

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

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**CWP No. 11723 of 2016 (O&M)
Date of decision: 28.03.2017**

Dayanand

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.K.Verma, Advocate for the petitioner.

Mr.Karan Sharma, AAG, Haryana.

Mr.Girish Agnihotri, Sr. Advocate with
Mr. Saurabh Gulia, Advocate for the respondents.**P.B. Bajanthri, J. (Oral)**

In the present writ petition, petitioner has questioned the validity of the order passed in the disciplinary proceedings dated 31.10.1994 and 22.05.2006 (Annexure P3 and P7). The petitioner while working as a Warder remained absent from 06/07.07.1994 to 13.07.1994 without permission of the higher authority. In this regard, the petitioner was subjected to disciplinary proceeding. The proceeding was concluded in imposing the penalty of stoppage of one increment with cumulative effect under Sub Clause 15(1) of Punjab Civil Services, Official Staff Rules (Punishment and Appeal) Rules, 1993.

2. Feeling aggrieved by the order of disciplinary authority dated 02.11.1994 petitioner has preferred an appeal before the appellate authority

on 23.03.1997. The appellate authority rejected the petitioner's appeal on the ground that petitioner's appeal is not within the time limit and it is time barred and so also it is meritless.

3. Learned counsel for the petitioner submitted that disciplinary authority as well as appellate authority have not appreciated the reasons for remaining absent and the penalty of stoppage of one increment with cumulative effect is a major penalty. Having regard to the conduct of the petitioner the disciplinary and appellate authority should have reconsidered the penalty as it is disproportionate to the allegations. It was further submitted that the extraneous matters have been taken into consideration by the disciplinary as well as appellate authority while imposing the penalty which is not part and parcel of the charge-sheet. Therefore, both the orders of disciplinary and appellate authority are liable to be set aside.

4. Per contra, learned counsel for the respondents submitted that there is inordinate delay in filing appeal by the petitioner that the order of punishment was imposed on 02.11.1994 whereas the appeal was presented on 23.03.1997. Therefore, rightly, the appellate authority has rejected the petitioner's appeal. Hence no interference is called for. Even on merits it was submitted that there is no proper explanation by the petitioner for remaining unauthorized absent and that too it is without permission. Hence petition is liable to be dismissed.

5. Heard learned counsel for the parties.

6. Undisputedly, the petitioner remained absent from 06/07.07.1994 to 13.07.1994. He being an employee of the Central Jail, which is one of the disciplined force he should have sent a leave application through family members or friend. On the other hand he remained absent.

This shows that there is negligence on the part of the petitioner. However, remaining unauthorized absent for about a week, penalty of stoppage of one increment with cumulative effect is a major penalty and it would be very harsh. Moreover, the disciplinary authority has taken extraneous material so also appellate authority as is evident from the order. Extract of the order of the appellate authority reads as under:-

“Warder Dayanand was on duty at Beat No.6 in the Central Jail, Hissar on the night of 06.07.1994 from 2 am to 6 pm. This Warder remained absent from duty upto 13.07.1994, due to this reason the Superintendent Headquarter, jail, Ambala issued a Charge-sheet vide letter No. 1574, dated 22.08.1994. After receipt of the reply from the employee the comments were called from the Superintendent Central Jail, Hissar, according to which, the official was earlier also punished for remaining absent from duty.”

7. Since the respondents have taken extraneous material while imposing penalty of stoppage of one increment with cumulative effect which is impermissible. Having regard to the perusal of the charge-sheet, the past records/events are not part and parcel of charge-sheet. Therefore, appellate authority's order is set aside. On the ground of delay is concerned, there is delay on the part of the petitioner as well as the respondents. Petitioner has taken 2 years and few months for filing appeal whereas the appellate authority has taken 10 long years to decide the appeal. Therefore, appellate authority's order dated 22.05.2006 is set aside. Matter is remanded to the appellate authority to take a fresh decision only with reference to charge levelled against the petitioner and charge proved in an inquiry. In other words extraneous material cannot be taken into consideration. In this regard, the petitioner is permitted to file necessary application for

condonation of delay from 1994 to 1997 within a period of 6 weeks from today. If such application is made the appellate authority is directed to consider it sympathically so also on merit that the allegation of unauthorized absence is for a period of about one week and imposed penalty is major one that it has cumulative effect. The above exercise shall be completed by the appellate authority within a period of 6 months from today.

28.03.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons	Yes/No
Whether Reportable:	Yes/No