

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

219.

**RSA NO. 2623-2016 &
CM-7020-C-2016**

Date of Decision : February 21, 2019

GURPREET SINGH

.... PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**Present : Mr. Anil Kumar Aggarwal, Advocate,
for the petitioner.**

**Mr. Charanpreet Singh, AAG, Punjab,
for the State.**

AUGUSTINE GEORGE MASIH, J.

CM-7020-C-2016

Prayer in this application is for condonation of delay of 45 days in filing the appeal.

The reason for the delay in filing the appeal is that the applicant-appellant had submitted the documents to the counsel well within time but the same were misplaced in the office of the Advocate leading to the delay in filing the appeal. The application is supported by the affidavit of the applicant.

For the reasons mentioned in the application, the same is allowed. Delay of 45 days in filing the appeal stands condoned.

RSA NO. 2623-2016

A suit was filed by the appellant-plaintiff praying for declaration that the order of dismissal of the appellant from the post of Constable issued by the Commandant dated 05.12.2008 for his absence from duty and the cumulative effect of his earlier conduct, order dated 01.04.2009 passed by the Deputy Inspector General of Police dismissing his appeal, order dated 30.09.2009 passed by the Inspector General of Police, PAP, Jalandhar Cantt. dismissing his second appeal with the order dated 23.02.2010 passed by the Director General of Police, Armed Battalion, Jalandhar Cantt. Punjab and order dated 18.03.2011 passed by the Director General of Police, Punjab, Chandigarh, be set aside being illegal, violative of the Statutory Rules, ultra-vires, null and void with the mandatory injunction directing the respondents to reinstate the appellant in service with all consequential benefits or in the alternative, granting the appellant-plaintiff pensionary benefits on account of he having completed more than 12 years of service.

2. Briefly, the facts of the case are that the appellant-plaintiff was appointed as a Constable on 04.10.1996 on compassionate grounds as his brother died during harness. He was posted at 36th Battalion Headquarters when he absented himself at the time of evening counting around 7.30 P.M. on 28.04.2008. Rapat No. 31 dated 28.04.2008 was entered in the Daily Diary Report regarding his absence. Notice was sent at his residential address but he did not come present and reported on 05.06.2008 after remaining absent for 37 days 15 hours and 35 minutes. For his absence, he was placed under suspension.

3. A departmental enquiry was initiated against him, in which a

charge-sheet dated 09.09.2008 Ex. P3 was issued to him, which was received by him personally and reply was also submitted. Departmental enquiry was held against the appellant as per the provisions of the Punjab Police Rules where the statements of the witnesses were recorded in his presence and he signed them all. After holding enquiry, the report was submitted by the Enquiry Officer wherein the appellant was found guilty of absence from duty for 37 days 15 hours and 35 minutes. The defence, which was produced by the appellant, were certain medical certificates regarding the treatment of his son who was stated to be suffering from Polio. The enquiry officer found that the certificates, which have been produced, did not tally with the period, for which he had remained absent from duty as the plea, which has been taken by the appellant, was that he had remained busy with the treatment of his son. Further, the private doctor, who had issued the certificate, was produced as a witness and in the cross-examination, he could not give any satisfactory reply nor could he produce any entry as made in the OPD register or the register of fitness certificate.

4. After the receipt of the enquiry report dated 29.06.2008 Ex. P4, the punishing authority issued a show cause notice to the appellant dated 12.11.2008 EX. P5 along with the copy of the enquiry report, to which the appellant submitted his reply. Along with the show cause notice, the enquiry report was also attached, the disciplinary authority had referred to the various other misconducts, which had been committed by the appellant during his service career which the disciplinary authority intended to rely upon. Appellant submitted reply Ex. P26 to the show cause notice, which, after taking note of, the punishing authority, proceeded to pass the order of

dismissal of the appellant-plaintiff dated 05.12.2008 Ex. P6.

5. Thereafter, the appellant preferred appeals and revisions which have all been duly considered and detailed speaking orders passed by the concerned authorities after giving him personal hearing. These orders have been placed on record by the counsel for the appellant, which have been perused. After having failed in his pursuit departmentally and having exhausted his remedies, as provided under the Punjab Police Rules, 1934, appellant filed a civil suit on 03.05.2012, wherein orders of dismissal and rejection of the appeals and revisions have been upheld. However, keeping in view the fact that the appellant had rendered about 12 years of service, the Court proceeded to observe that he should not be deprived of the pensionary and other benefits earned by him for the period for which he had worked and would make a representation to the authorities who shall consider to grant such benefits to him and decide the same within a period of three months and benefits, if any, admissible to him, shall be released in further three months.

6. This judgment and decree was challenged by the appellant by filing an appeal, in which cross-examinations were preferred by the State of Punjab, which came to be decided by a common judgment dated 05.01.2016 passed by the Additional District Judge, Patiala, whereby the appeal preferred by the appellant-plaintiff as also the cross-objections preferred by the respondents-defendants have been dismissed by upholding the order passed by the trial Court. This had led to the filing of the present appeal before this Court by the appellant-plaintiff.

