

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

**Regular Second Appeal No.4038 of 1999 (O&M)
Date of Decision : 2.12.2017**

Punjab State and others

... Appellant

Versus

Naresh Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. P.P.S.Thethi, Addl. AG., Punjab.

Mr. Vivek Salathia, Advocate
for the respondent

RAJ SHEKHAR ATTRI, J.

The defendants have come up in this appeal against the judgment and decree of the Courts below whereby the suit filed by plaintiff-Naresh Kumar (respondent herein) was decreed and the first appeal preferred by the defendants-appellants was dismissed.

The facts of the case lie in narrow compass. The plaintiff was enrolled as a Constable with Punjab Armed Police on 19.10.1981. He proceeded on five days sanctioned leave starting from 13.10.1989 due to death of his mother. However, during the leave period, he himself fell ill. He sent a telegram (Ex.P1) to the department for extension of his leave for another 3 days. The said telegram was duly received by his department and the same was entered into *Roznamcha* but inspite of that it was neither sanctioned nor declined and no intimation was sent to the plaintiff.

It is further the case of the plaintiff that thereafter, his health

deteriorated, as such, could not join the duties and remained under medical treatment of various doctors. He resumed his duties on 31.1.1990. He was declared absent from duty for the period with effect from 19.10.1989 to 31.1.1990. He was suspended from service with effect from 19.10.1989 vide order No.11894-98 dated 19.12.1989. The department treated it as his misconduct and initiated departmental proceedings against him. Inspector Randhir Singh was appointed as Inquiry Officer who framed summary of charges on 4.4.1990 and also submitted list of witnesses to the plaintiff and proceeded further. Various witnesses were examined during the enquiry. However, the inquiry officer returned the findings against the delinquent official.

On the basis of the said inquiry, a show cause notice was issued to the plaintiff which he replied. Ultimately, the plaintiff was dismissed from service vide order dated 3.12.1990 (Ex.P2). Feeling aggrieved by the order of dismissal, he preferred departmental appeal before Deputy Inspector General, PAP, Jalandhar. The same was also dismissed. The order of dismissal has been challenged *inter alia* on the following grounds : -

- i). That the plaintiff had proceeded on leave for 5 days which was duly sanctioned to him. He applied for extension of his leave on medical grounds. The orders passed on his telegrams for extension of leave was never conveyed to him. Thus the plaintiff did not absent himself from duty at any time. At the most it can be said that the plaintiff over stayed his leave. The allegation against the plaintiff did not constitute the commission of any misconduct on his part warranting departmental action against him.

ii). That inspite of repeated requests, the plaintiff was not supplied with the copies of documents relied upon by the department during the course of inquiry. It has highly prejudiced the case of the plaintiff who could not effectively cross examine the witnesses produced on behalf of the department.

iii). That the Enquiry Officer started examining the witnesses in support of the allegations immediately after the service of the summary of allegations on the plaintiff. No time was allowed to the plaintiff to go through the summary of allegations and to prepare his case.

iv). That the plaintiff was not allowed to cross examine the witnesses produced on behalf of the department.

v). That the plaintiff was not allowed to produce his defence evidence. The plaintiff submitted a list of only one defence witness. The Enquiry Officer did not summon the witness at any time but obtained a writing from the plaintiff under duress to the effect that he did not want to produce any defence evidence. Actually the Enquiry Officer did not allow the plaintiff reasonable opportunity to produce his defence.

vi). That there is no evidence on the file to prove that the plaintiff had intentionally or deliberately absented himself from duty.

vii). That reasonable and proper opportunity to defend himself was not afforded to the plaintiff as provided under the service rules.

viii). That the Commandant did not call the plaintiff before himself for service of show cause notice upon him nor did he explain to him the charges proved.

ix). That the impugned order has been passed in contravention of the provisions of rule 16.2 of Punjab Police Rules. Mere absence from duty does not disclose the commission of gravest acts of misconduct proving inefficiency and complete unfitness from Police service.

x). That the length of service of the plaintiff and his claim to pension was not taken into consideration while passing the impugned order.

xi). That the Commandant was not competent to pass the impugned order.

xii). That no opportunity of personal hearing as provided under the service rules was afforded to the plaintiff before passing the impugned order.

xiii). That the Commandant did not assign any reasons for passing the impugned order.

xiv). That the appellant authority did not apply his mind to the facts of the case while rejecting the appeal of the plaintiff.

xv). That the punishment awarded to the plaintiff is not in consonance with the allegations levelled against him.

