

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO. 6935 OF 2016

DATE OF DECISION: SEPTEMBER 15, 2016

Ex.Constable Sohan Singh No.478/CPFPetitioner

Versus

State of Haryana and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.GS Gopera, Advocate for the petitioner.

Mr.Ravi Pratap Singh, Assistant Advocate General,
Haryana.

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TEJINDER SINGH DHINDSA, J.

The petitioner, who was serving as a Constable with the Haryana Police, assails the validity of order dated 25.8.2008, Annexure P1, whereby he has been dismissed from service. Challenge is also to the orders dated 30.10.2008 and 28.10.2009, Annexures P3 and P6 respectively, and in terms of which the penalty of dismissal has been affirmed by the Appellate and Revisional Authorities.

2. Petitioner was enrolled as Constable in the Commando Police, Haryana in November, 2003. While posted at Haryana Raj Bhawan, Chandigarh, petitioner absented from duty w.e.f. 24.2.2008. He was placed under suspension vide order dated

29.2.2008. Petitioner reported back on duty on 18.3.2008. Regular departmental proceedings were initiated against the petitioner on the specific article of charge of having remained absent from duty for a period of 23 days and 8 hours. Inspector Ravinder Kumar Commando, Naval Karnal was appointed as the Enquiry Officer. The enquiry report was furnished on 24.7.2008 holding the petitioner to be guilty and having remained absent from duty unauthorizedly for the period in question. On 6.8.2008, petitioner was served a show cause notice contemplating the imposition of major penalty of dismissal. Upon consideration of the reply submitted to the show cause notice, the Superintendent of Police, Commando Haryana Naval, Karnal passed order dated 25.8.2008, Annexure P1, dismissing the petitioner from service. Appeal having been preferred, the same was dismissed vide order dated 30.8.2008, Annexure P3, by the Inspector General of Police and even a revision petition thereafter has been rejected in the light of order dated 30.10.2009, Annexure P5, by the Director General of Police, Haryana.

3. Learned counsel appearing for the petitioner would argue that the charge framed against the petitioner was towards his period of absence and such charge even if duly proved would not fall within the expression "gravest acts of mis-conduct" so as to justify the imposition of extreme penalty of dismissal. The impugned order of dismissal is also stated to be illegal inasmuch as the enquiry proceedings had been conducted in relation to a specific article of charge i.e. having remained absent for 23 days and 8 hours, whereas final order has been passed by observing

that the petitioner on previous occasions had remained absent 31 times. Argument raised is that the petitioner had not been charged in respect of the previous 31 occasions of absence and as such, the present departmental enquiry could not have culminated in an order of dismissal. A submission as regards violation of principles of natural justice has also been raised by contending that it was Shri OP Narwal, HPS, Deputy Superintendent of Police Commando who was the complainant as also one of the prosecution witnesses during the course of enquiry and whereas the Enquiry Officer was an official junior in rank i.e. Inspector Ravinder Kumar. Learned counsel would contend that entrustment of departmental enquiry in the hands of a junior under such circumstances has clearly worked to the prejudice of the petitioner as an official of the rank of Inspector would certainly be swayed and influenced by the complainant as also prosecution witness holding a senior rank.

4. Learned counsel for the petitioner has been heard at length and pleadings on record have been perused.

5. Rule 16.2(1) of the Punjab Police Rules, 1934 (for short 'the Rules 1934') and as applicable to the State of Haryana reads as follows:

“Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service, in making such an award regard shall be had to the length of service of the offender and his claim to pension.”

6. The charge levelled against the petitioner and which stands duly proved during the course of regular enquiry is of having remained absent unauthorizedly from duty for a period of 23 days and 8 hours. That apart, while passing the order of dismissal, the competent authority has also taken into account that the petitioner in his short service tenure of five years had remained absent unauthorizedly on as many as 31 occasions. Under Rule 16.2(1) of the Rules 1934, dismissal is to be awarded for the gravest acts of mis-conduct or for the cumulative effect of continuous mis-conduct proving incorrigibility and complete unfitness for police service. Petitioner was a member of a disciplinary force. He had been assigned duty in the Haryana Raj Bhawan at Chandigarh. The assignment involved providing security to a high profile VIP. Such assignment could not afford any laxity. The charge of having remained absent over a period in excess of 23 days unauthorizedly stands proved. In his service tenure of only five years, petitioner has remained absent on as many as 31 occasions. Under such circumstances, this Court would find no justification in interfering with the opinion formed by the Punishing Authority in holding the petitioner to be unfit to be retained in service.

