

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

482

**RSA-1002-1997 (O&M)
Date of decision:17.04.2018**

State of Punjab

... Appellant

Versus

Ex. Constable Sukhwinder Singh

.... Respondent

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

Present: Mr. RBS Chahal, Advocate for the appellant.

Mr. Madan Lal Saini, Advcoate for the respondent.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellant has questioned the validity of the trial and appellate courts judgments dated 12.10.1994 and 03.10.1996 respectively.

2. Constable Sukhwinder Singh-deceased while working as Security Guard of DSP Dera Baba Nanak at Guard Rest House Dera Baba Nanak he remained absent for a period of 51 days for which he was subjected to disciplinary proceeding and in the disciplinary proceedings respondent-deceased constable admitted the absence on the score that he was suffering from mental illness. The disciplinary authority after considering the inquiry proceeding proceeded to impose the penalty of dismissal from service. At the

same time absence period was treated as without pay. Feeling aggrieved by the order of dismissal deceased-Constable filed a suit questioning the validity of the order of dismissal dated 12.01.1990. Suit was decreed. Consequently, appellants have preferred an appeal against decree and suffered an order before the appellate court on 03.10.1996. Hence the present appeal.

3. Learned counsel for the appellant submitted that decree was passed in favour of the deceased-Constable only on the score that disciplinary authority has held that absence period is without pay. In other words, regulated the absence period. Consequently imposition of penalty of dismissal from service would be wrong. Such finding given by the trial court would be contrary to Supreme Court decision reported in ***Maan Singh versus UOI*** reported in (2003) 2 SCT 84 to the extent that even if the absence period is regularized as without pay still disciplinary authority is empowered to impose the penalty.

4. Per contra, learned counsel for the respondent submitted that no doubt suit was decreed with reference to regulating the absence period as without pay. At the same time, on the inquiring officer report, deceased constable had submitted a detailed reply with reference to show cause notice dated 12.12.1989 on 15.12.1989. The contention/plea raised by the respondent- deceased constable has not been apprised by the disciplinary authority while passing order of dismissal. What has been stated is "I perused and considered thoroughly reply submitted by Constable Sukhwinder Singh No. 36/397 but found unsatisfactory. So I dismiss

Constable-Sukhwinder Singh No. 36/397". Thus, order of disciplinary authority is non-speaking order. On this count, appellants have not made out a case. Even though trial court has not apprised whether order of dismissal dated 12.01.1990 is a speaking order or not? It was submitted that issuing show cause notice along with the inquiring officer's report and obtaining explanation on the inquiring officer report cannot be empty formality. On this ground order of disciplinary authority dated 12.01.1990 is liable to be set aside.

5. Heard the learned counsel for the parties.

6. Respondent was subjected to disciplinary proceedings for remaining unauthorized absent for a period 51 days and he had been dismissed from service. In the order of dismissal, disciplinary authority has regulated the absence period as without pay. Said issue was taken into consideration by the trial court and held that once the absence period has been regulated, question of imposing penalty do not arise. Such a view has been defeated by the Supreme Court in *Maan Singh's* case cited (supra). No doubt trial court held that once the absence period has been regulated question of imposing penalty do not arise. In other words, regulating the absence period and punishment of dismissal from service may not be correct and contrary to Supreme Court decision. At the same time one cannot loose sight of decision of the disciplinary authority dated 12.01.1990 which reads as under:-

"The Departmental Enquiry was opened against Constable Sukhwinder Singh No. 36/397 at the instance that while on 10.02.1989 he was posted security Guard

of DSP Dera Baba Nanak at Guard Rest House Dera Baba Nanak. He was marked absent without leave or permission by the Incharge Guard Head Constable Hira Lal No. 507 w.e.f. 10.02.1989 vide DDR No. 10 dated 13.02.1989 at 11.00 am in Roznamcha Dera Baba Nanak. He reported back at Roznamcha Dera Baba Nanak on 01.04.1989 vide DDR No. 27 at 06.05 PM after remaining absent for 50 days, 18 hours and 15 minutes. To remain absent for 50 days 18 hours and 15 minutes is a serious misconduct on the part of Constable Sukhwinder Singh No. 36/397 being a member of disciplined police force.

Due to above serious misconduct Sh. Amrik Singh Inspector of 36th Battalion PAP Bahadurgarh Patiala was ordered to conduct the departmental enquiry against Constable Sukhwinder Singh no. 36/397. The Enquiry Officer conducted the departmental enquiry against the Constable Sukhwinder Singh no. 36/397 as per rules and submitted his finding vide which Constable Sukhwinder Singh no. 36/397 was held guilty of the charges levelled against him.

The Enquiry Officer sent the enquiry file alongwith finding report to the office and same was submitted before me for appropriate order. I perused and considered thoroughly the enquiry file alongwith its findings report and Statements of prosecution witnesses and defence witnesses. Agreed with finding of enquiry officer a show-cause notice bearing no. 17931/St, dated 30.11.1989 along with copy of finding report proposing the punishment of dismissal from service and absence period treated as without pay was issued to Constable Sukhwinder Singh no. 36/397, which was delivered to

him on 12.12.1989 and vide which he was given 10 days time for reply. He submitted his reply to the show cause notice on 22.12.1989 before me. I perused and considered thoroughly reply submitted by Constable Sukhwinder Singh No. 36/397, but found unsatisfactory. So, I dismiss Constable Sukhwinder Singh No. 36/397 from service of Police Department w.e.f. 12.01.1990 and absence period is being treated without pay. Order be recorded in order book register and a copy of order is being delivered to Constable Sukhwinder Singh no. 36/397 free of cost.”

Perusal of the disciplinary authority's order read with deceased-Constable's reply on the inquiring officer's report dated 15.12.1989, he had taken number of contentions like he was not allowed to cross-examine three prosecution witnesses. There is non-consideration of Rule 8.13 (a) of the Civil Services Rules Volume I Para I etc. Aforesaid issues have not been dealt by the disciplinary authority in its order as is evident from the disciplinary authority's order dated 12.01.1990. Faced with these factual aspects read with fact that respondent-Constable died on 19.02.1995 question of remanding the matter to the disciplinary authority at this stage, may not be correct. So also disciplinary authority cannot pass any order against a dead person. Therefore, in order to give quietus to the litigation the deceased-Constable is treated to have been retired compulsorily w.e.f. 18.02.1995 one day prior to his death so as to enable legal heirs of the deceased-Constable to get benefit of pension. To that extent order of the trial court is modified. The appellants are hereby directed to extend all retiral benefits and pension as if the deceased-Constable was in service up

to 18.02.1995. Concerned respondent is hereby directed to calculate and disburse retiral benefits from 20.02.1995 till date. However, it is made clear that legal heirs are not entitled to any monetary benefits during the period from 12.01.1990 the date of dismissal till 19.02.1995 the date on which Constable-Sh.Sukhwinder Singh died. The above exercise shall be completed by the concerned authority within a period of 4 months from today.

8. With this observation, RSA stands disposed of.

17.04.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes

Whether Reportable:

No