Through the instant suit, plaintiff sought declaration to the effect that the order of the appellate authority dated 19.3.1991 and that of punishing authority dated 3.12.1990 are absolutely illegal, void, unlawful, unconstitutional, arbitrary, capricious, null, wanton, discriminatory,

malafide and against the provisions of law, service rules and natural justice.

The plaintiff claimed reinstatement in service with all service benefits.

The suit has been contested on the grounds that the plaintiff overstayed his leave and his absence period comes to 105 days which amounts to gravest misconduct. However, in the written statement, the instances of previous occasions have been cited wherein the plaintiff remained absent from duty.

From the pleadings of the parties, the following issues were framed : -

1. Whether the order dated 19.3.91 passed by the D.I.G. of Police is illegal, arbitrary, null, void and without authority? OPP.
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the notice U/S 80 CPC was received but its legality and validity has been challenged. OPD
4. Whether the plaintiff has no cause of action accrued? OPD
5. Relief.

Learned trial Court afforded adequate opportunities to both the parties to adduce their evidence. On appreciation of the evidence, the suit was decreed vide judgment and decree dated 15.2.1994 and the first appeal preferred by the appellants-defendants was dismissed by the learned first appellate court vide impugned judgment and decree dated 3.9.1999.

Learned State counsel vehemently contended that both the courts below have failed to appreciate evidence on record, the enquiry was

fully legal and valid; the plaintiff has been afforded adequate opportunity to

cross-examine the witnesses and to lead evidence in his defence; a show cause notice was issued to him and he replied the same in detail and after considering the reply to the show cause notice and other circumstances/evidence on the record, the order of dismissal was passed. The plaintiff challenged the same before the appellate authority and his appeal was dismissed.

On the other hand, learned counsel for the plaintiff vehemently contended that the plaintiff proceeded on sanctioned leave for five days starting from 13.10.1989. Thereafter, he remained busy in performing last rites of his mother and he sought further three days extension of leave by sending a telegram (Ex.P1) and his request was kept in abeyance but inspite of that, no intimation was sent to the plaintiff; that thereafter, the plaintiff had fallen seriously ill; he was medically treated by various doctors, therefore, he could not report for duty and ultimately, he joined duties on 31.1.1990 and at that time, he submitted his medical certificate which was not considered; rather the inquiry has already been ordered in the absence of the plaintiff without any basis or reason; even no procedure as prescribed under law has been followed. He further submitted that simple overstay from duty does not amount to the gravest misconduct. He endorsed the findings of the learned Courts below on all the issues and urges for dismissal of the appeal with exemplary costs.

This Court has given its thoughtful consideration to the rival contentions and carefully gone through the evidence available on record.

The service of the plaintiff has been regularized under the provisions of Punjab Police Rules. 1934 (in short, “the Rules”). One of the

contentions raised by the plaintiff was that in passing of the order of

punishment, the disciplinary authority did not comply with the provisions of Rule 16.2 of the Rules. This rule reads as under : -

“PPR. 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 an 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;
- (ii) disrupting the means of transport or of communication;
- (iii) damaging public property;
- (iv) causing indiscipline amongst fellow policemen
- (v) Promoting feeling of enmity or hatred between different class of citizens of India on grounds of religion, race, caste, community or language;
- (vi) Going on strike or mass casual leave or resorting to mass abstentions;
- (vii) Spreading disaffection against the Government; and
- (viii) Causing riots and the life.”

