

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

**CWP-2027-2016 (O&M)
Date of decision:06.11.2017**

Charanjit @ Charanjit Singh

... Petitioner

Vs.

State of Punjab & others

... Respondents

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

Present: Mr. Manish Dadwal, Advocate for the petitioner.

Mr. TPS Chawla, DAG, Punjab.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Challenge in the instant petition is to the order dated 22.11.2006 (Annexure P-1) passed by the Commandant 13th Battalion, PAP, Chandigarh and whereby the major punishment of dismissal from service was imposed upon the petitioner, who was serving as a Head Constable. Further challenge is to the orders appended and placed on record at Annexures P-5, P-6, P-7, P-9 and P-11, whereby the Appellate and Revisional Authorities have affirmed the action of dismissal and even a mercy petition preferred by the petitioner has been declined by the State Government.

Counsel submits that the petitioner was appointed as Constable in PAP on 17.01.1989 and thereafter in the light of his good service record was promoted to the post of Head Constable. In the month of May, 2006, petitioner was posted at MLA Hostel, Punjab, Chandigarh, where he suffered a mental disorder and as such, was unable to attend his duties.

While the petitioner was undergoing mental depression, departmental proceedings were initiated against him. On account of his medical ailment, petitioner could not join inquiry proceedings and ultimately, on the basis of an ex parte inquiry, the charges of being absent from duty were duly proved and which in turn have led to the passing of the impugned order of dismissal dated 22.11.2006 (Annexure P-1).

Counsel would argue that the petitioner was having 17 years of service to his credit and for which due weightage has not been given while taking a decision to dismiss him from service. Further submitted that the impugned orders cannot sustain as they suffer from a non-application of mind as the health ailment that the petitioner was suffering from was also not kept in mind. It has also been urged that the major penalty of dismissal is not commensurate to the charge of being absent from duty and as such, even a lesser punishment could have been imposed. Counsel has vehemently argued that not only the Punishing Authority but even the Revisional Authority have not given due credit to the petitioner as regards his unblemished service record as also length of service.

Per contra, learned State counsel would submit that the petitioner remained absent from duty for a period of 197 days without leave or permission of the competent authority. The reasons of absence were never furnished to the employer and such absence being wilful has been duly proved during the course of departmental inquiry in which every effort was made to associate the petitioner. State counsel further submits that during his entire span of service, the petitioner has remained absent for a total period of 325 days on 18 different occasions and as such, he is a habitual absentee. It

is contended that the petitioner was the member of the police force and from whom a very high standard of discipline is expected and keeping in view the track record of the petitioner, he has been rightfully dismissed from service and it is a case where no interference is warranted.

Counsel for the parties have been heard at length and the case paper book has been perused.

Rule 16.2 of the Punjab Police Rules, 1934 mandates that dismissal shall be awarded only for the gravest act of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

What would constitute a gravest act of misconduct or continued misconduct proving complete unfitness for police service cannot be precisely defined and would depend on the facts and circumstances of each case.

In the facts of the present case, petitioner while serving as Head Constable and having been deputed to perform security duty and posted at MLA Hostel, Chandigarh remained continuously absent from duty since 10.05.2006. In spite of a number of notices having been issued to him to resume duty, he did not come present. Ultimately, on 13.07.2006, Harmohan Singh, DSP was appointed as Inquiry Officer. Perusal of the impugned order dated 22.11.2006 at Annexure P-1 would show that repeated notices were duly served upon the petitioner and in spite thereof, he chose not to appear before the Inquiry Officer. A notice was even sent through special messenger and which was received by the petitioner personally and in spite thereof, he did not associate with the Inquiry proceedings. Inquiry report was

furnished holding the petitioner to be wilfully absent from duty over a period of almost 200 days. The competent authority having agreed with the findings of the Inquiry Officer issued a show cause notice dated 10.11.2006 contemplating the imposition of the major punishment of dismissal. In spite of the show cause notice having been received by the petitioner, he chose not to respond to the same. It has also been recited in the impugned order that the petitioner at no stage produced any medical certificate in support of his illness and to justify his prolonged absence from duty. It is against such factual backdrop that the dismissal order dated 22.11.2006 (Annexure P-1) was passed and the absence period from 10.05.2006 to 02.11.2006 was directed to be treated as absence period without pay.

In **B.C. Chaturvedi Vs. Union of India, 1996 (1) SCT 617**, the Apex Court authoritatively laid down that Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review would be exercised to ensure that the delinquent receives fair treatment but not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court.

The impugned order of dismissal in the present case has been passed after conducting a regular departmental inquiry. Counsel has not been able to point out any procedural illegality or infirmity in such proceedings. The service of a number of notices upon the petitioner calling upon him to resume duties in the first instance and thereafter, to participate in the departmental inquiry proceedings is admitted. The stand taken on behalf of the State that the petitioner had not furnished any medical record/certificate with regard to his illness has also gone uncontroverted. The findings

recorded by the Inquiry Officer are with regard to the petitioner having remained wilfully absent over a period of 197 days. That apart, in the written statement, a specific stand has been taken that the petitioner during his service remained absent for a total period of 325 days on 18 different occasions and the details thereof have also been furnished. It would be useful to extract and reproduce the same herein:

“Absence period w.e.f. 13.04.1990 to 15.04.1990 for 3 days treated as Leave of kind due vide order Book No.99/1990.

