

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

RSA No.644 of 2004(O&M)

Date of Decision : December 20, 2017

Paramjit Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Arun Abrol, Advocate,
for the appellant.

Mr. Sahil Sharma, DAG, Punjab.

RAJ SHEKHAR ATTRI, J.

The appellant-plaintiff has come up in this appeal assailing the concurrent findings of the Courts below dismissing his suit and the appeal respectively.

The facts of the case lie in narrow compass. The plaintiff-appellant was enrolled as a constable on 14.06.1979 in Punjab Armed Police. He was deputed to undergo lower school course at Training College, Phillaur in the year 1994. However, he absented himself from the training course w.e.f. 13.12.1994 without any leave or permission and thereafter never reported for the duty. His absence was duly entered in the Roznamcha. Vide order dated 23.01.1995, passed by the Police Training College (PTC)/Principal, Phillaur, he was remitted to his parent unit without completion of the said course. Thereafter, his parent department

asked him to join the duties but he paid no heed. Ultimately, the Commandant, 5th Indian Reserve Battalion issued an order vide which plaintiff/appellant was placed under suspension w.e.f. 05.02.1995 and regular enquiry was entrusted to Sh.Iqbal Singh Bajwa, Assistant Commandant. Copy of this order was sent to the appellant-plaintiff but he did not respond.

Thereafter, the Enquiry Officer served notice informing him regarding initiation of the departmental enquiry and the appellant-plaintiff was asked to join the enquiry proceedings. Even then, he did not join the disciplinary proceedings, inspite of the fact that he himself received the notice dated 28.02.1995, vide receipt Ex.D4. As such, he was proceeded against exparte in the enquiry proceedings. Summary of charges were prepared and served upon him alongwith the list of witnesses vide letter dated 19.04.1995 (Ex.D6), which was duly received by the appellant-plaintiff vide receipt Ex.D7. In spite of the fact that adequate opportunity was given to the appellant to join departmental enquiry.

During the enquiry, various witnesses were examined and the charge-sheet Ex.D9 was served upon the appellant-plaintiff. Ultimately, the enquiry report (Ex.D27) was submitted by the Enquiry Officer. After receipt of the same, a show cause notice dated 17.06.1995 (Ex.D28) was served upon the appellant-plaintiff. This notice was personally received by him but he did not bother to reply the same. Resultantly, he was dismissed from service vide punishment order dated 05.07.1995 (Ex.D30). Department appeal was filed by the appellant but till the filing of the suit, the same was pending.

Through, the instant suit, the appellant-plaintiff is seeking

declaration to the effect that the impugned dismissal order dated 05.07.1995 (Ex.D30), passed by the Commandant, 5th Indian Reserve Battalion is illegal, unlawful, unconstitutional, against the principles of natural justice and rules, against equity and fair play, cryptic and punitive in nature, non-speaking, capricious, malicious etc. on the following grounds:-

- (a) That no valid charge sheet and show cause notice was issued to the plaintiff. The charge sheet and show cause notice issued to the plaintiff are illegal and without jurisdiction.
- (b) That the plaintiff was not supplied with all the documents on the basis of which the summary of allegations and charge sheet was issued to the plaintiff.
- (c) That the plaintiff was not paid his subsistence allowances by the defendants and it was not possible for him to join the enquiry without being paid the subsistence allowances particularly under the circumstances when he was already undergoing treatment.
- (d) That it was not a case of absence without leave from the department rather it was a case of overstaying of leave and whereas plaintiff has been dismissed on the allegations of absence without leave and permission from the department.
- (e) That the plaintiff was not afforded personal hearing by the defendants while passing the order of dismissal against him.
- (f) That the departmental enquiry was got conducted ex-parte in a quick haste and without giving reasonable opportunity to the plaintiff to join the departmental enquiry.

(g) That the order is cryptic and punitive in nature and also non-speaking in nature since while passing the impugned order, the plaintiff's claim for pension was not considered and the order was passed in a gross violation of mandatory provisions of Punjab Police Rules 16.2.

(h) That while passing the impugned order against the plaintiff his past adverse service record was taken into consideration which was made the basis of passing the impugned order and to this effect no opportunity was afforded to the plaintiff.

(i) That the order was passed in gross violation of principles of natural justice and rules and statutory service rules applicable to the plaintiff.

The suit has been contested by defendants by filing a joint written statement on the grounds, inter-alia, that the same is premature as the appellant-plaintiff has not exhausted all the departmental remedies available to him and that the appellant-plaintiff has no cause of action. However, it has been admitted that the appellant-plaintiff joined service on 14.06.1979 and he was sent to undergo lower school course at Training College, Phillaur where he absented himself. Thereafter departmental enquiry was initiated. In spite of adequate notices, he did not join the enquiry and willfully remained absent. Therefore, the order of the dismissal is fully legal and valid. Remaining averments of the plaint have been denied.

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

1. Whether the plaintiff is entitled to declaration as prayed for

? *OPP*

2. *Whether the suit is not maintainable in the present form ?*

OPD

3. *Whether notice under Section 80 CPC is not legal and valid*

? *OPD*

4. *Whether the plaintiff has got no cause of action ?* *OPD*

5. *Whether the suit of the plaintiff is premature as alleged ?*

OPD

6. *Relief.*

Learned trial court has afforded adequate opportunities to both the parties to adduce evidence. On appreciation of evidence, the suit was dismissed with costs on 22.01.2000. The appellant-plaintiff preferred first appeal which was also dismissed vide impugned judgment and decree dated 31.07.2003.

I have heard the learned counsel for the appellant-plaintiff as well as learned State counsel and have gone through the record.

