

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

**CWP No. 10809 of 2001 (O&M)
Date of Decision: April 19, 2022**

Constable Om Parkash

...Petitioner

Versus

The Director General of Police, Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Prateek Gupta, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR, J.

1. The petitioner is aggrieved against the impugned order of dismissal dated 28.05.1997 as passed by the Superintendent of Police, Bhiwani, and orders dated 13.10.1999 and 30.6.2000, whereby the authorities in appeal and revision upheld the order of dismissal.

2. The facts are that the petitioner was appointed as Constable in District Rohtak in the year 1989. The petitioner was then deputed as gunmen in the office of ADC to Governor of Haryana at Raj Bawan Chandigarh. The petitioner claimed House Rent allowance, but a complaint was filed against the petitioner by his brother-in-law regarding demand of dowry and maltreatment of his wife, sister of the complainant. The petitioner was to appear before the Superintendent of Police, Bhiwani as an inquiry was ordered. The petitioner was to report before the office of Superintendent of Police, Bhiwani on 12.11.1996 but when he appeared, he

was told to come back again on 17.11.1996. On the said date, the Superintendent of Police, Bhiwani, was busy on account of an inquiry in an air crash and as such the petitioner was directed to go back to the Raj Bhawan at Chandigarh and report on duty. The petitioner reported for duty on 19.11.1996. In the month of December, the petitioner went to the office of Superintendent of Police, Bhiwani, for collection of his salary for the month of November when he was intimated that he was going to be dismissed from service as he had absented from duty.

3. A departmental inquiry was held and as the petitioner did not appear he was proceeded ex-parte and dismissed from service. The appeal and the revision filed by him were dismissed as well, upholding the order of dismissal. Hence, this writ petition.

4. Mr. Prateek Gupta, learned counsel appearing on behalf of the petitioner, submits that the petitioner was never served with any charge sheet nor was he informed about any departmental inquiry pending against him. It is contended that as per Rule 16.2 (1) of Punjab Police Act 1934, the act of being absent without leave does not fall within the ambit of gravest act of misconduct. It is further contended that there is no material on the record to prove incorrigibility and complete unfitness in the police, to warrant dismissal of the petitioner. It is also argued that the authorities concerned were well aware that the petitioner was residing in Chandigarh as he had claimed HRA, but the alleged service of show cause notices was shown to be effected upon him at his village address. It is also submitted that the authorities were to consider the length of service, which the petitioner had rendered, before dismissing him from service.

5. Per Contra, Mr. Tapan Yadav learned DAG Haryana would submit that that the petitioner in fact remained absent from duty from 12.11.1996 till the date of his dismissal i.e 28.5.1997. The ADC to the Governor of Haryana reported vide letter 12.11.1996 to respondent No.3, that the petitioner had not reported on duty since 12.11.1996 and that his services were no longer required in the office of respondent No. 4. It was also requested that the petitioner may be taken on District Strength. The petitioner was directed through Police Station Salahwas, his permanent home address, to appear before respondent No. 3, but the petitioner did not turn up and thereafter a notice dated 4.1.1997 was sent to the petitioner to join duty, but again he remained absent. Thereafter, a regular departmental inquiry was ordered to be held against the petitioner vide order dated 10.01.1997 and a notice was issued to the petitioner at his permanent address directing him to join inquiry, but again he did not turn up. The Inquiry Officer then sent a summary of allegations, list of PWs and documents along with the notice dated 2.2.1997, directing the petitioner to join inquiry, but again the petitioner remained absent. The Inquiry Officer was allowed to proceed ex-parte. The Inquiry Officer recorded the statement of 5 witnesses and framed a charge sheet against the petitioner, a copy of which was sent to him at his home address along with the notice dated 3.4.1997 directing him to join inquiry and to produce defense witnesses, if any, but again there was no response from the petitioner. A notice dated 15.04.1997 was sent to the petitioner to produce his defense witnesses and written statement but the petitioner remained absent throughout the proceedings. The Inquiry Officer held the petitioner guilty of charges vide

