

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

**CWP-16585-2014 (O&M)
Date of decision : 11.03.2019**

Manjit Singh Hira

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Dharam Pal, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN J. (ORAL)

Prayer in the instant writ petition filed under Articles 226/227 of the Constitution of India, *inter alia*, is for issuance of a writ of Certiorari quashing order dated 07.01.2014 (Annexure P-9), passed by respondent No.2, thereby, withholding three increments with cumulative effect and further treating the period of absence from 23.01.2010 to 30.10.2011 as leave without pay.

It is contended that the petitioner was selected for training as Inspector in the Cooperation Department, Punjab and deputed for training vide letter dated 08.08.1980 (Annexure P-1). After successful completion of the training, he was posted vide letter dated 09.05.1981 (Annexure P-2). He

was further promoted as Assistant Registrar, Cooperative Societies vide order dated 08.08.2005 (Annexure P-3). In the year 2009, the petitioner applied for grant of ex India leave for 361 days from 27.01.2009 to 22.01.2010, which was sanctioned vide endorsement dated 27.01.2009 (Annexure P-4). However, the petitioner having been transferred from Rajpura Branch to Bassi Pathana Branch, the order of sanction of his leave was received by him very late and on that account, he left his charge on 09.03.2009 (AN) i.e. after about two months from the sanctioned date and went abroad. Due to some compelling circumstances, the petitioner applied for extension of leave in the month of February, 2010. Thereafter, father-in-law of the petitioner expired and again, the petitioner had to apply for extension of leave upto 28.10.2011. However, the petitioner did not receive any intimation about acceptance or otherwise of his leave applications. The petitioner returned to India and submitted application for joining to respondent No.2 on 31.10.2011 (Annexure P-5). He also came to know that he had already been declared as 'absent from duty'. Respondent No.2 issued posting order of the petitioner vide letter dated 02.01.2012 (Annexure P-6) without taking any decision on the application of the petitioner for joining duties.

The petitioner was asked to join inquiry proceedings wherein, he was also handed over a copy of charge-sheet (Annexure P-7). The inquiry proceeding was initiated against the petitioner without ensuring

service of the same which is proved from letter dated 30.05.2011 (Annexure P-8) written by respondent No.3 to respondent No.2. The punishing authority served a copy of enquiry report upon the petitioner vide letter dated 23.07.2012. The petitioner clarified his position vide reply dated 08.08.2012. Opportunity of personal hearing too was given to the petitioner and thereafter, the respondent No.2 passed order dated 07.01.2014 (Annexure P-9), thereby withholding three increments of the petitioner with cumulative effect and treating the period of alleged absence from 23.01.2010 to 30.10.2011 as leave without pay.

The petitioner preferred departmental appeal (Annexure P-10). The appellate authority without calling the petitioner for personal hearing or affording him an opportunity of hearing, dismissed the appeal vide order dated 15.05.2014 (Annexure P-11).

Learned counsel contends that it is a case of overstay during leave which does not warrant the punishment imposed upon the petitioner. The impugned order dated 07.01.2014 has been passed without following the procedure prescribed under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. No order regarding period from 31.10.2011 to 05.01.2012 has been passed by the punishing authority as well as the appellate authority. Both the impugned orders have been passed by one and the same person, which is against the basic principles of natural justice.

On the other hand, learned State counsel submits that the application of the petitioner for extension of leave was received in the office of respondent No.3 on 09.03.2010 which was considered and rejected on 07.07.2010. The said rejection order was conveyed to the petitioner on his given address through Speed Post which article was not received back. Therefore, this is a conclusive presumption that the said order was duly received by the petitioner. It is further submitted that no application for extension of leave upto 28.10.2011 was received in the office of the respondents. The petitioner has already been allowed the salary for the period from 31.10.2011 to 05.01.2012 vide order dated 20.01.2016 (Annexure R-1). The charge sheet dated 11.03.2011 was duly dispatched to the petitioner through registered post on the address given by him in his leave application, which was not received back. It is lastly submitted that the appeal of the petitioner was dismissed by the Government i.e. Cooperative Minister and not by Shri S.K. Sandhu, Financial Commissioner, who simply conveyed the decision taken.

Heard.

The petitioner applied and was granted ex India leave for 361 days from 27.01.2009 to 22.01.2010 to visit United States of America on the conditions reflected in Annexure P-4, which read thus:-

1. He will not seek extension of leave
2. He will not participate in any political activity.

3. During Ex. India leave he will not do any business/private practice.
4. If after leave he failed to join the job, then disciplinary action will be initiated against him as per rules.
5. During leave he will obey the India/USA Government Rules.”

The petitioner submitted his joining report on 31.10.2011. The petitioner has already been allowed salary for the period from 31.10.2011 to 05.01.2012 (Annexure R-1). However, the period from 23.01.2010 to 30.10.2011 has been treated as leave without pay and a punishment of withholding of three increments of the petitioner with cumulative effect has been imposed upon him. The action taken by the respondents is in complete consonance with the service rules governing the petitioner as also the conditions prescribed in order of sanction of leave (Annexure P-4). The assertion that both the impugned orders have been passed by one and the same person is also against the record as the punishing authority only conveyed the order of the appellate authority i.e. the Cooperative Minister, Punjab.

It has become the general tendency among the employees availing ex India leave that they do not join back their duties after expiry of the leave period. This kind of indiscipline by a public servant cannot be ignored and the cases of the nature deserve to be dealt with firmly so that discipline prevails among the cadres. In the instant case, the authorities have

taken the necessary disciplinary action against the petitioner who did not join duties after the expiry of the leave period which cannot be ignored and in the considered opinion of this Court, does not suffer from any illegality or perversity.

In view of the above, impugned orders dated 07.01.2014 (Annexure P-9) and 15.05.2014 (Annexure P-11) are hereby affirmed.

Writ petition fails and is accordingly, dismissed.

11.03.2019

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No