7. It is the contention of the learned counsel for the appellant that the provisions of the Punjab Police Rules, 1934, have not been duly

complied with as the appellant was not given proper opportunity to participate in the enquiry. It has been contended that no date has been mentioned on the statements of the witnesses which have been recorded by the enquiry officer. It is asserted that the principles of natural justice have been violated as the proceedings have been held at the back of the appellant as he was not given any notice. He, therefore, contends that the enquiry proceedings and the ensuing report deserves to be set aside. His submission is that when the show cause notice was issued to the appellant on 12.11.2008, it contained certain other misconducts, for which he had already been punished and was not the subject matter of the charge-sheet and enquiry. Absence from his duty in the past has also been included in the show cause notice violating the principles of natural justice and thus, the punishment order cannot sustain. His further submission is that the charge-sheet, for which the appellant has been found guilty, was for a period of 37 days 15 hours and 35 minutes i.e. from 28.04.2008 to 04.06.2008. For the absence of these 37 days and some hours, order of dismissal has been passed, which is disproportionate to the misconduct attributed to the appellant. He contends that the period of his service has not been taken into consideration, as mandated under Rule 16.2 of the Punjab Police Rules, 1934 prior to passing of the order of punishment and further absence from duty is not mentioned to be a gravest act of misconduct. As per Rule 16.2 of the Punjab Police Rules, 1934, punishment of dismissal can only be awarded for a gravest act of misconduct. The punishing authority has not taken into consideration the fact that it was not a wilful absence on the part of the appellant but because of the ill health of his son, appellant had to proceed on leave so that he could get him treated properly. On the basis of

the above submissions, he prays for setting aside the order of dismissal passed by the punishing authority and the consequential orders passed by the appellate authorities as well as the revisional authorities.

8. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the records of the case as well as the judgments passed by the Courts below.

9. The contention of the learned counsel for the appellant that the statutory Rules have not been complied with during the enquiry proceedings and that the proceedings have been held in the absence of the appellant and he has not been given notice to appear during the enquiry proceedings, stands nullified from the fact that the statements of the witnesses, which have been recorded by the enquiry officer, have been duly signed by the appellant-plaintiff. The charge-sheet was delivered to the appellant on 09.09.2008 under his own signatures and he has also submitted in writing a response thereto and, therefore, this submission of the counsel for the appellant cannot be accepted.

10. As regards the contention of the learned counsel for the appellant that the absence of the appellant was not wilful but he had to proceed because of compulsion as his son had to be treated, the said plea cannot be accepted in the light of the fact that in the civil suit, the stand, which has been taken by the appellant, was that he himself was not well whereas during the enquiry proceedings, the stand of the appellant was contrary thereto. Further, the disciplinary authority as well as the appellate authority has found the certificate, which has been produced by the appellant, to be not tallying with the period of his absence and the same appeared to be false and fabricated document created for the purpose of

taking a defence. This is further fortified in the light of the cross-examination of private doctor, namely, Dr. Amar Singh, who had issued a certificate to the appellant-plaintiff which certificate could not be proved as no entry in that regard was available in the OPD register or the register maintained by him for issuance of fitness certificates. This argument, therefore, is unsustainable that the appellant had remained absent from duty because of medical compulsion.

11. As regards the contention of the learned counsel for the appellant that the appellant was not supplied the copy of the enquiry report along with the show cause notice, the same also cannot be accepted in the light of the fact that the appellant-plaintiff, when appeared as a witness before the trial Court, admitted in his cross-examination that he had been supplied the enquiry report along with show cause notice.

12. The contention of the learned counsel for the appellant that the enquiry proceedings, which have been initiated against the appellant, were limited to the extent of he having remained absent for a period of 37 days 15 hours and 35 minutes whereas the show cause notice dated 12.11.2008 Ex. P5 refers to the earlier misconduct, which was found to have been proved against the appellant and he was punished for the same, suffice it to say that as per the language of Rule 16.2 (1) of the Punjab Police Rules, 1934, not only the misconduct, which is attributed, falls within the ambit of gravest act of misconduct but the cumulative effect thereof can also be taken into consideration for coming to a conclusion with regard to the police official being incorrigible and unfit for police service. Obviously, therefore, not only the misconduct, for which an enquiry has been held, but his earlier service record can also be looked into to come to a conclusion in this regard

as the word used therein is 'cumulative effect of continued misconduct'.

13. For ready reference, Rule 16.2 of the Punjab Police Rules, 1934 is reproduced below:-

“16.2 Dismissal-Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

“Explanation.- for the purposes of sub-rule (1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action.-

- (i) Indulging in spying or smuggling activities;
- (ii) Disrupting the means of transport or of communication;
- (iii) Damaging public property;
- (iv) Causing indiscipline amongst fellow policemen;
- (v) Promoting feeling of enmity or halterd between different classes of citizens of India on grounds of religion, race, caste, community or language;
- (vi) going on strike or mass casual leave or restoring to mass abstentions;
- (vii) spreading disaffection against the Government;
- (viii) causing riots and the strife.”

