

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

CWP No.14506 of 2014 (O&M)

Date of decision: 28.08.2018

Kashmiri Lal

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Ms. Poonam Josan, Advocate for the petitioner(s).

Ms. Harsimrat Rai, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By way of the present petition, the petitioner seeks quashing of order of dismissal No.20401-10/Steno dated 17.06.2010 (Annexure P-4) and order dated 09.09.2011 (Annexure P-5) passed by respondent No.2.

It is asserted that that the petitioner joined as Constable on 03.03.1984 and in due course, was promoted as Assistant Sub Inspector in the year 2001. Vide order dated 23.10.2009, the petitioner was transferred from Bahadurgarh, District Patiala to District Muktsar where he could not report for the duty as he met with an accident. The information in this regard was telephonically communicated to the department. The petitioner reported to department on 09.12.2009 after 47 days. It is further submitted that during the period of absence, the petitioner had been taking treatment from a local *vaid* and had furnished

treatment certificate (Annexure P-2), however, the department did not accept the same and the petitioner was treated absent during leave period; the departmental enquiry was initiated against the petitioner and after finalization of the same, the petitioner was dismissed from service. It is asserted that the absence of the petitioner was neither wilful nor intentional but was on account of injuries sustained by him in the accident. The prayer made by the petitioner to retire him prematurely was also not considered. Hence the present writ petition.

On the other hand, learned State counsel submits that the petitioner is a habitual absentee. During his service, he willfully absented on different occasions for total 1034 days, therefore, he was rightly dismissed from service.

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

The following punishments were awarded to the petitioner:-

1. Absence period w.e.f. 22.07.1993 to 30.07.1993 for 9 days treated as non duty-without pay and awarded punishment of censure.
2. Absence period w.e.f. 20.09.1993 to 08.10.1993 for 18 days treated as non duty-without pay and awarded punishment of censure.
3. Absence period w.e.f. 06.07.1995 to 10.07.1995 for 4 days treated as non duty-without pay.
4. Absence period w.e.f. 31.07.1995 to 09.08.1995 for 9 days treated as non duty-without pay.

5. Absence period w.e.f. 30.09.1995 to 11.10.1995 for 11 days treated as non duty-without pay.
6. Absence period w.e.f. 06.11.1995 to 07.11.1995 for 01 day treated as non duty-without pay.
7. Absence period w.e.f. 22.11.1995 to 13.12.1995 for 05 days treated as non duty-without pay and awarded punishment of censure.
8. Absence period w.e.f. 02.12.1995 to 13.12.1995 for 11 days treated as non duty-without pay and awarded punishment of censure.
9. Absence period w.e.f. 20.03.1997 to 27.03.1997 for 07 days treated as non duty-without pay.
10. Absence period w.e.f. 03.08.1997 to 09.08.1997 and from 01.10.1997 to 08.10.1997 for 13 days treated as non duty-without pay.
11. Absence period w.e.f. 01.02.1998 to 12.02.1998 for 11 days treated as non duty-without pay.
12. Absence period w.e.f. 07.03.1998 to 09.03.1998 for 02 days treated as non duty-without pay.
13. Absence period w.e.f. 25.05.1998 to 30.05.1998 for 06 days treated as non duty-without pay.
14. Absence period w.e.f. 01.11.1998 to 06.11.1998 for 05 days treated as non duty-without pay.
15. Absence period w.e.f. 01.08.1998 to 10.08.1998 for 09 days treated as non duty-without pay.
16. Absence period w.e.f. 27.01.2000 to 14.02.2000 for 18 days treated as non duty-without pay.

17. Absence period w.e.f. 03.06.1999 to 04.06.1999 for 01 day treated as non duty-without pay.
18. Absence period w.e.f. 21.06.2000 to 25.06.2000 for 04 days treated as non duty-without pay.
19. Absence period w.e.f. 19.09.2000 to 17.10.2000 for 28 days treated as non duty-without pay.
20. Absence period w.e.f. 14.02.2000 to 24.02.2001 for 10 days treated as non duty-without pay.
21. Absence period w.e.f. 12.03.2001 to 21.03.2001 for 09 days treated as non duty-without pay.
22. Absence period w.e.f. 10.04.2001 to 23.04.2001 for 14 days treated as non duty-without pay.
23. Absence period w.e.f. 30.10.2000 to 22.11.2000 for 22 days treated as non duty-without pay.
24. Absence period w.e.f. 24.08.2000 to 07.09.2000 for 14 days treated as non duty-without pay.
25. Absence period w.e.f. 06.02.2001 to 09.02.2001 for 03 days treated as non duty-without pay.
26. Absence period w.e.f. 03.07.2001 to 1.07.2001 for 07 days treated as non duty-without pay.
27. Absence period w.e.f. 03.06.2001 to 15.06.2001 for 12 days treated as non duty-without pay.
28. Absence period w.e.f. 21.05.2001 to 22.05.2001 for 02 days treated as non duty-without pay.

