

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

**CWP-34272-2019(O&M)
Date of decision:26.02.2021**

Bhupinder Pal Singh Gill

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sunny Singla, Advocate for the petitioner

Ms. Ambika Bedi, AAG, Punjab

ANIL KSHETARPAL, J.

Through this writ petition, the petitioner assails the correctness of an inquiry report (Annexure P-11) and the impugned order dated 11.10.2019 imposing 2% cut in the pension with permanent effect as punishment.

On 06.01.2017, the Punjab Health System Corporation issued instructions that the Specialist Doctors, General Medical Officers or other Para Medical Staff shall not proceed on leave during election and if it is required in special cases, it will be only with the prior approval of the Director Health. It is undisputed that the petitioner remained absent from duty on 28.01.2017, 30.01.2017 and 31.01.2017 without prior sanction. The petitioner was issued a charge-sheet with the following charges:-

“1. Non compliance of the directions of the

Election Commission.

2. To proceed without getting the leave sanctioned.
3. None taking part in the pulse polio program and giving threats for legal action to the Senior Assistant of the office of the Civil Surgeon.
4. Non compliance with the orders of the superior officers.”

In the departmental inquiry, it was found that all the four charges are proved against the petitioner. The petitioner was supplied a copy of the inquiry report alongwith a show cause notice. The petitioner submitted a detailed reply. The Principal Secretary, Department of Health and Family Welfare, Punjab, after granting an opportunity of hearing to the petitioner, imposed 2% cut in the pension with cumulative permanent effect. The petitioner assails the correctness thereof.

Learned counsel for the petitioner contends that the petitioner was neither assigned any duty in the elections nor he was given any duty in the pulse polio program. The petitioner on 27.01.2017 waited for Civil Surgeon but he was not available, therefore, he left. The punishment awarded is also disproportionate to the charges proved.

Per contra, learned counsel representing the State of Punjab has defended the order while contending that the competent authority has passed the order after considering all aspects of the matter and therefore, the Court should not interfere.

This Court, after having considered the arguments of the learned counsel for the parties, alongwith a perusal of the paper book,

now proceeds to adjudicate upon the matter. First argument of the learned counsel is no doubt true but the petitioner does not dispute that on 06.01.2017 instructions were issued against the grant of leave without the prior approval of the Director Health. It is not in dispute that the petitioner still proceeded on leave without approval. The petitioner was working as a Senior Medical Officer in CHC, Dirba, Sangrur. He being a Senior Medical Officer was required to look after the working of CHC, Dirba, during such period. Still further, the petitioner did not even hand over the charge before leaving the health centre. Thus, the petitioner acted irresponsibly. This Court has also examined the reason for applying leave. The petitioner claims that he had to attend a hearing in cases pending before the High Court. It is not the case of the petitioner that the hearing was fixed only on 27.01.2017, the day on which the petitioner submitted the application. The petitioner could have applied for leave in advance, if his presence in the court cases was required. The petitioner even after having been informed that the Civil Surgeon has refused to sanction the leave, did not report back on duty. In such circumstances, there is no force in the first argument. Second argument of the learned counsel is also without substance, particularly, when it is not the case of the petitioner that he came to know of the hearing in the court cases on 27.01.2017. An employee does not have a right to proceed on leave. This is a concession granted by the employer and the petitioner being a Senior Medical Officer was expected to seek the leave in advance so that an alternative arrangement could be made. However, the petitioner at the eleventh hour, applied for leave and then proceeded

without waiting for its approval. Hence, there is no substance in the second argument.

Next argument of the learned counsel representing the petitioner also does not have any substance because the petitioner has failed to show as to how the penalty imposed is shockingly disproportionate. Unless it is proved that the punishment is shockingly disproportionate, the Court is not required to interfere in the penalty imposed by the employer. In the present case, the employer has imposed a 2% cut on the pension with cumulative effect. Some message has to be given to the employees to prevent them from violating their legal duties and to inculcate discipline in them.

Learned counsel representing the petitioner relies upon a Division Bench judgment in **Jagdish Mittar vs. Central Administrative Tribunal and another** CWP-568 of 2013 decided on 19.05.2014. This Bench has carefully gone through the aforesaid judgment. In that case, a Superintending Engineer had challenged the order passed by the Administrative Tribunal, Chandigarh, imposing a cut of 5% cut in pension for lack of supervision, particularly when there was no proof of monetary loss. In that case, the Court held that punishment of 5% in his pension for a period 5 years would meet the ends of justice and also act as a deterrence for other officers and enable them to discharge their duties in a proper manner.

In the present case, the cut in pension is only 2%, which this Bench does not find it inappropriate. The aforesaid judgment does not lay down that whenever there is permanent cut in the pension then it is

highly disproportionate. The Division Bench does not as a ratio decidendi lay down the cut in the pension cannot be imposed for life. Hence, the judgment relied upon by the learned counsel representing the petitioner does not advance the case of the petitioner.

In view thereof, there is no ground to issue the writ. Hence, dismissed.

26.02.2021
rekha
Whether speaking/reasoned
Whether Reportable

Yes /No
Yes / No

(ANIL KSHETARPAL)
JUDGE