

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-457-1992 (O&M)

Date of Decision:-01.05.2018.

The Punjab State through the Secretary to the Govt. of Punjab Home Department, Chandigarh and others

.....Appellants

Versus

Gulzar Singh, Constable

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Bhupender Beniwal, AAG, Punjab.

Mr. H.C. Arora, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, appellants have challenged Trial as well as Appellate Court judgments dated 8.6.1987 and 27.09.1991, respectively.

2.) The respondent while working as Constable, he was subjected to disciplinary proceedings for remaining overstay for about 4 days. Further he proceeded to leave for 30 days and, thereafter, failed to re-join for duty. Disciplinary proceedings was concluded in passing the order of penalty of forfeiture of 5 years of service on 07.2.1983 and it was affirmed by the Appellate Authority on 1.11.1984 (wrongly mentioned as 1.11.1983 in the Trial/Appellate Court judgment). Respondent aggrieved by the order of the Appellate Authority filed a suit. Suit was decreed. Thereafter, appellants preferred appeal before the Appellate Court, wherein they have suffered

order. Hence, the present appeal.

3.) Learned counsel for the State vehemently contended that respondent being serving in disciplined force, he has remained absent without permission of the higher authorities so also he has not submitted his leave application after expiry of leave period. Having regard to the conduct of the respondent, he is not entitled to any service benefits. Thus, rightly, disciplinary as well as Appellate Authority have imposed the penalty and it was affirmed by the next higher authority. The Trial as well as Appellate Court have not appreciated relating to conduct of the respondent. He being in disciplined force, he should be regular to the duties and so also remaining unauthorized absent without their being any leave application and sanction of leave after expiry of the leave period. To that extent, disciplinary authority has examined respondent's plea in detail. It was also contended that respondent remained *ex parte* before the inquiry proceedings. In view of these facts and circumstances, Trial as well as Appellate Court orders are liable to be set aside.

4.) *Per contra* learned counsel for the respondent while resisting the appellants' contention submitted that both the disciplinary as well as Appellate Authority have not appreciated the medical certificate furnished by the respondent. They are proceeded to hold the charges levelled against the respondent that he remained absent. The reason behind respondent's absence has not been taken into consideration. On the other hand, medical certificate which was produced by the respondent has been discarded without examining its contents or if the disciplinary and Appellate Authority were of the view that medical certificate is not a genuine one, in

genuineness of respondent's illness. Therefore, there is no infirmity in the decree.

5.) Heard the learned counsel for the parties.

6.) Perused the disciplinary authority's order. No doubt it is a very detailed order passed after due consideration of the respondent's plea, at the same time, disciplinary authority has not apprised the medical certificate produced by the respondent as is evident from the disciplinary authority's order. He merely disbelieved the medical certificate. If he is doubting the medical certificate and illness of the respondent, in that event disciplinary authority could have subjected the respondent for medical examination before the Medical Board. Similarly, the Appellate Authority has stated that mere submission of the telegram or the medical certificate in support of any illness could in no way disprove the allegations against the respondent. That apart, respondent remained *ex parte* in the inquiry proceedings. Perusal of Appellate Authority's order dated 1.11.1984, it is evident that it is not in accordance with Rule 19 of the Punishment and Appeal Rules, 1970 (for short "the 1970 Rules"). Rule 19 (2) (b) of the 1970 Rules relates to whether the findings of the punishing authority are warranted by the evidence on record. This issue has not been taken into consideration by the Appellate Authority with reference to the medical certificate furnished by the respondent. Therefore, Appellate Authority's order dated 1.11.1984 is not in accordance with Rule 19 of the 1970 Rules. Hence, decree is modified to the extent that Appellate Authority's order dated 1.11.1984 is set aside and the matter is remanded to Appellate Authority – Additional Deputy Inspector General of Police, Jalandhar Range, Jalandhar Cantt. If

directed to identify the Appellate Authority insofar as Constable is concerned and such authority is hereby directed to proceed to pass a speaking order in terms of Rule 19 of the 1970 Rules while considering respondent's medical certificate and after giving an opportunity to the respondent within a period of 3 months from the date of receipt of certified copy of this order.

7.) With the above observations, appeal stands disposed of.

(P.B. BAJANTHRI)
JUDGE

May 01, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.