

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

RSA-4365-2010

Date of Decision: 04.08.2016

Sawinder Singh

....Appellant

Versus

Punjab State and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Bikramjit Singh Bajwa, Advocate
for the appellant.

Mr. Neeraj Yadav, AAG, Punjab.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellant has assailed the order of the trial Court dated 14.11.2007 and order of the Appellate Court dated 30.04.2010.

The appellant is stated to have been appointed as a Constable in the Police Department, State of Punjab. While he was working as constable, during the period from 16.08.2002 to 21.12.2002, he remained absent. On the allegations of being absentee, the respondent initiated the disciplinary proceedings. The same was concluded in imposing the penalty of termination from service on 18.10.2004. Feeling aggrieved by the order of termination, the appellant filed suit for declaration before the trial Court. On 14.11.2007, the trial Court confirmed the order of the termination against the trial Court order as well as termination order, the appellant further preferred an appeal before the Appellate Court and the Appellate Court confirmed the order of the trial Court on 30.04.2010, thus the appellant presented this appeal.

Learned counsel for the appellant submitted that he has not been provided necessary opportunity before terminating his services. He has further contended that while passing the order of termination, the authority and the Senior Superintendent of Police, Amritsar relying on the past record stated that the appellant is a habitual absentee, he is unreliable police official and unfit for department and he deserves no leniency for the gross misconduct on his part. It was submitted that Senior Superintendent of Police, Amritsar exceeded his jurisdiction while exercising quasi judicial powers under the Disciplinary and Appeals Rules as a disciplinary authority. Contentions of the appellant raised in reply to the show cause notice has not been considered. Even though reply was belated and the same has been taken on record by the disciplinary authority.

Learned counsel for the appellant relied on various decisions of this court which are reported in the judgments titled as “***Ex. Constable Tarsem Singh Vs. State of Punjab 1996(2) RSJ 599***”, “***Satpal Singh Vs. State of Haryana, 1999(2) S.C.T.231***”, “***K.B. Tuli Vs. The Punjab Small Industries & Export Corporation Limited, 1992(3) S.C.T. 580***” and “***Shri Ram Vs. The State of Punjab 1967 SLR 678***”. In view of the above decision, order of termination is illegal. It was further submitted that Division Bench decision of this Court passed in a case of “***Ex. Constable Tarsem Singh Vs. State of Punjab 1996(2) RSJ 599***”, which reads as under:-

“Another serious infirmity with which the impugned orders suffer is that the disciplinary authority as well as punishing authority have taken into consideration the past absence of the petitioner even though the period of absence stands regularized by grant of leave without pay. There is nothing on the record to show that in past also, the petitioner had been punished on account of having remained absent from duty. Thus, the previous absence of the petitioner cannot be treated as the act of misconduct so as to constitute basis for taking the view that the petitioner is a habitual absentee”

Thus, the order of the trial Court as well as Appellate Court are liable to be set aside so also termination order.

Per contra, learned counsel for the respondent vehemently contended that he was the habitual absentee from duty for 49 times and his 1816 days past service was treated non duty period. It was further submitted that 28 years approved service of the appellant is already forfeited with the permanent effect and he has also suffered 8 major and 9 minor punishments in his credit. In view of past conduct of the appellant, the Senior Superintendent of Police, Amritsar while passing the order of termination made passing remarks which reads as under:-

Besides, I have also perused his previous service records which shows that he is a habitual absentee. He is an unreliable police official and unfit for department. He deserves no leniency for the gross misconduct on his part. The defaulter deserves the proposed punishment in the Show Cause Notice. Therefore, I dismiss Const. Sawinder Singh No.1380/ASR from the Police Department w.e.f. 18.10.2004 A.N. His aforesaid period is treated as N.D.P.

Therefore, decision cited by the appellant is not applicable having regard to the conduct of the appellant.

Learned counsel for the respondent further submitted that even though appellant was charge-sheeted, he remained *ex parte*. *Ex parte* proceedings were concluded by the inquiry officer. Therefore, there is no infirmity in the order of termination as well as trial Court and Appellate Court orders.

Heard learned counsel for the parties.

It is very much true that conduct of the appellant cannot be ignored having regard to the conduct of the appellant, he should be punished by imposing penalty of dismissal from service. At the same time,

one cannot ignore the disciplinary proceedings rules and its scope. The Senior Superintendent of Police, Amritsar is exercising quasi judicial powers under the Disciplinary Appeals Rules and scope of exercising powers is very limited with reference to the charge-sheet. He has to pass the final order in a disciplinary proceeding. In the present case, the appellant has been charge-sheeted for remaining absent from 16.08.2002 to 21.12.2002. Admittedly, the appellant remained *ex parte* in the inquiry, the inquiry officer held that the charges were proved. Thereafter, while passing the order of termination the disciplinary authority instead of restricting his decision only to the charge, exceeded his jurisdiction and taken extraneous materials into consideration. Those extraneous materials reads as under:-

Besides, I have also perused his previous service records which shows that he is a habitual absentee. He is an unreliable police official and unfit for department. He deserves no leniency for the gross misconduct on his part. The defaulter deserves the proposed punishment in the Show Cause Notice. Therefore, I dismiss Const. Sawinder Singh No.1380/ASR from the Police Department w.e.f. 18.10.2004 A.N. His aforesaid period is treated as N.D.P.

Learned counsel for the respondent submitted that it is only a passing remarks while passing the termination order. Passing remarks can be made while passing an executive order not in a quasi judicial power. Scope of quasi judicial powers is related to the issue involved in a case. In the present case, as is evident from the order of termination, it is crystal clear that past records have been taken into consideration, which is not

part and parcel of the chargesheet. Therefore, there is total non-application of the mind while passing the order of termination by the third respondent.

In identical circumstances, this Court as well as Apex Court have held that disciplinary proceedings while passing order/imposing penalty extraneous materials should not be taken into consideration. Scope is very limited to the extent that whatever the charge memo and charge is framed, only on such of those proved charges, disciplinary authority can impose the penalty. One of the decision by Constitution Bench of the Supreme Court in “*State of Mysore v. K.Manche Gowda, (1964) 4 SCR 540*”, wherein it is held that extraneous material cannot be taken into consideration. Division Bench of this Court in the case of *Ex. Constable Tarsem Singh's* case (supra) which reads as under:-

“Another serious infirmity with which the impugned orders suffer is that the disciplinary authority as well as punishing authority have taken into consideration the past absence of the petitioner even though the period of absence stands regularized by grant of leave without pay. There is nothing on the record to show that in past also, the petitioner had been punished on account of having remained absent from duty. Thus, the previous absence of the petitioner cannot be treated as the act of misconduct so as to constitute basis for taking the view that the petitioner is a habitual absentee”

In view of the above, the order of termination, order of the trial Court and of the Appellate Court are set aside, however, this order will not come in the way of disciplinary authority to re-examine and pass fresh order within a period of 3 months.

In view of quashing of order of termination, the appellant is entitled for subsistence allowance for the period from the date of termination till passing of final order (fresh order) in the matter, in view of the decision rendered by the Supreme Court in “***Managing Director ECIL, Hyderabad Vs. B. Karunakar 1993(4) SCC 727***” which reads as under:-

31. “Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusions that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/ Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing

the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, when such fresh inquiry is held. That will also be the correct position in law”.

Accordingly, RSA stands disposed of.

(P.B. BAJANTHRI)
JUDGE

August 04, 2016

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Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No