Absence period w.e.f. 04.04.1996 to 05.04.1996 for 01 day treated as casual leave vide order Book No.262/1996.

Absence period w.e.f. 25.08.1996 to 26.08.1996, 01.09.1996 to 03.09.1996, 10.09.1996 to 25.09.1996 and 02.10.1996 to 03.12.1996 total 78 days treated as Leave of Kind due vide order dated 25.03.1998.

Absence period w.e.f. 26.09.2001 for 01 day treated as casual leave vide order Book No.665/2001.

Absence period w.e.f. 09.12.2003 to 24.12.2003 for 15 days treated as Non duty-without pay vide order Book No.593/2004.

Absence period w.e.f. 17.02.2004 to 26.02.2004 for 09 days treated as Non duty-without pay vide order Book No.593/2004.

Absence period w.e.f. 01.03.2004 to 02.03.2004 for 2 days treated as Non duty-without pay vide order Book No.593/2004.

Absence period w.e.f. 25.05.2004 to 02.07.2004 for 38 days treated as Non duty-without pay vide order Book No.525/2004.

Absence period w.e.f. 05.07.2004 to 13.07.2004 for 08 days treated as Non duty-without pay vide order Book No.525/2004.

Absence period w.e.f. 16.08.2004 to 23.08.2004 for 08 days treated as Non duty-without pay vide order Book No.652/2004.

Absence period w.e.f. 05.08.2005 to 08.08.2005 for 04 days treated as leave of kind due vide order Book No.49/2006.

Absence period w.e.f. 04.12.2005 to 12.12.2005 for 09 days treated as Non duty-without pay vide order dated 23.02.2006.

Absence period w.e.f. 12.01.2006 to 06.03.2006 for 53 days treated as Leave of kind due vide order dated 26.06.2006.

Absence period w.e.f. 13.04.2006 to 20.04.2006 for 07 days treated as leave of kind due vide order dated 09.08.2006.

Absence period w.e.f. 10.05.2006 to 22.11.2006 (i.e. date of his dismissal) for 197 days treated as Non duty-without pay vide order dated 22.11.2006.”

The details referred to hereinabove as regards the absence period has not met with any rebuttal at the hands of the petitioner.

This Court finds that even though, the order of dismissal dated 22.11.2006 (Annexure P-1) is not very happily worded inasmuch as the Punishing Authority has not employed the expression of the petitioner being guilty of continued misconduct and thereby being unfit for police service yet there would be no escape from the factual premise that the petitioner has been found guilty of having remained wilfully absent over a period of 197 days in a regular departmental inquiry. A previous absence period of a total 325 days on 18 different occasions also stands conceded.

In the considered view of this Court wilful absence from duty over a prolonged period of time and that too, by a member of a disciplined force is a misconduct. In the present case, it is not one stray incident of absence from duty. The facts would demonstrate that the petitioner is a habitual absentee. Mere non-mentioning of the expression as regards the petitioner being guilty of continued misconduct and as such, being unfit for police service would not vitiate an order of dismissal.

Mr. Manish Dadwal, learned counsel representing the petitioner has been candid enough to concede not only the absence from duty over a period of 197 days but even with regard to the previous instances of absence

from duty totaling to 325 days and on 18 separate occasions. On a specific query having been put, it was also admitted by counsel that at no stage did the petitioner furnish any medical record with regard to the medical ailment so as to justify the period of absence. The action of the State in having imposed upon the petitioner the major penalty of dismissal, as such, is well founded.

Even as regards quantum of punishment, the principles governing interference in the same are well settled. It has been held in a catena of judgments rendered by the Apex Court that the High Court while exercising powers of judicial review cannot substitute its own opinion of penalty and impose some other penalty. It is only if the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, then it would be appropriate to mould the relief either by directing the Disciplinary/Appellate Authority to reconsider the punishment imposed or to shorten the litigation and in exceptional and rare cases, to pass an order imposing appropriate punishment in the light of cogent reasons being assigned.

Petitioner herein was a member of disciplined a force. In pursuance to a regular departmental inquiry conducted and after following due procedure and in consonance with the rules of the natural justice he has been held guilty of wilful absence from duty over a prolonged length of time. On a number of previous occasions, the petitioner has also remained absent. This Court would have no hesitation in holding the petitioner to be a habitual absentee.

Under such circumstances, there would be no scope for

interference and to take a different view even as regards quantum of punishment imposed by the Punishing Authority and affirmed by the Appellate and Revisional Authorities.

For the reasons recorded above, the writ petition is dismissed.

06.11.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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|--------------------------------|-----|
| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | Yes |