

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

RSA No. 5235 of 2015 (O&M)
Date of decision : September 19, 2017

Sunil Kumar

..... Appellant

v.

Collector Ambala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Ram Chander, Advocate
for the appellant.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant.

Brief facts are that the appellant was recruited as a Constable on 31.7.2004 and was sent for training to the Recruit Training College Bhundsi. He was absent on various dates from 28.1.2006 to 2.2.2006. Since he had also been absent without leave on various other occasions totalling 23 days, a notice dated 12.6.2006 was issued asking him to show cause why his absence period be not treated as leave period without pay. The appellant submitted a reply and also submitted a medical certificate issued by the Civil Hospital Gurgaon regarding his illness. Before proceeding further in the matter, the said medical certificate was referred to the civil hospital Gurgaon and the Medical Superintendent reported by Ex.D20 that the said certificate was forged. It was in those circumstances

that the respondents determined that the appellant was unlikely to prove a good police officer and consequently discharged him under Rule 12.21 of the Punjab Police Rules (Volume II). Rule 12.21 is quoted here in below :

“ 12.21-Discharge of inefficient: A Constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrollment. There shall be no appeal against an order of discharge under this Rule.”

Counsel for the appellant has argued that once action was proposed to be taken against the appellant on a stigmatic charge, an inquiry had to be held. As per him, had the appellant been given an opportunity he would have been able to show that the medical record was in fact correct. The Courts below have noticed that even during this case, the appellant led no evidence to show that the report of the civil hospital Gurgaon was in fact wrong.

I have gone through the plaint and the replication. It is nowhere pleaded that the report of the civil hospital was wrong despite the fact that this plea was specifically taken in the written statement. In the circumstances, I reject this argument.

Counsel for the appellant has further argued that there was a similarly situated Constable Sushil Kumar who was also absent without leave and to whom a notice similar to that issued to the appellant was issued. That Constable also relied upon the forged record but in his case the respondents took a lenient view and merely withheld two increments with cumulative effect. As per the learned counsel, the respondents are not justified in discriminating between the appellant and the said Sushil Kumar.

In my opinion, this argument is also mis-placed. If a particular punishing authority takes a lenient view in one case, it is not discrimination

if another punishing authority takes a little harsh view in the identical case.

Learned counsel has further argued that in the circumstances of the case the finding on limitation has to be set aside.

In my opinion, the question on limitation would assume importance in case the appellant is able to otherwise prove his case on merits. Resultantly, finding no merit in this appeal, the same is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

September 19, 2017
'kk'

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No

