

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

CWP-9757-2010 (O&M)
Date of decision : 28.03.2019

Kuldeep Singh

...Petitioner(s)

Versus

The State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. S.S. Brar, Advocate,
for the petitioner(s).

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J. (Oral)

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner, *inter alia*, seeks issuance of a writ of Certiorari for quashing the order dated 03.09.2007 (Annexure P-1) passed by respondent No.2, whereby, the revision petition filed by the petitioner against *ex parte* dismissal order was rejected.

The petitioner was appointed as a Constable in the Railway Police on 20.12.1994. In the month of February, 2004, he availed 3 days' sanctioned leave from 17.02.2004 to 20.02.2004 (afternoon). However, due to sudden deterioration in his health, he could not join his duties. After recovering from illness, the petitioner submitted his joining report on 10.09.2004 along with representation to consider his unconditional apology. A departmental enquiry was initiated against the petitioner and vide *ex parte* order dated 05.05.2005, the petitioner was dismissed from service.

The appeal preferred by the petitioner before DGP, Railways, Punjab was also rejected vide order dated 09.01.2006.

It is contended that the impugned order of dismissal dated 05.05.2005, is against the provisions of Rule 16.24 of the Punjab Police Rules, 1934 as no opportunity of hearing was granted to the petitioner before passing the impugned order.

On the other hand, learned State counsel submits that the impugned orders had been passed after following due procedure and affording sufficient opportunity of hearing to the petitioner to defend his case. The petitioner is a habitual offender and several other departmental proceedings were pending against him.

Heard.

A perusal of the record reveals that the petitioner was required to report back from leave on 20.02.2004 but he reported back on 10.09.2004 after remaining absent from duty for 203 days and 45 minutes. A departmental enquiry was initiated against the petitioner. The enquiry officer issued notice dated 02.10.2004 (Annexure R-1) and the petitioner was directed to join inquiry but he did not report to the enquiry officer. Thereafter also, several notices were issued upon the petitioner to join the enquiry but he did not turn up. As such, permission for ex parte proceedings was obtained by the enquiry officer from the competent authority on 23.11.2004. Thereafter a notice dated 24.11.2004 along with summary of allegations, list of prosecution witnesses, list of documents and permission of ex parte proceedings was served upon the petitioner through

his wife on 27.11.2004 (Annexure R-5). Still, the petitioner did not turn up to produce his defence evidence. Charge-sheet was prepared by the enquiry officer and the same was served upon him on 23.12.2004 (Annexure R-6). The petitioner ultimately appeared before the enquiry officer on 10.01.2005 and submitted two applications dated 10.01.2005 (Annexures R-7 and R-8) stating that he did not wish to produce any defence evidence. He further tendered unconditional apology stating that he remained absent on account of illness and as such, the period of absence be considered as leave period. On conclusion of the enquiry, the petitioner was held guilty of wilful absence for 203 days. On receipt of the enquiry report, the punishing authority issued show-cause notice which was served upon the petitioner on 28.02.2005, *inter alia*, proposing punishment of dismissal from service. He was asked to submit reply to the show cause notice and to appear before the punishing authority for personal hearing within 10 days but the petitioner neither submitted his reply nor came present before the punishing authority for personal hearing. Reminders were also sent to him on 17.03.2005 and 12.04.2005 (Annexures R-9 and R-10).

It has also come on record that during the service period of the petitioner, he earned fifty bad entries in his service record on account of total 673 days of absence. On this account, he had been awarded Censure for 45 times, forfeiture of 10 years of service towards future increments with permanent effect and stoppage of two future annual increments.

Even otherwise, the petitioner has not placed on record any material/document to support his assertion with regard to alleged illness.

The petitioner being a member of the disciplinary force, was expected to conduct himself in a disciplined manner. The service record of the petitioner projects him as a person not qualified to be on the establishment of the disciplined force. The repeated absence of the petitioner disqualifies him to be person who could be retained in a disciplined force. The Court feels that keeping such persons in the disciplined force will be against the public interest. In ***Karnail Singh Vs. The State of Punjab, 1993(4) S.C.T 770 (P&H) (DB)***, this Court has held as under:-

“7. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effects in the maintenance of law and order. The interpretation placed by the learned Single Judge in Chanan Singh case on Rule 16.2(1) of the Rules has not been approved by the apex Court in Ram Singh case (supra). Resultantly, with respect to the learned Single Judge, we have no option but to overrule the same.

The petitioner habitually remained absent from duty. He did not reform himself. The record which has been alluded to by the appellate authority reveals that on previous occasions too the petitioner was awarded punishment on eight different occasions for remaining absent from duty. His absence from duty continuously for 5 months and 5 days was not an isolated Act. There had been repeated acts of remaining absent from duty for which he had been awarded punishment and the past record was taken into account while awarding punishment of dismissal from service. On the facts of the instant case, we do not find that the action of the respondents suffers from any infirmity.

For the reasons stated above, the writ petition fails and is dismissed, but with no order as to costs.”

In view of the above, this Court is of the opinion that the punishment awarded is commensurate with the misconduct of the petitioner and there is no ground to interfere in the well reasoned impugned orders passed by the respondent-authorities.

Accordingly, there being no merit in the present case, the same is, hereby, dismissed.

28.03.2019
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No