

**C.M.No.8607 of 2019 in/and
CWP No.19620 of 2018**

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

**C.M.No.8607 of 2019 in/and
CWP No.19620 of 2018
Date of decision:02.07.2019**

Ravinder Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Maani pur, Advocate, for the petitioner.

Mr. Harish Nain, AAG, Haryana.

AMIT RAWAL J.

C.M.No.8607 of 2019

The application is allowed, subject to all just exceptions.

Replication is taken on record.

CWP No.19620 of 2018

The petitioner-Ravinder Singh has sought indulgence of this Court under Article 226 of the Constitution of India for quashing the following orders:-

- i) Order dated 28.05.2010, Annexure P-8
- ii) Enquiry report dated 27.06.2008 (Annexure P-3)
- iii) Order dated 30.06.2011 (Annexure P-10)
- iv) Order dated 20.04.2018, Annexure P-13 (served upon the

petitioner on 05.07.2018) whereby he has been dismissed from the service.

As per the averments in the writ petition, petitioner in June

2003 was appointed as Commando Police Force and was deputed on various jobs from time to time. However, owing to some domestic work, he submitted leave application to immediate Incharge for two days, i.e. 26.08.2007 and 27.08.2007 but reported for duty on 28.08.2007 at 12.00 noon. He had fallen sick on 27.08.2007. The doctor advised rest for three weeks, i.e. upto 16.09.2007 but when he attempted to resume duty, was objected to. The department has not granted any medical leave and treated him as absent. Enquiry Officer-respondent No.5 served two charge-sheets for remaining absent from 18.08.2007 to 17.09.2007 and for second time from 06.11.2007 to 03.03.2008. In the first charge sheet, vide order dated 06.07.2008 was dismissed by the punishing authority-respondent no.4, for remaining absent for 21 days 12 hours and 30 minutes. Accordingly, the second inquiry was not conducted. In the appeal preferred against the aforementioned order, punishment was reduced to stoppage of three increment with permanent effect.

It was alleged that before the termination order dated 06.07.2008, he was issued charge-sheet dated 28.05.2008 (Annexure P-2) for remaining absent for the period of 118 days 21 hours 20 minutes. Inquiry officer conducted the proceedings vide report dated 27.06.2008 (Annexure P-3) and respondent no.3 issued show cause notice dated 01.06.2009 (Annexure P-4) proposing the dismissal of the petitioner from service. Vide Annexure P-6, reply was submitted and show cause notice was dropped.

Mr. J.S.Maani pur, learned counsel appearing on behalf of petitioner submitted that though inquiry was conducted by inquiry officer and charge sheet was also issued by inquiry officer but show cause notice was issued by punishing authority which is not permissible as per provisions of Rule 16.1 of Punjab Police Rules, 1934. The decision rendered in appeal and revision also upheld the dismissal which is totally against provisions of law and settled canons of justice, thus, impugned orders and inquiry report are illegal and not sustainable in the eyes of law. The appellate authority cannot take away the powers of punishing authority.

Per contra, Mr. Harish Nain, learned Assistant Advocate General, Haryana opposed the prayer by raising numerous preliminary objections including maintainability of grounds that petitioner remained habitual absentee during the service period and therefore, proved himself incorrigible and unbecoming police official and thus, was not liable to be retained in service where discipline was mandatory. The inquiry was conducted as per the rules and laid down procedure. The petitioner did not join the proceedings but was proceeded ex parte vide order dated 16.01.2008. The punishing authority issued a show cause notice dated 17.06.2008 with the proposed punishment of dismissal from service and after considering the reply and hearing the petitioner personally, concluded that he intentionally remained absent from duty which resulted into gravest mis-conduct. He had absented from duty 14 times upto 19.09.2007 and further from 03.11.2007 to 05.11.2007. The punishment by a higher officer cannot result into ambiguity or illegality of the order.

I have heard learned counsel for the parties, appraised paper book and of view that there is no force and merit in submissions of Mr. Maanipur. For the sake of brevity, it would be apt to reproduce Rule 16.1 of Punjab Police Rules, 1934 which reads thus:-

“16.1 Authorized Punishments (1) No police officer shall be departmentally punished otherwise than as provided in these rules.

(2) The departmental punishments mentioned in the second column of the subjoined table may be inflicted on officers of the various ranks shown in the heading nos.3 to 6, by the officers named below each heading in each case, or by any officer of higher rank:-

1	2	3	4	5	6
Sr. no.	Department punishment	Inspectors	Sergeants. Inspectors Assistant Inspectors	Sub and Sub Head Constables	Constables
1	Dismissal	XX	XX	XX	Superintendents of Police, Deputy Superintendent (Administrative), Police: Deputy Government Railway Superintendents-Incharge of Railway Police Sub-Divisions; Senior Assistant Superintendent of Police, Lahore; Officer in charge of Recruits Training Centres.

From the perusal of record, it is revealed that inquiry was conducted by the Inspector and show cause notice was issued by the Superintendent of Police whereas order of dismissal dated 28.05.2010 (Annexure P-8) was passed by the Inspector General of Police, Railways and Technical Services, Haryana, Panchkula. The order passed by Higher Officials cannot be said to be suffering from any ambiguity but in converse situation, balance would definitely tilt in favour of the petitioner. Remaining absent from duty himself is a pointer that he could not support perpetual absence from duty nor examined any doctor in justifying the medical record. The impugned order of dismissal in such circumstances was necessary corollary particularly a person belonging to disciplinary force remained absent.

No ground is made out for interference.

Resultantly, writ petition is dismissed.

**(AMIT RAWAL)
JUDGE**

July 02, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No