

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.695 of 2016 (O&M) in
CWP No.6167 of 2010
Date of decision: 22.02.2018

Yograj

..... Appellant

Versus

State of Haryana and Others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Suresh Kumar Redhu, Advocate for the appellant.
Ms. Tanisha Peshawaria, DAG, Haryana.

B.S. Walia, J.

[1] Intra-court appeal has been filed against order dated 19.02.2016 dismissing the writ petition challenging Enquiry Report dated 11.02.2017(Annexure P-1), order of dismissal dated 10.05.2007 (Annexure P-2), order of dismissal of appeal dated 15.01.2008 (Annexure P-3) as also order dated 03.07.2008 (Annexure P-4) rejecting the Revision Petition against order of dismissal of appeal.

[2] Learned counsel for the appellant contended that on account of illness and being under treatment could not attend duty or for that matter departmental proceedings, there was no bar to the appellant taking treatment from an allopathic/ayurvedic doctor, opportunity had not been given to the appellant in the disciplinary proceedings, appellant had sent application for leave through his wife which was not accepted nor was the application for

10 days casual leave sent through UPC on 09.01.2006 or for 2 months'

earned leave on 17.04.2006 entertained, absence of 515 days could not be treated as gravest act of misconduct, consequentially impugned order was liable to be set aside and appellant be reinstated in service.

[3] We have heard learned counsel for the appellant and considered the submissions but for the reasons given hereunder are unable to agree with the same.

[4] The appellant who was serving as Head Constable in the Haryana Police remained unauthorizedly absent for 515 days for which he was served with a charge-sheet. The charge of unauthorized absence for 515 days was proved in ex-parte enquiry due to non-participation of the appellant in the enquiry. Notice sent to the appellant by the Disciplinary Authority was also not responded to. In the circumstances, on the basis of Enquiry Report, the Disciplinary Authority came to the conclusion that appropriate punishment for absenting for 515 days from a Disciplined Force was dismissal from service. It was only thereafter that the appellant woke-up and challenged the order of dismissal by way of an appeal which was rejected as was the revision petition filed by him before the Director General of Police.

[5] Order of the Writ Court reveals that despite issuance of several notices to the appellant to join duty, he never bothered to respond to the same. No reply was submitted by him to the charge-sheet. Enquiry proceedings were held ex-parte for despite having been served notice of pendency of the proceedings, appellant never bothered to appear before the Enquiry Officer. Conduct of the appellant even before the Disciplinary Authority was the same. In the circumstances, by no stretch of imagination can it be contended that there was non-compliance with the principles of natural justice.

[6] Perusal of the record reveals that the appellant's wife submitted application (Annexure P-7) dated 02.05.2007 to the Superintendent of Police, Railways, Ambala Cantt., requesting for keeping the enquiry initiated against her husband in abeyance on the ground that he was suffering from depression and was taking treatment from Shiv Jivodaya Janta Hospital regularly and the doctors had recommended him complete rest. However, perusal of medical certificates (Annexures P-7 to P-12) issued by Shiv Jivodaya Janta Hospital, Narela, Delhi as also medical certificates Annexure P-13 to P-15 issued by Acharya Gyan Muni Charitable Hospital, New Delhi for the relevant period reveal the appellant suffering from ailments other than depression. Thus, when viewed in the context of application (Annexure P-7) dated 02.05.2007 it is evident that the medical certificates (Annexures P-7 to P-15) are bogus for the reasons cited in the application (Annexure P-7) for deferring enquiry is on account of the appellant suffering from depression whereas the medical certificates (Annexures P-7 to P-15) portray some other diseases and make no reference to depression.

[7] Moreover, the medical certificates (Annexures P-7 to P-15) were never submitted by the appellant to the authorities for seeking leave on medical ground nor were they produced during the enquiry proceedings or before the disciplinary authority. They were produced for the first time before the Appellate Authority. We are convinced that the medical certificates (Annexures P-7 to P-15) when viewed in the context of application (Annexure P-7) are bogus and were procured solely for making an application to delay the enquiry proceedings. In the circumstances, the Writ Court rightly doubted the authenticity of aforesaid medical certificates.

[8] Lastly, learned counsel by relying upon the decision of Hon'ble the Supreme Court in **State of Punjab and others v. Mohinder Singh,**

2005 (12) SCC 182 contended that the order of dismissal was in derogation of Rule 16.2 of the Punjab Police Rules, 1934 as the absence for 515 days could not be regarded as gravest act of misconduct besides the appellant had served for 20 years and in the circumstances, he could have been awarded lesser punishment of compulsory retirement.

[9] Perusal of order (Annexure P-3) passed in appeal by the Inspector General of Police mentions that on countless occasions, absence of the appellant was regularized by sanctioning him leave of various kinds by different authorities. In the facts of the case, the appellant, being a member of a disciplined force could not be permitted to remain absent without leave and that too for such a long period. Therefore, he was rightly not allowed to be retained in service.

[10] However, taking into account the decision of Hon’ble the Supreme Court in Mohinder Singh’s case (supra), we dispose of this appeal by granting liberty to the appellant to make a representation to the competent authority for imposition of punishment other than that of dismissal. In case of receipt of any such representation, the competent authority would consider the same sympathetically in accordance with law and the rules applicable and pass orders in respect thereto as may be warranted in accordance with law. Letters Patent Appeal disposed of in the above terms.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

22.02.2018
amit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No.