Rule 16.2 (1) provides for dismissal for the gravest act of misconduct or for the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. Under the first part of the Rule, gravest act of misconduct entails dismissal whereas under the second part of the rule, cumulative effect of continued misconduct also invites penalty of dismissal. However, in both the cases, incorrigibility of the delinquent official and complete unfitness for police service has to be established. There is another rider on the award of punishment incorporated

in the Rule itself, which, *inter alia*, requires the punishing authority to take into consideration the length of service of the delinquent and his claim to pension. Explanation appended to Rule 16.2 further defines the gravest act of misconduct in respect of a delinquent police official facing disciplinary action. As many as eight kind of acts have been specified which may individually or in conjunction with each other, constitute gravest act of misconduct inviting the punishment of dismissal envisaged under Rule 16.2 of the Rule.

In the case in hand, initially the plaintiff proceeded on five days leave due to sudden demise of his mother. The leave was duly sanctioned. Indisputably, he sent a telegram for extension of leave. The said telegram was kept in abeyance but no notice was given to the plaintiff.

It is further case of the plaintiff that he himself had fallen ill. At the time of joining duties on 31.1.1990, he submitted an application wherein he has categorically stated that on 19.10.1989, he suddenly fell ill before noon, as such, the plaintiff has started taking medical treatment from Guru Teg Bahadur Hospital, Amritsar. The doctor advised him bed rest for three months. He placed on record a certificate issued by the said hospital along with application. However, the said medical certificate was not considered nor verified from its issuing authority.

After conduct of the inquiry, a show cause notice was issued to the plaintiff. While replying to the show cause notice, the plaintiff has stated that he fell seriously sick and remained under medical treatment of Dr. Inderbir Singh of Vijay Hospital, Amritsar because his health did not permit him to join duties and he was advised rest by the said doctor from

19.10.1989 to 31.1.1990. He also produced a medical certificate issued by

Dr.Indervir Singh. During the inquiry, the certificate issued by Guru Teg Bahadur Hospital, Amritsar was neither considered nor it was got verified. Even the plaintiff submitted an application to summon the said doctor in his defence evidence but the said doctor could not appear. Thereafter, the plaintiff submitted an application that the said doctor is not appearing before the inquiry officer, therefore, he does not want to examine him. The medical certificate issued by the concerned doctor of Guru Teg Bahadur Hospital was a crucial piece of evidence. If the plaintiff was really sick, it was the duty of the Inquiry Officer to verify the said certificate and in case it was found genuine, then he should accept it but the enquiry officer as well as the punishing authority at the time of passing punishment order Ex.P2 ignored both the certificates solely on the ground that at the time of joining duties on 31.1.1990, the plaintiff submitted medical certificate of Guru Teg Bahadur Hospital but while submitting reply to the show cause notice, he has relied upon certificate issued by Dr.Inderbir Singh. In the plaint, the plaintiff has specifically stated that he remained under treatment of various doctors. It was the duty of the disciplinary authority to verify the genuineness of the medical certificates. No finding has been given if both or any one of the certificates is fake or genuine. To the mind of this Court, ignoring both the medical certificates in the circumstances of the case was not proper. Therefore, the plaintiff has not been afforded adequate opportunity of being heard.

In this case, no charge sheet was issued to the plaintiff with regard to different punishments awarded to him on previous occasions but those were duly taken into consideration by the inquiry officer as well as by the punishing authority. The plaintiff should have been given an opportunity

by framing a specific charge with regard to his misconduct in the past. To the mind of this Court, the plaintiff has not been given adequate opportunity of being heard.

The charge sheet has been supplied to the plaintiff by an Inspector of police who is neither appointing nor disciplinary authority of the plaintiff. Even the documents relied upon by the Inquiry Officer during the inquiry was not supplied to the plaintiff and this fact has gravely prejudiced to the plaintiff. To the mind of this Court, the inquiry was not proper. Rather it violates the principles of natural justice and also the different provisions of the Rules. Thus, on the independent appraisal of the evidence, this Court is of the considered opinion that the findings of the courts below are based on proper appreciation of evidence. They do not call for any interference and stand affirmed. However, the department is at liberty to conduct further inquiry.

As a sequel to my above discussion, the appeal sans merit and the same is hereby dismissed. The judgment and decree of the courts below are affirmed. However, the appellants are at liberty to conduct further inquiry. If they proposes to do so, that must be initiated within a period of 90 days from the date of receipt of a copy of this order.

(RAJ SHEKHAR ATTRI)
JUDGE

December 2, 2017

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No