed almost 19

years of service on the date of his dismissal. The respondents are directed to commute the monitory benefits and released the same to the petitioner within a period of 3 months from the date of the receipt of the certified copy of the order.”

Now, therefore, keeping in view the above facts and circumstances and various orders of Hon'ble Punjab and Haryana High Court passed in various CWPs from time to time, the appeal of appellant, Ex-EHC Ramesh Kumar No. 2537/FBD is hereby accepted and order of dismissal from service is hereby converted to that compulsory retirement from service with the date of dismissal i.e 19-01-2015 in the interest of principles of natural justice as appellant has rendered more than 20 years of service. However, the period of suspension is hereby treated as period not spent on duty and period of dismissal is decided as dies non on the well settled principles of "nowork - no pay."

A copy of this order shall be supplied to the appellant free of cost.

*Sd/-
Commissioner of Police,
Faridabad 25.06.2015
[Emphasis supplied]”*

Learned counsel for the petitioner admitted that the petitioner had given in writing that he had claimed false Traveling Allowance and on the basis thereof, had further pleaded for leniency.

Once the petitioner had admittedly given in writing that he had claimed false Traveling Allowance and on account of his admission, the Appellate Authority had, on the petitioner's asking, shown leniency to him by converting the order of dismissal from service to that of compulsory retirement, the petitioner would be estopped by his conduct from maintaining the present petition before this Court.

Resultantly, finding no merit in the present petition, the same is ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

February 24, 2016
monika