29. Absence period w.e.f. 06.08.2001 to 13.08.2001 for 07 days treated as non duty-without pay.
30. Absence period w.e.f. 03.12.2001 to 08.12.2001 for 05 days treated as non duty-without pay.
31. Absence period w.e.f. 30.08.2001 to 05.11.2001 for 67 days treated as non duty-without pay.
32. Absence period w.e.f. 01.01.2002 to 08.01.2002 for 07 days treated as non duty-without pay.
33. Absence period w.e.f. 03.03.2002 to 06.03.2002, from 22.03.2002 to 22.03.2002 and 27.03.2002 to 03.04.2002 total for 11 days treated as non duty-without pay and awarded punishment of censure.
34. Absence period w.e.f. 03.05.2002 to 31.05.2002 for 28 days treated as non duty-without pay and awarded punishment of censure.
35. Absence period w.e.f. 04.06.2002 to 19.06.2002 for 15 days treated as non duty-without pay.
36. Absence period w.e.f. 04.07.2002 to 12.07.2002 for 09 days treated as non duty-without pay.
37. Absence period w.e.f. 04.08.2002 to 28.08.2002 for 25 days treated as non duty-without pay.
38. Absence period w.e.f. 09.10.2002 to 14.10.2002 for 05 days treated as non duty-without pay.
39. Absence period w.e.f. 02.09.2002 to 03.09.2002 for 02 days treated as non duty-without pay.
40. Absence period w.e.f. 08.09.2002 to 14.09.2002 for 06 days treated as

non duty-without pay.

41.Absence period w.e.f. 15.10.2002 to 17.10.2002 for 02 days treated as non duty-without pay.

42.Absence period w.e.f. 09.11.2002 to 16.11.2002 for 08 days treated as non duty-without pay.

43.Absence period w.e.f. 13.01.2003 to 17.01.2003 for 05 days treated as non duty-without pay.

44.Absence period w.e.f. 28.01.2003 to 24.02.2003 and from 07.03.2003 to 13.05.2003 for 95 days treated as non duty-without pay and his three years approved service was forfeited permanently for increments.

45.Absence period w.e.f. 05.06.2003 to 20.06.2003 for 15 days treated as non duty-without pay.

46.Absence period w.e.f. 07.08.2003 to 08.08.2003 for 01 day treated as non duty-without pay.

47.Absence period w.e.f. 02.03.2004 to 09.03.2004 for 07 days treated as non duty-without pay.

48.Absence period w.e.f. 10.10.2003 to 25.12.2003 for 77 days treated as non duty-without pay and his two years approved service was forfeited temporarily for increments.

49.Absence period w.e.f. 22.03.2006 to 29.03.2006 for 08 days treated as non duty-without pay.

50.Absence period w.e.f. 07.12.2006 to 21.12.2006 for 15 days treated as non duty-without pay.

51.Absence period w.e.f. 28.07.2006 to 06.09.2006 for 40 days treated as

non duty-without pay and his one year approved service was forfeited temporarily for increments.

52.Absence period w.e.f. 04.06.2007 to 12.06.2007 for 09 days treated as non duty-without pay.

53.Absence period w.e.f. 07.07.2007 to 23.07.2007 for 16 days treated as non duty-without pay.

54.Absence period w.e.f. 30.07.2007 to 31.07.2007 for 01 day treated as non duty-without pay.

55.Absence period w.e.f. 30.03.2007 to 23.04.2007 for 25 days treated as non duty-without pay.

56.Absence period w.e.f. 11.09.2007 to 24.09.2007 for 14 days treated as non duty-without pay.

57.Absence period w.e.f. 25.10.2007 to 19.11.2007 for 26 days treated as non duty-without pay.

58.Absence period w.e.f. 10.03.2007 to 27.03.2008 for 18 days treated as non duty-without pay.

59.Absence period w.e.f. 05.11.2008 to 12.11.2008 for 08 days treated as non duty-without pay and awarded punishment of censure.

