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

**C.W.P. No.15471 of 2004 (O&M)
Date of Decision : 21.02.2017**

Satinder Kumar

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Shireesh Gupta, Advocate
for the petitioner.

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

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the dismissal order (Annexure P-12).

The petitioner joined service as Clerk on 08.08.1971 in the Haryana Civil Secretariat. After having putting 21 years of service in August, 1992 he applied for Ex-India Leave for two months i.e. from 10.08.1992 to 10.10.1992 in order to enable him to visit to his ailing father-in-law in the United States of America. Having gone there he applied for extension of the aforesaid leave which was rejected. For this absence inquiry was initiated against him. He came back to India in the year 1998 (after 6 years) and moved an application for permission to take voluntary retirement w.e.f. the date his original Ex-India leave had expired. No action

was taken on that application but in the inquiry he was found guilty of having abandoned the job and ultimately the order of dismissal was passed.

Learned counsel for the petitioner has raised threefold arguments. The first argument of the learned counsel is that as per the dictum of law laid down by the Supreme Court in the case of *Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others, (1993) 4 Supreme Court Cases 727* the respondent was obligated to furnish him a copy of the inquiry report so that he could object to the findings of fact and thereafter it was incumbent upon the disciplinary authority to have considered his representation to the inquiry report and then decided whether or not punishment was called for and then given show cause notice. As per the learned counsel for the petitioner, in the present case the inquiry report was never made available to the petitioner and no opportunity was granted to him to represent against the findings.

The second argument of the learned counsel for the petitioner is that on the date when his original sanctioned Ex-India leave had expired the petitioner had already more than 21 years of service and while passing the dismissal order no consideration was made of the fact that he had already earned pension.

The third argument raised by the learned counsel for the petitioner is that once the petitioner had moved an application for premature retirement it was necessary for the respondent to have considered the same before proceeding with the disciplinary proceedings because that application was moved 1½ years prior to the issuance of the charge-sheet and as per law if no response is given to the application for voluntary

retirement within 3 months it would be deemed to have been accepted.

Firstly, the learned Additional Advocate General has raised a preliminary objection that the power of attorney was executed on 04.06.2004 and the two witnesses to it signed on 06.07.2004. Therefore, it is clear that the principal has not signed it in the presence of the witnesses.

Learned counsel for the petitioner has accepted this but states that the Notary having signed on 06.07.2004 it is clear that at least there is one witness to the signature and in any case the fact that this writ petition was admitted in the year 2004 and was pending for the last so many years would not now disentitle the petitioner from pressing the same. I find myself in agreement with this argument and consequently reject the prayer that the writ petition is not maintainable.

Learned Additional Advocate General has further argued that the conduct of the petitioner in having overstayed on leave for a period of more than 5 years is a serious misconduct.

In my opinion, the only issue is not how serious the misconduct of overstaying leave is but whether at the time of passing of the punishment order the punishing authority considered the claim of the petitioner for pension. On perusal of the record, it is clear that the entitlement of the petitioner for pension was not considered before passing the punishment order. The parameter for judicial interference in matters of punishment was laid down by the Supreme Court in case of ***Union of India and another vs. S.S. Ahluwalia, 2007(7) SCC 257***, wherein it has been held as follows :-

“.... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to

the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty.....”

Keeping in view the nature of allegations, I am convinced that the punishment imposed is disproportionate to the charges levelled against the petitioner. In the circumstances, I deem it appropriate to reduce the punishment of the petitioner to that of compulsory retirement from the date of expiry of sanctioned Ex-India leave. Ordered accordingly. Consequently, the petitioner would now be entitled to retiral benefits. The respondent is directed to workout the same and pay it to him within a period of three months from the date of receipt of a certified copy of this order, failing which, he would be entitled to claim the same with interest @ 12% p.a. from the date/s the amount/s fell due till the date/s of payment.

Petition stands disposed of.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

February 21, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No