First of all, coming to the fact regarding the absence of the appellant-plaintiff from duty. Cogent evidence has been produced to prove this fact. Even the appellant also admitted this fact. However, the appellant-plaintiff took the plea that he proceeded on two days leave w.e.f. 11.12.1994 as he was not feeling well but on reaching home his condition had worsened, therefore, he could not report back to the Principal of PTC in time. Thus, the bare perusal of the plaint makes it abundantly clear that he did not joint duty on 13.12.1994. So far as the plea of remaining absent due to ill health is concerned, the same is without any substance. Neither, the appellant produced any medical certificate before his department nor during the trial of the suit. Even the appellant was specifically asked during cross-examination while appearing as his own witness as to whether

he is having any medical certificate and he denied the same. Thus, it is well established that the plea with regard to ill health is not proved. As such, the period of absent from 13.12.1994 to 05.07.1995 is well established.

So far as ex-parte proceedings are concerned, ample evidence has been produced to establish that the appellant-plaintiff has ample knowledge but he did not join the proceedings. Various notices were issued to him which were duly received by him. This fact has also been admitted by him in his plaint. Relevant part of the plaint is reproduced as under:-

“It is pertinent to mention here that the plaintiff kept on informing the department regarding his illness through the persons who used to come to tell the plaintiff to participate in the enquiry and he had submitted/informed to the messengers that as soon as he recovers from the illness, he will report back immediately but the defendant passed the order of dismissal in a quick haste and ultimately he was dismissed from service w.e.f. 05.07.1995 and while passing the order of dismissal, even the period after placing the plaintiff under suspension was also counted as the period as alleged absence whereas it is well settled that the period after placing an employee under suspension cannot be treated as period of absence from the department as during the suspension an employee is not required to remain present in the department. It is also submitted that the plaintiff was not paid his subsistence allowances during the period of suspension and it was not possible for the plaintiff to attend the enquiry without being paid the subsistence allowances particularly when he was ill.”

Apart from it, documentary evidence has also been produced

which established that adequate notices were given to the appellant-plaintiff which were received by his father whereas the show-cause notice issued to him personally but he neither bothered to reply the same nor he joined the departmental enquiry. Thus, he was proceeded ex parte in a proper way.

Now coming to the question as to whether the absent of the appellant-plaintiff for the period from 13.12.1994 to 05.07.1995 amounts to gravest misconduct, which entitled the respondents-defendants to dispense with his services ? Rule 16.2 of the Rules make it abundantly clear that mere absent from duty shall not be taken as gravest misconduct and at the time of passing punishment order, the previous service rendered by the delinquent official must be considered. This Court would like to reproduce the said Rule hereunder:-

16.2 (i) "Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or 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.-----"

(ii) and (iii) xxx xxx xxx

In this case, the appellant-plaintiff was sent to undergo lower school course which is meant for his promotion. He was not on the active duty in his parent unit. If he himself abandoned the training course it will certainly affect his promotion avenues. He rendered 16 years qualifying service before his dismissal. This is a case of single misconduct by remaining absent from duty.

In these circumstances, this Court is of the considered opinion

that mere absence from training course and in the subsequent period certainly amount to misconduct but it does not make him disentitled for considering the length of his service at the time of awarding punishment.

This Court is further of the opinion that the punishment is not only disproportionate to his misconduct but also shocking the conscience of the Court. Keeping in view the prolonged litigation, it shall not be in the interest of justice to remit the case before the punishing authority to reconsider the punishment. As such, this Court deem it appropriate to convert the punishment of dismissal into compulsory retirement from service. Similar proposition of law has been laid down by a three Judges bench of the Hon'ble Apex Court in **B.C.Chaturvedi vs. Union of India and others (1995) 6 SCC 749** wherein it has been held as under:-

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.”

The said view has also been followed in **Shri Bhagwan Lal**

Arya vs. Commissioner of Police Delhi & others 2004 (4) SCC 560, by

noticing that to shorten the litigation and in view of the time already lost, the punishment of removal of service could be altered by the Court.

This Court in **Virender Singh vs. State of Haryana and others** **2014 (1) SCT 561** has also discussed the akin proposition of law and made following observations:-

“The parameter for judicial interference in matters of punishment was laid down in case of Union of India and another v. S.S.Ahluwalia, 2007 (4) S.C.T. 83 : 2007 (4) Recent Apex Judgments (R.A.J) 653 :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.....”

In **Virender Singh's case** (supra) this Court substituted order of dismissal into that of compulsory retirement.

In this view of the matter, this Court is of the considered opinion that the enquiry was conducted in accordance with the rules and findings of the Courts below to this effect are based on proper appreciation of evidence. However, the punishing authority as well as the courts below failed to consider that the appellant-plaintiff was enrolled in service on 14.06.1979 and was dismissed on 05.07.1995 and he rendered 16 years of qualifying service for grant of pension. This Court is of the considered opinion that the appellant-plaintiff is entitled to benefit of his previous

service w.e.f. 14.06.1979 till his dismissal by following the ratio dicidendi culled out in Union of India and another versus S.S.Ahluwalia, 2007 (4) S.C.T. 83. Thus, the ends of justice would be adequately meted out in case the punishment of dismissal from service be converted into punishment for compulsory retirement.

As a result, this appeal is partly accepted and the judgment and decree of the courts below stand modified accordingly. For the sake of clarity, it is held that the punishment of dismissal is disproportionate to his misconduct. Keeping in view the facts and circumstances of the case, I deem it appropriate to set aside the punishment order dated 05.07.1995 passed by the Commandant, 5th Indian Reserve Battalion, Jalandhar Cantt. and to convert it into an order of compulsory retirement from service w.e.f. 05.07.1995 i.e. the date of dismissal order. The appellant shall be entitled all the consequential benefits.

Ordered accordingly.

December 20, 2017
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No