

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

**RA-58-C-2016 in
RSA-3138-2012
Date of Decision:27.02.2018**

Rajinder Singh

... Review-applicant

Vs.

State of Punjab and another

... Respondents

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

Present : Mr. R.K. Arya, Advocate
for the review applicant.
Mr. Rana Harjasdeep Singh, A.A.G. Punjab.

P.B. BAJANTHRI J. (Oral)

Appellant while working as a constable remained unauthorized absent for which respondent initiated disciplinary proceedings and it was concluded in imposing the penalty of dismissal from service on 23.06.2005. Feeling aggrieved by the order of dismissal, appellant filed a suit before the trial court. Trial Court decreed the suit. State-respondent aggrieved by the order of the trial Court preferred an appeal. Appellate Court reversed the order of the trial Court vide judgment dated 8.5.2012.

2. Learned counsel for the appellant submitted that trial court has taken note of the order of dismissal to the extent that there is non compliance of Rule 16.2 of Punjab Police Rules, 1934 (for short "1934 Rules"). However, appellate court failed to appreciate that there is non compliance to Rule 16.2 of 1934 Rules. He further submitted that appellant has rendered more than 15 years of service. Therefore, it was bounden duty of the disciplinary authority to take into consideration the length of service for the purpose of extending pension or not in view of Rule 16.2 (1) of 1934 Rules. The aforesaid statutory provision was not considered while disposing RSA No.3138 of 2012 on 1.4.2016. Hence, the present review application.

3. Per contra, learned counsel for the respondents while resisting the appellant's claim submitted that disciplinary authority has gone extensively in deciding the disciplinary matter including complete service record of the appellant. When the main matter was decided orders of disciplinary authority was taken note of and there is no infirmity. Therefore, merely not stating that there is no consideration in respect of sub-rule 1 of Rule 16.2 of 1934 Rules that does not enure to the benefit of the appellant that disciplinary authority is required to reveal in the order of dismissal that whether appellant is entitled to pension or not?

4. Heard learned counsel for the parties.

5. Crux of the matter in the present review application is whether disciplinary authority while imposing the penalty of dismissal from service on 23.6.2005 whether has he taken note sub-rule 1 of Rule 16.2 of 1934 Rules or not and while deciding RSA No.3138 of 2012 on 1.4.2016, afore-said statutory rule was taken note of or not?

6. No doubt disciplinary authority extensively considered the service records of the appellant. However, there is no whisper insofar as whether appellant is entitled to pension or not? In other words, there is no finding of the disciplinary authority that the appellant's misconduct leads to gravest Act of misconduct so as to deny the pension with reference to the service rendered by the appellant to the extent of more than 15 years. Therefore, disciplinary authority's order is set aside only to the extent in not considering sub-rule 1 of Rule 16.2 of Rules 1934 to the extent whether misconduct committed by the appellant is it gravest act of misconduct. Further whether appellant is entitled to pension or not with reference to service record of the appellant. While deciding RSA No.3138 of 2012 on

1.4.2016 , the aforesaid issue was not dealt with. Hence, order passed in RSA No.3138 of 2012 on 1.4.2016 is reviewed/recalled.

7. Regular Second Appeal is heard with consent of the parties.

8. For the reasons stated in para 5 and 6, RSA No.3138 of 2012 is allowed in part. In this regard, disciplinary authority is hereby directed to pass a suitable order and communicate to the appellant within a period of three months from today.

27.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No