60.Absence period w.e.f. 06.12.2008 to 13.12.2008 for 07 days treated as non duty-without pay and awarded punishment of censure.

61.Absence period w.e.f. 12.01.2009 to 16.01.2009 for 05 days treated as non duty-without pay and awarded punishment of censure.

62.Absence period w.e.f. 24.10.2008 to 28.10.2008 for 04 days treated as non duty-without pay and his one year approved service was forfeited

temporarily for increments.

63. Absence period w.e.f. 09.04.2009 to 20.04.2009 for 11 days treated as non duty-without pay and awarded punishment of censure.

64. Absence period w.e.f. 07.08.2009 to 26.08.2009 for 19 days treated as non duty-without pay and awarded punishment of censure.

65. Absence period w.e.f. 11.05.2009 to 20.05.2009 for 09 days treated as non duty-without pay and his two years approved service was forfeited temporarily for increments.

66. Absence period w.e.f. 04.01.2010 to 22.01.2010 for 18 days treated as non duty-without pay and his one year approved service was forfeited temporarily for increments.

67. Absence period w.e.f. 04.02.2010 to 05.02.2010 and from 05.02.2010 to 23.03.2010 for total 48 days treated as non duty-without pay and his three years approved service was forfeited temporarily for increments.

68. Absence period w.e.f. 01.01.2002 to 31.12.2002 for 30 days has kept pending vide Annexure R-9.

69. Absence period w.e.f. 22.04.2010 to 13.05.2010 for 22 days has kept pending vide Annexure R-8.

As per record, the petitioner remained absent for about 1034 days on different occasions. The details in the preceding para explains petitioner's commitment to his duties. On account of his absence, the respondent authorities had awarded punishment of 'censure' for 11 times and his thirteen annual increments were forfeited. The petitioner was

directed to resume duty vide communication dated 06.11.2009 (Annexure R-10) failing which a departmental action will be taken against him, however, he failed to do so. Ultimately, a regular departmental enquiry was initiated against the petitioner for remaining wilfully absent. The petitioner was afforded full opportunity to cross examine the witnesses, however, he did not cross examine and submitted in writing that he did not want to lead defence evidence and after going through the material on record, finding prima facie guilty, the petitioner was removed from service in terms of Rule 16.2(1) of the Punjab Police Rules. The respondent authorities had already taken a lenient view against the petitioner on many occasions meaning thereby he was allowed to resume duty despite repeated absence but the petitioner did not improve his conduct. Hon'ble the Supreme Court in **State of Rajasthan and another Vs. Mohammed Ayub Naz**, 2006(1) SCT 445 observed as under:-

“9. Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principal cause of indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a Government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself has admitted that he

was absent for about 3 years. After holding so, the learned Single Judge committed a grand error that the respondent can be deemed to have retired after seeking of service of 20 years with all retrial benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent for 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service.

12. *In this context, we can usefully refer to the case of B.C. Chaturvedi v. Union of India and Ors., AIR (1996) SC 484 (3 Judges) wherein this Court held thus: "Ramaswamy, J for himself and B.P. Jeevan Reddy, J.-Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, - it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."*

13. *Therefore, we do not propose to issue a direction to the disciplinary/appellate authority to reconsider the penalty imposed. As pointed out by this Court in the above judgment and in order to appropriately mould the relief and to shorten the litigation, we ourselves impose the punishment of removal from service which was imposed by the disciplinary authority in the instant case which, in our view, is the appropriate punishment.*

19. *For the foregoing reasons, we are of the opinion that a*

Government servant who has wilfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court has no right to receive the monetary/retrial benefits during the period of question. The High Court has given all retrial benefits which shall mean a lumpsum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was wilfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent. The orders passed by the learned Single Judge in S.B. Civil Writ Petition No. 2239/1991 dated 24.08.2001 and of the order passed by the Division Bench in LPA No. 1073 of 2001 dated 13.12.2001 are set aside and the punishment imposed by the disciplinary authority is restored. However, there shall be no order as to costs. The appeal stands allowed.”

In view of the service record of the petitioner, in case a lenient view in such a matter is taken, it will certainly adversely affect the discipline required in the police force. The petitioner is a habitual absentee and lacks devotion, discipline and commitment which are hallmark of the disciplined force. Thus, there is no illegality or perversity in the impugned order of dismissal No.20401-10/Steno dated 17.06.2010 (Annexure P-4) and order dated 09.09.2011 (Annexure P-5). Finding no merit in the instant petition, the same is hereby dismissed.

28.08.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No