

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

LPA No.1234 of 2015 (O&M)

Date of Decision: 17.10.2016

Jaggi Ram

..Appellant

Vs.

State of Haryana and others

..Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr. S.K.Redhu, Advocate for the appellant.
 Mr. R.D.Sharma, DAG Haryana.

SURYA KANT, J.

This Letters Patent Appeal is directed against the order dated 7.4.2014 passed by learned Single Judge, dismissing the appellant's writ petition. Consequently, the order of his dismissal from service on the ground of absence from duty for 139 days, has been upheld.

The appellant was recruited as a Constable in Haryana Police on 2.12.1988. He was sent on election duty but instead of taking the call, the appellant willfully absented without any explanation whatsoever and was found absent from duty for 139 days i.e. from 8.5.2009 to 23.9.2009. He was charge sheeted; enquiry was held and charge of absence from duty having been proved, Deputy

Commissioner of Police, Headquarter, Gurgaon dismissed him from service vide order dated 21.8.2010.

The appellant filed departmental appeal and relied upon Rule 16.2 of Punjab Police Rules, 1934 to contend that absence from duty was not the 'gravest misconduct' on the basis of which he could be dismissed from service and his claim for pension ought to have been kept in view while awarding the punishment.

It may be useful at this stage to refer Rule 16.2 of Punjab Police Rules, which reads as follows:

“16.2 Dismissal – (1) 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 award regard shall be had to the length of service of the offender and his claim to pension.

Explanation – For the purpose of sub rule (1) the following shall, inter alia, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action:-

- (i) indulging in spying or smuggling activities;
- (ix) disrupting the means of transport or of communication;
- (x) damaging public property;
- (xi) causing indiscipline amongst fellow policemen;
- (xii) promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;
- (xiii) going on strike or mass casual leave or resorting to mass abstentions;

- (xiv) spreading disaffection against the Government and
- (xv) causing riots and the strife.”

Appellate Authority dismissed the appeal vide memo dated 4.3.2011 but unfortunately without dealing with the pension claim of the appellant. He thereafter filed revision petition which was also summarily dismissed by the Director General of Police, Haryana vide order dated 11.8.2011.

The Appellate as well as Revisional Authorities both did not dwell upon the appellant's contention that even if he was found to be unfit for police service, the punishment of compulsory retirement could be imposed for the reason that he had already served the department for more than 21 years.

Learned Single Judge also did not find any merit in the appellant's claim for the reason that in the past also he was found absent from duty on the following occasions.

<i>Sr.No.</i>	<i>Absence Period</i>	<i>Total absence</i>	<i>Punishment awarded</i>
1	16.4.1994 to 19.4.1994	04 days	LWP
2	20.7.2006 to 21.7.2006	02 days	LWP
3	15.9.2006 to 16.9.2006	02 days	LWP
4	25.6.2007 to 3.7.2007	218 days	Stoppage of three future increments with permanent effect+LWP
5	28.9.2007 to 5.10.2007		
6	06.01.2008 to 18.7.2008		
7	21.10.2008 to 29.10.2008		
	Total absence	226 days	

It appears that Disciplinary Authority misled itself by assuming that the appellant remained absent for 218 days between

16.4.1994 to 3.7.2007. The total period of absence of the appellant during 6 years is 4+2+2+9 days i.e. total 17 days. He again absented from duty from 28.9.2007 to 5.10.2007; 6.1.2008 to 18.7.2008 (the longest period) and 21.10.2008 to 29.10.2008.

His learned counsel has reiterated that even if the appellant was held to be an incorrigible police official to be unfit to continue in police service, keeping the length of his service in view which could earn him pension, some lesser punishment ought to have been imposed.

Having heard learned counsel for the parties and keeping in view the total length of service rendered by the appellant, coupled with the fact that he specifically raised a plea to extend the protection of Rule 16.2 of Punjab Police Rules, 1934 which has not been dealt with at all by the Appellate or Revisional Authority, we are of the considered view that the instant appeal deserves to be allowed in part, with a direction to the Revisional Authority to re-decide the appellant's revision petition with reference to his claim under Rule 16.2 of the Rules (ibid). While we do not express any views on the appellant's entitlement to pension, it appears expedient that such a claim be considered by Revisional Authority in the light of service of more than 21 years rendered by him. Suffice it would be to mention that the punishment of compulsory retirement is also one of the major punishment and if the Revisional Authority decides to impose the same, it would amount to giving some solace to the appellant's family, without compromising with the desired standards of discipline

required to be maintained in the police force.

For the reasons afore-stated, the appeal is allowed in part; the order passed by learned Single Judge is set aside and the writ petition is partly allowed. Order dated 11.8.2011 passed by the Director General of Police, Haryana is set aside with a direction to the Revisional Authority to decide the revision petition afresh in the light of the observations made here-in-above. It would be appreciated if the revision petition is decided within four months from the date of receipt of certified copy of this order.

**(SURYA KANT)
JUDGE**

**(SUDIP AHLUWALIA)
JUDGE**

17.10.2016
Meenu

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No