

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

RSA No.1747 of 1991
Date of Decision: 9.3.2017

State of Punjab and others

... Appellants

Versus

Gian Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Anil Sharma, Addl.A.G., Punjab for the appellants

Mr.A.S.Sandhu, Advocate for the respondent

RAJIV NARAIN RAINA, J. (Oral)

1. After hearing learned counsel for the appellants-State and the respondent, on 27th February, 2017, I had passed the following order :-

“Present: Mr.Anil Sharma, Addl.A.G., Punjab

for the appellant

Mr.A.S.Sandhu, Advocate

for the respondent

Respondent would take note of the order passed in RSA No.141 of 1988 decided on 16th January, 2017 and its effect on this case. Secondly, to examine why relief should not be based on Rule 16.5 (2) of the Punjab Police Rules, by remitting the matter to the disciplinary authority to pass a fresh order in tune with the rule where only approved service for increment can be forfeited either temporarily or permanently. The effect of such deferment would result in rejection in pay and this is part of the punishment apparatus. Thirdly, the effect of Rule 8.16 of the Punjab Civil Services Rules Part 1, Vol.I which prescribes that absence period will be treated as “absence from duty without leave” while Rule

8.121 (2) prescribes that period of absence without leave can be converted into extraordinary leave. The State argues that there is no material difference between leave without pay and extraordinary leave with reference to the punishment order and the result of the appeal.
Post for final disposal on 9.3.2017.”

2. In RSA No.141 of 1988 (Bharpur Singh vs. State of Punjab and others decided on 16th January, 2017, I passed the following order:-

“Present: Mr. Puneet Sharma, Advocate, for
Mr. S.K.Sharma, Advocate, for the appellant.
Mr. Anil Sharma, Addl. AG, Punjab.

This is a Constable’s appeal against concurrent findings of fact recorded by the learned first Appellate Court vide judgment and decree dated September 28, 1987, reversing the findings recorded by the trial Court.

The appellant was dismissed from service on December 02, 1980 for proven absence of 131 days without leave. The dismissal was preceded by a full-fledged regular inquiry in which the appellant at the first instance chose to remain ex parte. However, he replied to the show cause notice and was heard personally by the disciplinary authority before the dismissal order was passed. The statutory appeal failed before the D.I.G. (Patiala Range), Patiala and the further revision was declined by the I.G. (Police). Absence for such a long period is recognized in rulings as falling in the gravest acts of misconduct by a policeman, whose duty is to remain disciplined and obedient while serving in the police force.

Learned counsel for the appellant Mr. Puneet Sharma submits that the appellant’s case for pension was not considered at the time of dismissal and this fault is a fundamental flaw in the impugned order. He rests his argument on the fact that the period of absence was treated as nonduty and by that time the dismissal order was passed he had put in 13 years of service, which was long enough

to bring in the fruit of pension had the issue been considered. He relies on Harjit Singh & another Vs. State of Punjab & another, (2007) 9 SCC 582 to secure his point. In Harjit Singh's case, the Supreme Court dealt with an order of dismissal of a policeman and found on facts that it would be appropriate if the quantum of punishment was converted from dismissal to compulsory retirement to meet the ends of justice since the occurrence was in remote past. In Harjit Singh's, the Supreme Court appears to have exercised its powers under Article 142 to do complete justice in a cause which power this Court does not possess under Article 226 of the Constitution. In any case, it is a decision based on facts and does not involve a case of absence of 131 days by a Constable without prior intimation or permission of his superiors. Thus, the reliance on Harjit Singh's case is misconceived and consequently the single Bench ruling of this Court in Satbir Singh Vs. The Director General of Police, Haryana & others, 2013 (3) SCT 76, relying upon Harjit Singh's and other cases is also misplaced. Harjit Singh's case is a Haryana matter, where an amendment to Rule 16.2 of the Punjab Police Rules, 1934, as applicable to Haryana, governs the field. Punjab has not defined the 'gravest acts of misconduct' in Punjab Police Rules, 1934 unlike Haryana. The present is a Punjab matter and, therefore, reliance on a judgment passed in the case involving State of Haryana would not per se be applicable to the State of Punjab.

On the other hand, Mr. Anil Sharma learned Addl. AG, Punjab appearing for the State relies on a decision of the Division Bench of this Court in Avtar Singh Constable Vs. State of Punjab & others, 2004 (1) SLR 694; 2003 (4) SCT 564 and especially Paras.13 & 14 thereof. This is also a case of unauthorized absence by a policeman and it would be best to reproduce Paras.13 & 14, which read as follows:

“13. However, the Supreme Court in a latter case titled State of Punjab v. Bakshish Singh, 1997(3) SCT 401

(SC): (1997) 6 SCC 381 considered the question of a constable of the State of Punjab who was absent from duty. While allowing the appeal of the State, it was held as follows:-

“It is settled legal position that it is for the disciplinary authority to pass appropriate punishment; the civil Court cannot substitute its own view to that of the disciplinary as well as appellate authority on the nature of the punishment to be imposed upon the delinquent officer. In view of the finding of the appellate court that it is a grave misconduct, the appellate Court ought not to have interfered with the decree of the trial Court. The High Court dismissed it without application of the (sic) mind and ignoring the settled legal principle.”