14. The appellant, was, therefore, made aware of not only the enquiry report which had gone against him but also his earlier conduct during service, which was to be taken into consideration for coming to a

conclusion by the punishing authority with regard to his incorrigibility and complete unfitness for police service.

15. It is admitted that the appellant had filed reply to the show cause notice which he has received under his own signatures. A perusal of the orders of the punishing authority clearly indicates that his reply has also been duly considered by the punishing authority i.e. The Commandant 36th Battalion, PAP, Bahadurgarh, Patiala.

16. The next contention of the learned counsel for the appellant is that the punishment, which has been imposed upon the appellant, is disproportionate to the misconduct, which has been attributed to him i.e. absence from duty for 37 days 15 hours and 35 minutes and that absence from duty is not included/mentioned to be a gravest act of misconduct thus, the punishment deserves to be diluted cannot be accepted as a perusal of the above reproduced rule 16.2 of the Punjab Police Rules, 1934, when taken into consideration in the letter and spirit with which it has been drafted, it is apparent that not only a specific misconduct is to be taken into consideration but the earlier service record can also be looked into for coming to a conclusion with regard to the continuance of a police officer in service, as provided for under the statutory Rules.

17. This Court had an occasion to deal with a similar case i.e. CWP No. 3682 of 2012 titled as **Kuldeep Singh vs. State of Haryana and others**, decided on 28.02.2012, where a Constable has absented himself for a period of 55 days, 7 hours and 15 minutes and after holding a departmental enquiry, a show cause notice was issued and after taking into consideration the reply thereto, the punishing authority had dismissed him from service. A plea was, therefore, raised that an act of absence from duty

had not been declared as a gravest act of misconduct and, therefore, on the basis of the said misconduct, order of dismissal could not have been passed. This Court while dealing with Rule 16.2 of the Punjab Police Rules, 1934, held as follows:-

“ As per this Rule, punishment of dismissal shall be awarded for the gravest acts of misconduct or as the cumulative effect of continued misconduct of a police official proving incorrigibility and complete unfitness for police service. Apart from the general definition, which has been given in this part of the Rule, explanation has been added, wherein word 'inter alia' attains significance which indicates that the explanation only is a descriptive one and is not an exhaustive one, which identifies some of the misconducts which if proved would itself be gravest acts of misconduct which have been listed therein. In case any of these misconducts is found during an enquiry, the same has to be treated as a gravest act of misconduct, which would, in itself, be enough for dismissal as that would not require any further qualification thereto.

In any case, this explanation does not exclude other acts to be treated as gravest act of misconduct in itself. The punishing authority in the given facts and circumstances of the case can come to a conclusion that such an act of misconduct or the cumulative effect of continued acts of misconduct would fulfil the mandate of the rule and can be taken as a ground for passing an order of dismissal on a police official.

In the present case, petitioner had absented from duty for

55 days 7 hours and 15 minutes without informing the department. A perusal of the impugned order further indicates that after his enrollment in the year 2003, he had, on earlier occasions, remained absent 35 times, which further shows that the petitioner is habitual of absenting himself from duty. This needs no further elaboration that the act and conduct of the petitioner is a gravest act of misconduct, which has been rightly accepted by the punishing authority to be one and has imposed the punishment of dismissal. The Supreme Court in the case of **State of U.P. vs. Ashok Kumar and another, AIR 1996 SC 736**, has held that absence from duty is a gravest act of misconduct and an employee of a disciplined uniformed force cannot be permitted to take a plea of it being not a gravest act of misconduct. Further, the petitioner in this era of advanced communicational facilitates and options such as mobile phone, fax apart from the time tested phone, telegram and letter, had not even taken care to inform the department about the reason of his absence from duty. This further shows the irresponsibility with which the petitioner had been serving the respondent-department.

Finding no merit in the present writ petition, the same stands dismissed.”

18. Now coming to the present case, as regards the earlier conduct of the appellant, a perusal of the order of dismissal as well as the appellate authority would indicate that the appellant had been appointed as a Constable on 04.10.1996 till the date of his dismissal on 05.12.2008. He

remained absent from duty several times for varied purposes, which, when taken into consideration, comes to 739 days. His annual increments had been stopped on various occasions and his 10 years of service has already been forfeited permanently. A total of 60 punishments of censure have been imposed upon the appellant for violation of various service rules. The punishing authority, under these circumstances, has rightly come to a conclusion that he is habitual of remaining absent from duty without intimation time and again and, therefore, the order of dismissal, as imposed upon the appellant, is fully justified. The requirement of the Statute having been complied with, the Courts below have rightly upheld the order of dismissal and rejection of the appeals and revisions of the appellant.

19. Since the State of Punjab has not preferred any appeal against the judgment dated 05.01.2016 passed by the Additional District Judge, Patiala, this Court would not like to go into the aspect as to the entitlement of the appellant for grant of pensionary benefits merely because he has been in service for a period of 12 years. It may be pointed out here that 10 years of his service stands forfeited because of the passing of the various orders during his service tenure. This Court would leave this question open in the absence of there being any challenge to the judgments and decree passed by the Courts below.

20. The appeal being devoid of merit stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

February 21, 2019
pj

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No