

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

CWP No. 10992 of 2017

Date of decision : 29.04.2019

Baljit Singh

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Nitin Rathee, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner is seeking setting aside of order dated 13.08.2012 (Annexure P-18) passed by respondent No. 4 and order dated 04.08.2016 (P-19) passed by respondent No. 3. Further prayer of the petitioner is that he be reinstated w.e.f 17.01.1992 along with all consequential benefits.

On notice of the petition, a reply has been filed stating therein that petitioner while posted in Police Lines, Sirsa District Sirsa was transferred to BRS Guard, Kalanwali on 17.06.1991 but petitioner did not join his duties. He was informed vide notice dated 27.07.1991 (R-1) to join his duties but petitioner refused to accept the notice as per R-2. Thereafter, the local police from Police Station Beri went to the house of the petitioner to furnish the information and recorded the statement of Ms. Lachhmi Devi, mother of the petitioner who stated that her son is ill and the nephew of the petitioner is getting his treatment in hospital. Whenever the petitioner will be fit, he will resume his duties (R-3). Thereafter, the departmental enquiry

was initiated against the petitioner and the Enquiry Officer directed the petitioner to join enquiry proceedings by way of sending notices to the home address of the petitioner through special messenger but all in vain and ex parte proceedings were carried out against the petitioner, vide order dated 15.09.1991 under Rule 16.24 (2). The petitioner was held guilty of unauthorized absence from duty by the Enquiry Officer. The Punishing Authority then issued a show cause notice dated 10.12.1991 (P-9) proposing a punishment of dismissal from service. The petitioner gave his reply dated 19.12.1991. But the punishing authority after considering the reply of the petitioner awarded a punishment of dismissal from service vide order dated 17.01.1992 (P-10). The appeals and revision filed by the petitioner against order of dismissal were considered and rejected by Deputy Inspector General of Police, Hisar Range, Hisar and Director General of Police, Haryana respectively. The petitioner then filed CWP No. 9395-1996, which was allowed, vide judgment dated 15.11.2011 (P-16) and the matter was remitted back for reconsideration of the entire matter after affording an opportunity of hearing to the petitioner. The matter was considered afresh and notice dated 19.07.2012 was issued to the petitioner to explain the allegations of willful absence from duty. The petitioner gave his reply on 21.07.2012 and was heard in person by Superintendent of Police, Sirsa on 27.07.2012 wherein the petitioner submitted that consequent upon his transfer from Sirsa to Kalanwali, he went to Hissar to bring his uniform articles and fell ill. He remained under treatment at Civil Hospital, Rohtak and PGI, Rohtak and hence absented from duty.

Thereafter, vide order dated 13.08.2012 Superintendent of Police, Sirsa by taking a lenient view reduced the punishment of dismissal

from service to that of stoppage of three increments with permanent effect without any monetary benefits for the period he remained out of service and the period of his absence w.e.f 17.01.1992 till the date of his dismissal and further till joining back in service was treated as not spent on duty on the principle of No Work No Pay. The petitioner preferred highly time barred appeal before Inspector General of Police, Hisar Range, Hisar on 14.05.2016 which was rejected on 04.08.2016 (P-19) being time barred.

At the very outset, learned counsel for the petitioner has referred to Rule 16.30 and 16.31 of Punjab Police Rules, 1934 (applicable to Haryana) (for short 'Rules 1934') to contend that order dated 04.08.2016 is against the above said Rules. Rules 16.30 and 16.31 reads as under:-

16.30. Rules regarding appeals (1) Every appeal to the Deputy Inspector-General or Inspector-General shall be in English. It shall set forth the grounds of appeal, and shall be accompanied by a copy of the order made in the case. (2) An appeal which is not filed within a month of the date of the original order, exclusive of the time taken to obtain a copy of the order or record, shall be barred by limitation. The appellate authority may, however accept an appeal filed out of time, if he sees fit to do so.

16.31 Orders of appeals. Every order passed in appeal shall contain the reasons therefore. A copy of every appellate order and the reason therefore shall be given free of cost to the appellant

Learned counsel for the petitioner contends that as per above said Rules, the detail reasons have to be recorded while dismissing the

appeal of the petitioner, vide order 04.08.2016 (P-19).

To give force to the above contention, learned counsel has relied upon judgment of this Court in cases of ***Jaswinder Kaur vs. PSPCL and others, 2016 (2) S.C.T 218, Manjit Kumar @ Goldi vs. State of Punjab and others, passed in CWP No. 20097-2015, decided on 15.02.2017 and Anil Kumar Tyagi vs. DHBVNL and another, passed in CWP No. 13988-2015, decided on 24.01.2017.***

On the other hand, learned State counsel has argued that as per Rule 16.30 of Rules 1934, Inspector General of Police was not required to give detailed reasoning when the appeal was time barred.

After hearing learned counsel for the parties, the present writ petition deserves to be dismissed.

Rules 16.30 and 16.31 of Rules 1934 came up for consideration before this Court in a case of ***Kewal Singh vs. State of Punjab and others, passed in CWP No. 25093-2014 decided on 27.04.2015*** wherein the petitioner absented from duty without leave/permission of the competent authority. A show cause notice issued to the petitioner was also not responded to. It was held by the competent authority that the petitioner was in-disciplined, irresponsible and undependable officer. He was dismissed from service but he approached the competent authority after 20 years who dismissed his appeal being time barred. Then he chose to approach the High Court after a gap of 20 years. The writ petition was dismissed and it was held that institution of the appeal by the petitioner on 28.03.2014 against the order of dismissal was nothing but an attempt to re-open the matter.

Reference at this stage can further be made to a judgment of

this Court in a case of ***Gurdev Singh Ex Constable vs. State of Punjab and others, passed in CWP No. 3639-2005, decided on 06.01.2011*** wherein the petitioner was dismissed from service by the competent authority as the petitioner was found indulging in anti social and anti national activities. The petitioner-plaintiff filed a suit which was decreed but on appeal, the decree was set aside being time barred, as the same was filed after three years of passing of impugned order. It was held that the acquittal in criminal case would not extend the period of limitation. This Court also dismissed the appeal, as no substantial question of law arises in the regular second appeal.

In the present case as well, the petitioner was dismissed from service, vide order dated 17.01.1992 (P-10). Thereafter, vide order dated 13.08.2012 Superintendent of Police, Sirsa by taking a lenient view reduced the punishment of dismissal from service to that of stoppage of three annual increments with permanent effect without any monitory benefits for the period he remained out of service and the period of his absence w.e.f 17.01.1992 till the date of his dismissal and further till joining back in service was treated as not spent on duty on the principle of No Work No Pay. Rule 16.30 (2) of Rules 1934 postulate a period of 30 days to prefer an appeal, whereas the petitioner preferred highly time barred appeal before Inspector General of Police, Hisar Range, Hisar on 14.05.2016 which was rejected on 04.08.2016 (P-19) being time barred.

In view of the discussion made above, the petition is dismissed being devoid of any merit.

29.04.2019

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No