

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

**210**

**CWP No.16889 of 2012 (O&M)**

**Date of Decision: July 24, 2017**

Parminder Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present: Mr. P.S. Bhangu, Advocate  
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

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**TEJINDER SINGH DHINDSA, J. (Oral)**

The petitioner, who was serving on the post of Senior Assistant in the office of Additional Director General of Police, Intelligence, State of Punjab, has filed the instant petition impugning the action of the respondent-authorities in having imposed upon him the extreme penalty of dismissal in the light of order dated 04.03.2004, issued by the Director General of Police, Punjab at Annexure P-14. Challenge is also laid to the order dated 14.02.2011 (Annexure P-17) and in terms of which, the appeal preferred by the petitioner against the order of dismissal, has been declined. Even the review preferred by the petitioner thereafter, has been dismissed vide memo dated 23.05.2011 (Annexure P-19) and which order is also under challenge.

Counsel for the parties have been heard.

Facts of the case are in a narrow compass.

Petitioner was appointed as officiating Steno Typist vide order dated 02.08.1978. On 02.02.1981, services of the petitioner were regularized. Petitioner is governed by The Punjab Police Clerical Service (State Service Class-III) Rules 1960. Rule 14 of the 1960 Rules, governs discipline, penalties and appeals and it is provided that in all matters relating to discipline, penalties and appeals, the members of the service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules 1952 (as amended from time to time).

On 05.05.2000, departmental proceedings were initiated against the petitioner under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 and the precise Article of charge was that the petitioner had applied for one year Ex-India leave from 01.06.1998 to 31.05.1999 for going abroad and he proceeded on Ex-India leave on 04.06.1998 without getting the same sanctioned from the competent authority. Further charge was that the petitioner had chosen to apply for extension as regards Ex-India leave from time to time and which had not been granted by the competent authority.

The duly appointed Enquiry Officer furnished the enquiry report holding the petitioner guilty of the charge levelled against him. The punishing authority having agreed with the

findings of the Enquiry Officer, issued a show cause notice dated 13.12.2003, contemplating the imposition of major penalty of dismissal upon the petitioner. Petitioner submitted his reply to the show cause notice. The competent authority i.e. the Director General of Police, Punjab has thereafter issued the order dated 04.03.2004 (Annexure P-14) imposing the penalty of dismissal upon the petitioner. The penalty of dismissal stands affirmed by the Appellate Authority in the light of order dated 14.02.2011 at Annexure P-17 and even a review preferred by the petitioner, has not been entertained.

It is against such brief factual backdrop that the instant writ petition was instituted in the year 2012.

Placed on record at Annexure P-13, is the reply dated 26.12.2003 that the petitioner had submitted in response to the show cause notice dated 20.11.2003. Perusal thereof would reveal that certain specific contentions and grounds had been raised by the petitioner and which stood delineated and noticed even in the order of dismissal to the following effect:-

*“(i) That he applied for Ex-India leave (without pay) w.e.f. 1.6.98 to 31.5.99 but he was not informed up to 28.5.98 regarding sanctioning of leave.*

*(ii) That he appeared before DIG/C.I., Punjab on 28.05.1998 regarding sanctioning of his leave and DIG/C.I. allowed him to proceed on leave.*

*(iii) That he proceeded on leave after it being duly sanctioned by DIG/C.I.*

*(iv) That during his 21 years service he has not done any misconduct nor he has been awarded any penalty.*

*(v) That his father died on 30.11.2002 and now he has to look after his ailing mother.*

*(vi) That he may be given 'Voluntary Retirement' from service w.e.f. 1.6.1998."*

Strangely, even though specific grounds/contentions have been noticed by the punishing authority yet the same have not been dealt with while imposing the extreme penalty of dismissal.

