

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

CWP No.17338 of 1996

Date of Decision:18.03.2017

Surender Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

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

Present : Ms. Nupur Choudhary, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has assailed the order of dismissal dated 8.11.1993 and order of the appellate authority dated Nil Annexures P-4 and P-5 respectively.

The petitioner is stated to have been appointed as constable on 19.8.1988. While he was working as such, he applied casual leave for 10 days on 21.4.1993. Whereas the respondents sanctioned only leave for a period of five days. Thereafter, the petitioner is stated to have fell ill for which he had applied for casual leave for a period of 10 days which was sanctioned. With reference to medical fitness certificate, the petitioner has reported for duty on 20.5.1993. Thereafter in the month of May itself, he had applied leave with reference to the fact that he is suffering from typhoid. When he reported back to the duty with the medical fitness certificate on 14.7.1993, he was charge-sheeted for remaining absent frequently. The charges reads as under:

“1. While posted in the protection guard at Deputy Commissioner, Rohtak residence absented from duty. An

absence report was recorded vide DD No.11 dated 26.4.1993 and he reported on duty vide DD No.19 dated 26.4.1993 after an absence of 3 hours and 3 minutes;

2. That while he was posted in Police Lines, Rohtak absented from duty on 11.5.1993. An absence report was recorded vide DD No.73 dated 11.5.1993 and he reported on duty vide DD No.28 dated 20.5.1993 after an absence of 6 days 6 hours and 5 minutes;

3. Absented vide DD No.38 dated 23.5.1993 while posted in Police Lines, Rohtak and reported on duty vide DD No.16 dated 14.7.1993 after an absence of 21 days 15 minutes and 20 minutes.”

The petitioner submitted his reply to the charge memo. Ignoring the reply to the charge-memo, the official respondents proceeded to hold an inquiry. In the inquiry, it was held that the charges levelled against the petitioner were proved. Consequently, show cause notice was issued and thereafter proceeded to impose the penalty of dismissal from service on 8.11.1993. The petitioner feeling aggrieved by the order of dismissal preferred an appeal before the appellate authority. The appellate authority confirmed the order of dismissal. Thus, the present petition.

Learned counsel for the petitioner submitted that having regard to the charges that the petitioner remained absent for 3 hours, 3 minutes, 6 days, 6 hours and 5 minutes and 21 days, 15 minutes and 20 minutes. In this regard, the respondents have sanctioned leave for certain period and for certain period it has been declined. The inquiry officer has not appreciated the contentions of the petitioner so also not apprise the evidence adduced by the defence witness no.2. There is no discussion by the inquiry officer insofar evidence adduced by defence witness No.2-Dr. V.P. Sharma.

Therefore, the respondents have failed to prove the charges. It was further

contended that disciplinary authority has not apprised the contentions of the petitioner that he was genuinely suffering from illness for which doctor has been examined. The same has not been considered by the inquiry officer. It was also contended that the appellate authority has failed to consider the contentions of the petitioner while considering the quantum of penalty. The appellate authority has taken that the petitioner was habitual absentee. Whereas for some of the absence period, the respondents have sanctioned the leave. Further argued that extraneous materials which are not part of record has been taken into consideration. In support of this contention counsel relied on Ex. Constable Tarsem Singh v. State of Punjab and others; reported in 1996 (2) RSJ 599. Thus, the materials have not been considered by the appellate authority. In view of these facts and circumstances, the disciplinary and appellate authority orders are liable to be set aside.

Per contra, learned counsel for the respondents submitted that the disciplinary authority has taken the entire service record of the petitioner and come to the conclusion that petitioner is liable to be dismissed from service. An extract of disciplinary authority's order reads as under:

“The perusal of the service record of the defaulter reveals that the defaulted was awarded punishments for his wilful absence from duty. The detail is as under:

- 1. 15 days P.D. Vide ob No.632/91.*
- 2. Punishment of censure vide OB No.116/93.*
- 3. For future annual increments with permanent effect stopped vide OB No.394/92.*
- 4. Five future annual increments with permanent effect stopped with permanent effect vide OB No.337/93.*

The perusal of the service of the defaulter also reveals that the defaulter had been remaining absent time and again but he

was sanctioned extra ordinary leave without pay by the competent authority. The detail is as under:

- 1. 26.7.91 to 2.8.91 7 days OB No.636/91*
- 2. 10.6.92 to 19.6.92 9 days OB No.216/92.*

And the above factum is proved by PW-4 Head Constable Raj Singh CRC SP Office, Rohtak.

This shows that the defaulter Constable Surender Singh No.1231/RTK is a habitual absentee.”

It was further submitted that the petitioner is a constable in the police department. He is a habitual absentee that has been taken note by the disciplinary authority as well as appellate authority while deciding the subject matter. Therefore, the petitioner has not made out a case so to interfere with the orders passed by the disciplinary authority as well as appellate authority vide Annexures P-4 and P-5.

Heard learned counsel for the parties.

Perusal of the charge-memo, it is evident that the petitioner has been charged for remaining absent for 3 hours, 3 minutes, 6 days, 6 hours and 5 minutes and 21 days, 15 minutes and 20 minutes respectively. The inquiry officer has not appreciated the evidence adduced by the defence witness No.2-Dr. V.P. Sharma, Medical Officer, Municipal Cooperation Unani Dispensary, Najafgarh (Delhi). It is evident from the conclusion of the inquiry officer that it was considered only to the extent that “delinquent has submitted witness in his defence out of which one witness is formal and there is no truth in his statement”. Such a conclusion is very vague. In other words, there is no discussion of evidence adduced by the defence witness-Dr. V.P. Sharma, Medical Officer who is a crucial witness. Thus, the finding of the inquiry officer is not based on evidence. Consequently order of disciplinary authority wherein he has taken extraneous material

which is not part and parcel of the charge-memo like punishment of censure, stoppage of annual increment and imposition of five future annual increment with permanent effect etc. On the other hand, disciplinary authority has appreciated the fact that inquiry officer has failed to take note of the evidence adduced by defence witness No.2-Dr. V.P. Sharma. Further examination of the appellate authority's order, it is also evident that the appellate authority is influenced by the extraneous material to the extent that "the petitioner is a habitual absentee and the police department cannot afford to keep such indisciplined persons". Habitual absentee is a very vague word. In other words, the appellate authority is influenced by the past record of the petitioner which is not part and parcel of the charge. In this regard, Supreme Court by a Constitution Bench in case of State of Mysore v. K. Manche Gowda; 1964 AIR (SC) 506 in para 8 held as under:

"8. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But nothing in law prevents the punishing authority from taking that fact

into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.”

Having regard to the Supreme Court ruling, the penalty should be restricted with reference to the whatever the charges framed. Thus, the disciplinary and appellate authority have taken into consideration the extraneous materials is not tenable and contrary to the decision of the Supreme Court. Moreover, in the present case, it is evident on record that for certain period, the petitioner's absent has been treated as extra ordinary leave without pay by the competent authority. That apart, the inquiry officer has totally ignored the evidence adduced by defence witness No.2-Dr. V.P. Sharma.

Accordingly, order dated 8.11.1993 (Annexure P-4) and order Nil (Annexure P-5) are set aside. The disciplinary authority is directed to reinstate the petitioner. For the intervening period from the date of dismissal till date of reinstatement, the petitioner is entitled for all service benefits including monetary benefits. Monetary benefits shall be calculated and disburse in accordance with law i.e. with reference to revision pay from time to time.

Petition stands allowed.

18.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No