7. The submission raised by the learned counsel as regards violation of the principles of natural justice and an Officer of a junior rank conducting an enquiry in the backdrop of the charge levelled by the complainant who was holding a senior rank, would be of no consequence. During the course of arguments, it has been conceded that apart from the complainant

who was holding the rank of Deputy Superintendent of Police, four other prosecution witnesses had been examined by the Enquiry Officer to press home the charge. Even otherwise, perusal of the statutory appeal preferred against the order of dismissal would reveal that the petitioner had admitted his absence for the period in question and without availing of any authorization. The relevant extract from the appeal placed on record and appended as Annexure P2 reads as under:

“That the alleged absent of the appellant ex-Constable Sohan Singh No.478/CPF was not knowingly and intentionally because on 24.2.2008 in the morning after the duty of the appellant Constable upto 6.00 a.m. is over, the appellant Ex-Constable all of a sudden had received a telephonic message from his wife that Anshu daughter of the appellant Ex-Constable has been suffering from pneumonia and Asthmaic disease and is serious. On this, the appellant Constable had made his best efforts to give him permission or leave but none of the superior/officer had heard his request. After all human being he went to look after his minor child who later on remained under the treatment of a child Expert Doctor, Hooda Maternity and Nursing Home Meham who was nearest to his home. There was no another to look after the daughter of the appellant and the appellant remained with his daughter to look after her till she remained under the treatment of the above Hospital upto 14.3.2008.....”

8. The submission raised by learned counsel for the petitioner that departmental proceedings were conducted against the petitioner on the specific charge of absence from duty for a period of 23 days and 8 hours and whereas while passing the

impugned order even the previous misconduct has been taken into account and which has resulted in negation of the principles of natural justice, is without substance. On the previous date of hearing i.e. 11.7.2016, learned State counsel had been directed to produce the original record of the case. During the course of hearing today, service record has been perused. The show cause notice dated 6.8.2008 served upon the petitioner proposing the major penalty of dismissal even though not placed on record has been seen. The same clearly reveals that apart from the enquiry report in relation to the charge of absence of 23 days and 8 hours, the petitioner had also put to notice as regards his previous misconduct of having remained absent on as many as 31 occasions. The petitioner had no response to offer. Even learned counsel during the course of hearing has not been able to rebut the factual aspect as regards petitioner having remained absent on 31 occasions in his tenure of service.

9. Apart from finding the instant petition to be lacking in merit, this Court finds that the writ petition raises a highly belated claim and deserves to be dismissed on the ground of delay and laches. The order of dismissal passed by the Punishing Authority is dated 25.8.2008. Appeal was dismissed on 30.10.2008 and revision was rejected on 28.10.2009. The instant petition has been instituted in the year 2016 after a period of six years. Learned counsel for the petitioner would make an attempt to overcome delay by submitting that the petitioner had even preferred a mercy appeal before the Additional Chief Secretary to Government Haryana, Home Department and which has been

decided by a cryptic one line order dated 8.7.2016 and that too after filing of the instant petition. Even such submission is being noticed only to be rejected. Learned counsel has not been able to advert to any statutory provision under which a mercy appeal is maintainable after rejection of the revision petition at the hands of the Director General of Police, Haryana. In the case of **Baljinder Pal Kaur v. State of Punjab and others**, 2008(4) SCT 213, a Division Bench of this Court considered the issue of delay in a situation wherein after exhausting the statutory remedies of appeal and revision against the order of punishment, the petitioner having preferred a mercy petition and the same also having been rejected thereafter, it was held that cause of action would be taken to accrue from the date of passing of final order or from the date when an appeal or revision provided under law is disposed of. It was further held that in the absence of any statutory provision providing for the filing of a mercy petition, delay could not be overlooked merely on account of an order having been passed on such mercy petition as it was the employee itself who had invited such order.

10. For the reasons recorded above, the writ petition is dismissed on merits as also on the ground of delay.

(TEJINDER SINGH DHINDSA)
JUDGE

SEPTEMBER 15, 2016
SRM

Note: *Whether speaking/reasoned?* *Yes/No*

Whether referred to Reporter? *Yes/No*