

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

CWP-7335-2015 (O&M)
Date of decision : 01.03.2019

Dilshad

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rakesh Sobti, 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 order dated 26.05.2007 (Annexure P-5) passed by respondent No.2, whereby, he was dismissed from service; order dated 25.08.2017 (Annexure P-6) passed by respondent No.3, whereby, the appeal preferred by the petitioner was rejected; and order dated 02.02.2010 (Annexure P-7), passed by respondent No.4, vide which the revision petition was declined.

It is contended that the impugned order of dismissal was passed against the petitioner only on account of his absence from duty for 02 months and 25 days, while ignoring the long service of about 16 years put in by the petitioner with the respondent-Department. The petitioner had satisfactorily explained his absence as he met with an accident on

17.07.2006 while riding his motorcycle wherein he suffered serious injuries. He resumed his duties on 14.10.2006 after the treating doctor declared him fit. A charge-sheet was served upon the petitioner to which he submitted detailed reply (Annexure P-4) explaining the circumstances under which he remained absent. In support of his case, the petitioner also annexed medical certificates issued by the doctor. However, the reply so filed was not found satisfactory and regular departmental inquiry was ordered against him. During the inquiry proceedings, the petitioner submitted the list of witnesses in his defence but he was not allowed to lead evidence and the same was closed without affording an opportunity of hearing. Even, copy of the inquiry report was not supplied to the petitioner. Ultimately, vide impugned order Annexure P-1, the petitioner was dismissed from service in blatant violation of the provisions of Rule 16.2 of the Punjab Police Rules, 1934. Cites *Ex. Constable Malkiat Singh Vs. State of Punjab & others (P&H)*, CWP-11458-2001, decided on 11.07.2012.

On the other hand, learned State counsel submits that the petitioner remained absent from duty without any sanction/valid permission or leave from 18.07.2006 to 13.10.2006, while he was posted at Police Station, Morinda. During the departmental inquiry, allegations of wilful absence from duty were proved against the petitioner. During the course of inquiry, the petitioner was given full opportunity to cross-examine the PWs and produce his defence and was also allowed to take copy of the documents related to the inquiry. He also could not produce cogent medical evidence in support of his case. The petitioner is a habitual absentee and

has absented himself from duty without sanctioned leave on four occasions during the period from 1999 to 2005. This time also, the petitioner absented himself from duty for 86 days. The impugned orders have been passed after following due procedure and affording sufficient opportunity of hearing to the petitioner to defend his case.

Heard.

It is to be noticed that the petitioner has tried to explain his conduct in remaining absent from duty for about three months on the ground of his medical condition after suffering injuries in a motor-vehicular accident. However, there is nothing on record to substantiate the assertion. The story put forth by the petitioner as well as the medical report submitted by him was found to be unreliable. The authorities have followed the due procedure prescribed under the service rules governing the petitioner.

The petitioner being a member of the disciplinary force, was expected to conduct himself in a disciplined manner. To the contrary, he proved himself to be an indisciplined, incorrigible and irresponsible police officer whose conduct is clearly unbecoming of a member of the disciplined force. It has come on record that earlier also, the petitioner absented himself from duty without sanctioned leave on four earlier occasions and punishments were inflicted upon him several times including forfeiture of service. 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.”

The case law cited by the petitioner is distinguishable on facts as in the cited case, there is no reference of any previous misconduct by the petitioner therein. To the contrary, the petitioner in the instant case is a habitual absentee. The conduct of the petitioner during the course of his entire service when seen in totality, would certainly constitute as an act of gravest misconduct for the purposes of Rule 16.2 *ibid*.

In view of the above, this Court does not find any ground to

interfere in the impugned orders and finds that the punishment awarded is commensurate with the misconduct of the petitioner.

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

01.03.2019
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(JITENDRA CHAUHAN)
JUDGE

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