Besides, another Division Bench of this Court of which one of us (Swatanter Kumar, J.) was a member in the case of Exconstable Satnam Singh v. State of Punjab and others, 1997(4) SCT 475 (P&H): 1997(3) Recent Services Judgments 353, which also related to a case of a constable of the Punjab who was absent without leave, considered the matter in the context of Rule 16.2 and held that where the inquiry was fair, in consonance with the Rules and principles of natural justice, the unauthorised absence of the delinquent for 73 days is fully established, this would constitute a misconduct of grave nature.

14. In the case in hand it is not the case of the petitioner that there was any violation of the principles of natural justice or that he was not afforded a full and complete opportunity to defend himself in the departmental action. The contention is that the true effect of Rule 16.2 was not considered inasmuch as the absence from duty of the petitioner was not “gravest act of misconduct.” This has already noticed in view of Bakshish Singh’s case (supra) and Satnam Singh’s case (supra) is without any basis. The inquiry against the petitioner was held in a fair manner. No infraction of the rule has been pointed out which would

vitiate the departmental action against the petitioner. Besides, the petitioner belongs to the Police Service in which discipline and obedience is of paramount importance which defines the nature of duties. The departmental authorities have taken conscious decisions to dismiss the petitioner from service and whether a different view is possible cannot be gone into.”

Besides, Mr. Anil Sharma relies on a decision of the Single Bench of this Court in *State of Punjab Vs. Surjit Singh*, 2002 (3) SLR 148: 2001 (4) RSJ 774, wherein the issue arose for determination was that when the period of absence is treated to be leave would it amount to condoning the absence, was answered by the learned Single Judge [Adarsh Kumar Goel, J. as His Lordship then was Hon’ble Member of this Court] holding that the order treating the period of absence to be leave cannot be taken to be condoning the absence, but only with a view to maintain correct record. The Court further held that even absence of express mention of consideration of the past record and reasons for depriving the employee of pension will not always vitiate the order nor warrant substitution of lesser punishment such as compulsory retirement etc. The scope of interference by the Court is limited only to see that the order of punishment was not passed in denial of reasonable opportunity, was not without evidence and was not mala fide or arbitrary. When a charge was fully proved, which was of the gravest kind, there was no scope for interference; [See - *State of U.P. Vs. Ashok Kumar Singh*, (1996) 1 SCC 302: 1996 (2) SCT 139]

Apart from the above, Mr. Anil Sharma cites *Maan Singh Vs. Union of India & others*, (2003) 3 SCC 464: 2003 (2) SCT 84. The Supreme Court in this case dealt with an issue of absence from duty by a policeman. The police department had treated the period of absence as leave of the kind due and without pay and yet the dismissal had followed. The Supreme Court held that treating the period

of absence as a leave of the kind due or without pay after order of dismissal is only to regularize the period of unauthorized absence from duty but that does not have the effect of invalidating the termination itself.

It is well-settled in law that judicial review is not directed against the decision, but against the decision-making process. I find no error apparent on the face of record in the impugned order of dismissal and none whatsoever in the judgment and decree of the first Appellate Court dated September 28, 1987, and would, therefore, dismiss the appeal.”

3. What is true for a dismissal order as far as cause of action, right to sue and question of limitation is equally true of an order forfeiting approved service. They have both to be challenged within limitation being one-time transactions.

4. For facility of reference, Rule 16.5 (2) of the Punjab Police Rules is reproduced as under:-

“PPR 16.5. (2)- Approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail either the deferment of an increment or increments or a reduction in pay. The order must state whether the forfeiture of approved service is to be permanent or, if not, the period for which it has been forfeited.”

5. The impugned administrative order in Roman form reads as under:-

“Isliye hawaldar Gian Singh No.979/Jalandhar di ik saal di perwaniat naukri pakke taur te pichchli kamayee hai. Aaj to kat lai jandi hain. Sana gairhajri 8 din extraordinary chutti munzoor kitta janda hai. Hukm darj order book howe te isdi ik nuql isnoo muft taksis kitti jawe.

Sd/- Superintendent Police, Jalandhar

5/4/84”

6. The requirements in Rule 16.5 (2) are mandatory in nature and decisions thereunder taken are to be reduced into writing as to whether the forfeiture of approved service is permanent or temporary. There appears to be an omission in passing such an order. Since the authority to pass the order under Rule 16.5 (2) lies with the competent authority, the matter is remanded to the competent authority to address itself to the rule and make an order in writing and convey the same to respondent. In passing the order, the effect of Rules 8.16 and Rule 8.121 (2) of the Punjab Civil Services Rules Part 1 Vol.I may also be kept in mind. It is directed that the order to be passed on remand will relate back to the main order so as to avoid any administrative chaos that may result, if this direction is not issued. The order be passed within reasonable time.

7. Accordingly, this appeal is disposed of and the judgments and decrees of the courts below will stand modified accordingly.

(RAJIV NARAIN RAINA)
JUDGE

9.3.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No