The entire discussion and reasoning furnished in the dismissal order by the Director General of Police, is in the following terms:-

*"I have gone through the pleas given in reply to the show cause notice. The points raised by the defaulter carry no weight. I, therefore, see no reason to change or alter the punishment proposed in the show cause notice. After going through all pros and cons of the case, the official does not deserve any sympathy and I dismiss him from service with immediate effect".*

In the considered view of this Court, it was imperative for the punishing authority to have assigned cogent and valid reasons in the order so as to justify the imposition of major penalty of dismissal. Assigning reasons in an order imposing extreme penalty upon an employee would be necessary as such, course if

adopted would obscure any chances of an employee being discriminated again and would rule out even situations of arbitrary and illegal exercise of discretion. Order dated 04.03.2004 (Annexure P-14) passed by the punishing authority will have to be termed as a cryptic non-speaking order. Petitioner having availed of his statutory remedy of appeal, appellate authority has rejected the same in terms of equally sketchy reasoning and by observing that ***“the pleas given by him were enquired on the basis of record but neither any satisfactory answer was given nor any solid proof was presented by appellant Sh. Parminder Singh Senior Assistant, in his favour.”***

The statutory remedy of appeal available to an employee is a substantive remedy. Such remedy cannot be reduced to the level of a mere formality or an eye wash. This Court would have no hesitation and observing that the order passed by the appellate authority dated 14.02.2011 (Annexure P-17) also suffers from the same very infirmity as the order imposing the extreme penalty of dismissal passed by the Director General of Police, dated 04.03.2004 at Annexure P-14.

There is yet another aspect of the matter. Petitioner in his reply to the show cause notice had taken a specific stand that he has unblemished service record of almost 21 years. This factual assertion has not met with any rebuttal at the hands of the State. Under such circumstances, it was also incumbent and obligatory

for the punishing authority to have weighed the article of charge against the petitioner and which stood duly proved in enquiry proceedings as opposed to the quantum of punishment imposed upon the petitioner. The punishing authority was obligated to consider as to whether the gravity of the offence/charge was such that it would necessarily entail the imposition of the major penalty of dismissal or any other major penalty. In the reply to the show cause notice, a request had also been raised that the petitioner be given voluntary retirement from service w.e.f. 01.06.1998 i.e. the date he had proceeded on Ex-India leave. Concededly, under the statutory rules, compulsory retirement is one of the major penalties. Such aspect has also been completely overlooked by the punishing authority while passing the impugned order of dismissal.

Learned State counsel would seek to justify State action by adverting to the averments made in Para-3 of the written statement and would submit that the petitioner had already availed Ex-India leave twice that is w.e.f.18.09.1995 to 11.09.1996 and secondly for the period 27.02.1997 to 21.01.1998. It is contended that for the afore noticed two periods, leave had been duly sanctioned and as such it was not open for the petitioner to contend that his leave for the period 01.06.1998 to 31.05.1999, had been endorsed by DIG/C.I. and that he was not aware that such official was not the competent authority to sanction leave.

Submissions advanced by learned State counsel are on the strength of averments contained in the written statement. The order of dismissal as also the order declining the statutory appeal have to be tested in the light of the reasoning furnished in these very orders. Such orders cannot be fortified thereafter in the light of certain justification and reasoning being offered in a written statement to a writ petition, wherein, the validity of such orders has been put to question.

In my considered view, a case for remand and reconsideration at the hands of the punishing authority and even as regards the quantum of punishment is made out.

For the reasons recorded above, the impugned orders dated 04.03.2004, 14.02.2011 & 23.05.2011 at Annexures P-14, P-17 & P-19 respectively, are set aside.

The matter is remanded back to the Director General of Police to pass orders afresh after taking into consideration the grounds and contentions raised in the reply furnished by the petitioner dated 26.12.2003 (Annexure P-13) by way of response to the show cause notice that have been served upon him. Let such exercise of reconsideration and passing of orders afresh, be completed within a period of three months from the date of receipt of certified copy of this order.

It is however made clear that by virtue of setting aside of impugned orders, the petitioner would not automatically be vested

with the right for any consequential relief and the same would be subject to the fresh orders that will be passed by the Director General of Police and as has been directed.

Petition is allowed in the aforesaid terms.

**(TEJINDER SINGH DHINDSA)**  
**JUDGE**

24.07.2017  
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**Whether speaking/reasoned :**      **Yes/No**  
**Whether reportable**                      **:**      **Yes/No**