

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

CWP-7060-2014 (O&M)
Date of decision : 05.02.2019

Astan Singh

...Petitioner(s)

Versus

The State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.K. Arya, Advocate,
for the petitioner(s).

Mr. Navdeep Chhabra, DAG, 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 quashing of order dated 22.02.2005 (Annexure P-1) passed by respondent No.3, whereby, he had been dismissed from service; order dated 24.05.2012 (Annexure P-2) passed by respondent No.4, whereby, the petition presented by the petitioner against the order of dismissal had been rejected; and order dated 06.09.2013 (Annexure P-3), passed by respondent No.2, vide which his appeal was also declined.

It is contended that while the petitioner was deployed for duty at Headquarter, Bahadurgarh, Patiala, he came to know from the news published in a newspaper that his two year-old nephew had been kidnapped by some unknown persons. Therefore, he had to rush back home on 14.09.2004 to trace the child as there was no other male member in the

family. Unfortunately, despite all efforts, the child could not be traced and therefore, the petitioner reported back for duty on 18.01.2005 after remaining absent from duty for 125 days, 17 hours and 10 minutes. However, the respondent-authorities, without considering the compelling circumstances under which the petitioner had remained absent from duty, inflicted the extreme penalty of dismissal from service upon him. The order of dismissal has been passed in clear violation of Rule 16.2 of the Punjab Police Rules, 1934, which provides that the punishment of dismissal be awarded sparingly, in cases of gravest misconduct.

On the other hand, learned State counsel submits that the impugned orders have been passed after following due procedure and affording sufficient opportunity of hearing to the petitioner to defend his case.

Heard.

A perusal of the record reveals that the petitioner was enlisted as Constable in the Punjab Armed Police on 13.05.1997. Subsequently, he was dismissed from service vide order dated 18.11.1998 (Annexure R-2) on account of wilful absence from 13.01.1998 to 20.01.1998 (6 days and 14 hours), 04.02.1998 to 19.02.1998 (14 days and 18 hours) and 22.02.1998 to 16.11.1998 (269 days). The revision petition preferred by the petitioner was partly allowed vide order dated 19.04.2000 (Annexure R-3) and the punishment of dismissal from service was reduced to forfeiture of two years' service for the purpose of increments only with permanent effect. The petitioner was again dismissed from service vide order dated 04.06.2002

(Annexure R-4) on account of wilful absence from 28.07.2001 to 07.08.2001, 07.09.2001 to 22.09.2001, 22.09.2001 to 17.01.2002 (total 141 days, 02 hours and 40 minutes). The petitioner preferred revision-cum-mercy petition which was dismissed on merits vide order dated 08.12.2003 (Annexure R-5) but the punishment was reduced to withholding of four annual increments with the effect of postponing future increments. Lastly, the petitioner absented himself from 14.09.2004 to 18.01.2005. A departmental inquiry was conducted against the petitioner. He was also served with attendance notices dated 23.12.2004, 04.01.2005 and 11.01.2005 at his residential address to come present on duty and to join the departmental proceedings. However, the petitioner came present after absenting himself for 125 days. On 21.02.2005, the petitioner put in appearance and submitted his written/oral reply which was considered and rejected. The authorities have followed the due procedure prescribed under the service rules governing the petitioner. Even otherwise, the petitioner has not placed on record any material/document to support his assertion with regard to alleged kidnapping of his nephew. There is no evidence to show that he had reported the matter to the police or his senior officials nor any details of the parents of the child who was allegedly kidnapped or the composition of the family have come forth. The petitioner himself being a member of the police force, ought to have sought police help in such circumstances. The petitioner being also a member of the disciplinary force, was expected to conduct himself in a disciplined manner. 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.

05.02.2019
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(JITENDRA CHAUHAN)
JUDGE

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