his inquiry report dated 24.4.1997. A notice dated 12.05.1997 was sent to the home of the petitioner directing him to appear before respondent No. 3 on 16.05.1997 for personal hearing and to join his duty, clearly mentioning that no further opportunity will be given to him. The petitioner neither appeared before respondent No. 3, nor joined his duty which resulted in his order of dismissal. It is further stated that the order of dismissal along with a copy of the finding of the Inquiry Officer was sent to his home address, which was received by the father of the petitioner. It is submitted that the copy of the inquiry report and copy of dismissal order were not sent to ADC to Governor Haryana because the petitioner was reported to be absent from office since 12.11.1996, as intimated by the ADC himself and that is the reason why all correspondence was issued to his permanent address as available on the police records. It is submitted thereafter appeal and the revision were decided taking into all factors concerned.

6. I have heard the learned counsel for the parties and with their assistance have gone through the pleadings and the case law cited.

7. Mr. Prateek Gupta, learned counsel appearing on behalf of the petitioner, has vehemently argued that per Rule 16.2 (1) of Punjab Police Rules 1934, the act of being absent without leave, does not fall within the ambit of gravest act of misconduct. In this regard, he places reliance upon a judgement rendered in **State of Punjab versus Prakash Chand 1992 (1) SCT 123**. It is specifically argued that the petitioner was never served with a copy of the allegations nor was he aware of any departmental proceedings pending against him. It is submitted that in fact the petitioner was residing in Chandigarh in rented accommodation which was well within the

knowledge of the respondent authorities and, therefore, his service ought to have been affected upon him at Chandigarh which was never done. However, this court is not inclined to agree with the said submission, simply on the ground that there is a letter available on the record as Annexure P-1 which would reflect that he was getting his pay from Bhiwani. The ADC to the Governor of Haryana, by the letter dated 18.12.1996, had sent a communication to the SP Bhiwani that the petitioner had absented himself from Duty since 12.11.1996 and, therefore, there would be no occasion to send any communication to Chandigarh. The petitioner on several occasions had been asked to participate in the inquiry proceedings and show cause notice and notices had been sent to his permanent address. However, the petitioner still failed to put in an appearance before the departmental inquiry, despite the fact that notices had been received by his father. If the petitioner had put in an appearance before the Inquiry Officer and given any plausible explanation for his absence the same would have been taken into consideration. Otherwise it would become a case of abandonment of service as has been held by the Division Bench in **Constable Om Parkash vs. State of Haryana and others 1994 (2) RSJ 791**. The plea that the petitioner had no knowledge of the proceeding pending against him, would also be unsubstantiated as he was withdrawing his salary from Police Station Bhiwani, which he would go to collect personally. It would be automatic reaction to check why the salary was not being released to him in December 1996, and at that point he would become aware of the proceedings pending. The bald statement given that he was waiting for dismissal orders to be passed does not stand to reason. Therefore, this court

is of the opinion that enough opportunity had been given to the petitioner to appear before the disciplinary authority and despite service he failed to do so. Proper procedure has been adopted while holding the inquiry.

8. In the present case, the punishing authority has come to a finding that the misconduct attributed to the petitioner was '*grave misconduct and indiscipline*' especially being a member of the disciplined force. He remained absent from duty and did not join despite a notice being sent to him to do so. There is also no explanation forthcoming as to why he did not join after being relieved from Chandigarh. The judgment as relied upon by the counsel for the petitioner would not be applicable to the facts of the present case, since the petitioner despite being given sufficient number of notices to join the inquiry, and was also given personal hearing, did not choose to appear.

9. As the petitioner had worked from 3.10.1989 and was dismissed from service on 25.7.1997, he would not be entitled to pension as he had not worked for 15 years to qualify for pension.

10. Consequently, the impugned orders do not suffer from infirmity and the writ petition stands dismissed.

April 19, 2022.

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : No