

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

CWP No.12551 of 2014 (O&M)

Date of decision: 22.02.2018

Nahar Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Malik, Sr. Advocate with
Mr. Ramandeep Singh, Advocate for the petitioner(s).

Ms. Sudeepti Sharma, Addl. A.G., Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks issuance of a writ in the nature of certiorari to quash the order dated 15.10.2010 (Annexure P-9) vide which the petitioner has been dismissed from service and further to quash orders dated 08.07.2011/16.07.2011 and 22.01.2014/30.01.2014/07.02.2014 (Annexure P-14 and P-16) whereby the statutory appeal and mercy petition filed by the petitioner was dismissed.

Learned counsel for the petitioner contends that the petitioner joined as Constable on 14.06.1994. The petitioner proceeded on seven days leave and was to join back on 14.09.2001. During the leave period, it is asserted that he was suffering from schizophrenia and due to that reason, he could not join duty on 14.09.2001. The petitioner was suspended w.e.f. 14.09.2001 (Annexure P-1). Learned counsel refers to

Annexure P-6, the medical certificate dated 23.09.2010 to contend that the petitioner was suffering from schizophrenia and he remained under treatment of Dr. Ramesh Batra, MBBS, whereby it has been certified that the petitioner is under treatment with the doctor w.e.f. 29.09.2001 till date. After declaring fit by the concerned doctor w.e.f. 18.12.2010 (Annexure P-10), the petitioner represented to the concerned authorities, vide (Annexure P-11) however, he was not allowed to join and he was dismissed from service on 15.10.2010 (Annexure P-9) on account of absence for the period from 14.09.2001 to 09.04.2003. Learned counsel refers to judgment dated 30.07.2004 passed by this Court in CWP-1825-1990 titled as **Randhir Singh Vs. Deputy Inspector General of Police and another**, whereby this Court had observed that absence from duty during the suspension period cannot be equated with the absence from duty during active duty period and the dismissal order was converted into compulsorily retirement, therefore, he states that the case of the petitioner is at par with the petitioner in CWP-1825-1990. Learned counsel further states that even during the suspension period, the petitioner has not been paid any subsistence allowance.

On the other hand, learned State counsel submits that the petitioner was suspended on account of his absence on 14.09.2001. Thereafter, he did not join duty till the date of termination on 15.10.2010. The petitioner remained willfully absent for a long period of about 9 years. The service record of the petitioner was not satisfactory and the punishment of dismissal from service was imposed upon the petitioner

during the enquiry. She refers to Rule 16.21(2) of the Punjab Police Rules, 1934 to contend that the petitioner is not entitled for subsistence allowance as he never attended the office during the suspension period.

Heard, learned counsel for the parties and perused the record carefully.

The petitioner, who was a Constable in Punjab Police, after proceeding on seven days leave did not join back his duty and he was marked absent from duty, vide DDR No.15 dated 14.09.2001. No permission or intimation was sent to the competent authority by the petitioner for his absence. Thereafter, a departmental enquiry was held and the petitioner was charge-sheeted, however, no reply was filed by the petitioner to the charge-sheet and ultimately, the petitioner was held guilty by the enquiry officer. The enquiry report was submitted to the competent authority and a show cause notice with proposed punishment of dismissal was prepared and sent to the petitioner, however, the petitioner did not submit any reply to the same. It has come on record that during the pendency of departmental enquiry, the petitioner reported back on duty in Police Station Sahnewal, Ludhiana, vide DDR No.8 dated 02.04.2003 (Annexure P-2) and he was sent to Police Lines, Ludhiana and thereafter, he remained absent from duty from Police Lines, Ludhiana from 10.04.2003 till his dismissal on 15.10.2010. The long absence from duty without any explanation by the petitioner who was member of a disciplined force is a grave misconduct and thus, no fault can be found in the order of dismissal by the competent authority. As regard to the prayer

of subsistence allowance is concerned, this Court feels that the petitioner does not deserve the said allowance. Rule 16.21 of the Punjab Police Rules, 1934, Vol-II reads as under:-

16.21 Status and treatment of officers under suspension. -

(1) A police officer shall not by reason of being suspended from office cease to be a police officer. During the term of such suspension the powers, functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

(2) A police officer under suspension shall be transferred to the lines, if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Superintendent may direct; provided that he shall not perform guard duty or any other duty entailing the exercise of the powers or functions of a police officer; shall not be placed on any duty involving the exercise of responsibility, and shall not be issued with ammunition. A police officer under suspension shall ordinarily be confined to lines when off duty, but shall be allowed reasonable facilities for the preparation of his defence. When transferred to the lines under this rule Lower Subordinates shall deposit their belts and Upper Subordinates their revolvers, belts and swords with the Lines Officer.

(3) Mounted police officers placed under suspension shall cease to draw horse, pony or camel allowance, as the case may be, and hand over their mounts to the Lines Officer who shall be responsible for the feeding and keeping of such animals under the supervision of a gazetted officer. The actual expenditure incurred on this account shall be debited to contingencies under the head "Feeding and keeping of animals of mounted police officers under suspension".

As per the above mentioned Rule, the petitioner was required

to continue to attend the office during the suspension period, however, he remained absent during that period. There is no credible medical evidence to support the assertion of learned counsel for the petitioner that the petitioner was ill and thus, did not join duty. Accordingly, finding no merit in the instant petition, the same is hereby dismissed.

22.02.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No