

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

CWP-14829-2016

Date of decision: - 01.10.2019

Ram Sarup Singh Bhullar

....Petitioner

Versus

The Punjab State Power Corporation Limited and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Manish Thakur, Advocate
for Mr. Pankaj Bhardwaj, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order of the punishment dated 07.08.2009 (Annexure P-5) imposed upon the petitioner by which 5% cut in pension has been imposed for a period of five years as well as to the order dated 24.02.2014 (Annexure P-8) by which the appeal preferred by the petitioner has also been rejected.

The facts noticed in the petition are that the petitioner was appointed as a Junior Engineer (Civil) on 17.11.1973. He was promoted as Assistant Engineer (Civil) on 21.02.2006. In the year 2008, petitioner sought permission to visit Canada, which was granted to him vide memo dated 13.02.2008 on the condition that before availing leave the

petitioner has to get his earned leave sanctioned from the competent authority and it is only after sanctioning of the leave, he can avail the Ex-India Leave. Petitioner without waiting for the Ex-India leave to be sanctioned, went to Canada. As the petitioner did not get his leave sanctioned from the competent authority, after petitioner rejoined his duties in the year 2009, he was served with the charge-sheet dated 26.02.2009 for remaining absent and going to Canada without the sanction of the competent authority. Petitioner submitted his reply to the said charge-sheet and thereafter, he also applied for the premature retirement and the application for premature retirement was accepted by the respondents w.e.f. 31.05.2009. After the retirement, the charge-sheet which was issued to the petitioner on 26.02.2009, was decided vide order dated 07.08.2009, by which the punishment of 5% cut in his pension was imposed for a period of five years and further the period of absence was treated as a non-duty period by the same order dated 07.08.2009 (Annexure P-5). The order dated 07.08.2009 imposing the punishment, was challenged by the petitioner by filing a CWP No.22525 of 2011 and the said writ petition was withdrawn by the petitioner with liberty to file a statutory appeal and accordingly he filed an appeal against the order dated 07.08.2009.

The appellate authority considered the appeal of the petitioner and ultimately rejected the same in its meeting held on 18.02.2014 and the said decision of the appellate authority was conveyed to the petitioner, vide order dated 24.02.2014 (Annexure P-8).

In the present writ petition, the order imposing the

punishment dated 07.08.2009 (Annexure P-5) as well as rejecting the appeal of the petitioner dated 24.02.2014 (Annexure P-8) are under challenge.

The ground for challenge is that the orders imposing the punishment as well as declining the appeal are cryptic & non-speaking and further that the punishment imposed upon the petitioner is disproportionate to the charges alleged. Further, learned counsel for petitioner argues that declining to regularize the absence period also amounts the punishment and therefore, the petitioner has been imposed two punishments for the same incident.

Upon notice of motion, respondents have filed the reply, in which, it has been stated that petitioner went on unsanctioned Ex-India Leave for 345 days, which is a misconduct and as the petitioner went abroad without permission of the competent authority, the punishment which has been imposed is perfectly valid.

Counsel for the respondents argues that petitioner had gone abroad with intention to settle there as he had obtained permanent resident status of Canada and therefore, no lenient view could have been taken in imposing the punishment as he was never interested in discharging the duties of the post. Counsel for the respondents further argues that after imposing the punishment for the misconduct, as the petitioner was allowed to retire, the period of absence was to be decided, as to whether, the same could be treated as a qualifying service or not by treating the absence period as a duty period or not and, therefore, once the petitioner did not perform the duties and went on unauthorized leave, the

period of absence has rightly been treated as unauthorized leave, not to be treated as a duty period.

I have heard counsel for the parties and have gone through the record with their able assistance.

This Court is not an appellate authority against the order which has been passed by the punishing authority which has been upheld by the appellate authority. The scope of this Court to interfere in the punishment order is very limited. In case, the rules governing the service for imposition of the punishment has not been followed or any prejudice has been caused to the petitioner during the inquiry, only that can be looked into by this Court in judicial review.

In the present writ petition, petitioner is challenging the order of punishment dated 07.08.2009 (Annexure P-5) on the ground that the same is cryptic. A bare perusal of the said order would show that the reasons have been given that only the request of the petitioner for Ex-India Leave was forwarded by the Chief Engineer, but the same was never accepted by the competent authority before the petitioner left India. Once, in the absence of any sanctioned leave, petitioner remained away from his job for more than one year unauthorisedly, hence, respondents were very much within their right to record a finding that petitioner remained absent unauthorizedly. Moreover, sufficient reasons have been given in the impugned order dated 07.08.2009 for imposing the punishment and also for treating the period of absence as a non-duty period. Further, even the appellate authority in its resolution, which has been reproduced in the order rejecting the appeal, clearly states that the

petitioner was responsible for availing the Ex-India Leave without sanction and therefore, no leniency can be shown towards the petitioner. This has to be treated as sufficient grounds in the facts and circumstances of the present case.

With regard to the argument that two punishments have been imposed upon the petitioner in the punishment order i.e. 5% cut in pension for a period of five years and treating the absence period as a non-duty period is also not correct. The punishment for the misconduct is only 5% cut in pension for a period of five years. Punishing authority is required to decide the absence period in a particular manner, keeping in view the facts and circumstances of the present case. Said decision has been taken by the competent authority that as the petitioner remained absent unauthorizedly and went abroad without the sanction of the leave, the period of absence cannot be taken into consideration for any purpose and the same is to be treated as non-duty period. This is essentially required as the petitioner was given the premature retirement and the respondents had to decide the period of absence one way or the other way to decide his claim for the grant of pensionary benefits and therefore, no grievance can be made by the petitioner in this regard.

Keeping in view the above, no interference is called for and the writ petition is accordingly dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

October 01, 2019
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes