

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

Sr. No.580

**CWP-15553-1999 (O&M)
Date of decision: May 19, 2022**

Sher Singh, Conductor

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Naveen Daryal, Advocate
for the petitioner.

Mr. R.D. Sharma, Deputy Advocate General, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner, *inter alia*, seeks issuance of a writ in the nature of certiorari to quash an office order dated 08.04.1994 (Annexure P/2) whereby period of absence of the petitioner from 11.03.1993 to 07.06.1993 was treated as leave without pay and punishment of warning was awarded to the petitioner.

2. Petitioner was served with charge-sheet dated 12.4.1993 (Annexure P/1) on account of his remaining absent from duty for the period from 11.03.1993 to 07.06.1993. He submitted his reply to the charge-sheet on 10.06.1993. An inquiry officer was appointed, and in the report submitted by the Inquiry Officer petitioner was found innocent of all charges. Vide order dated 08.04.1994 (Annexure P/2) petitioner was awarded punishment of warning and his period of absence was treated as leave without pay. Appeal filed against impugned punishment order was dismissed vide order dated 26.11.1997 (Annexure P/3).

3. Learned counsel for the petitioner argues that petitioner could not resume his duty due to his genuine illness. Overlooking the same, the impugned order read with order of the State Transport Controller, dated 26.11.1997 (Annexure P/3) were passed, vide which appeal of the petitioner was rejected. Both the orders are illegal and have been passed by dissenting with the detailed report given by the inquiry officer, without giving any cogent or admissible reasons thereof.

4. Whereas, learned State Counsel urges that the petitioner was entitled to medical leave, only if there were any medical prescription of bed rest by the

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competent medical officer. He thus defends the impugned punishment order as upheld by appellate authority in view of the alleged misconduct of petitioner.

5. In the context of punishment awarded to the petitioner, reference may first be had to the relevant service rule, which is reproduced herein below:-

“8. Without prejudice to the provision of Rule 7 no order for imposing a minor penalty shall be passed on a Government employee unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration

x x x x x x x x

Provided further that the requirements of this rule may, for sufficient reasons to be recorded in writing be waived where it is not practicable to observe them and where they can be waived without injustice to the Government employee concerned.”

6. No doubt the punishing authority is empowered to disagree with the findings of the inquiry report. However, once the inquiry officer after conducting proper proceedings and having gone through the evidence had given finding that the petitioner was indeed hospitalized at the relevant period and he could not report for work owing to serious ailments of Tuberculosis, he ought to have been given the benefit of being absent from service on medical grounds as per the applicable service rules. Number of days an employee is permitted to remain absent on payment of full salary is stated to be 180, throughout the service career.

7. In my opinion, the arguments advanced by learned State Counsel does not seem to have any substance in view of clear findings rendered by the inquiry officer who concluded the proceedings after going through the entire medical record of the relevant period. Further the punishing authority is empowered to disagree with the findings rendered by the inquiry report, as mentioned above, by recording reasons thereof. However, the same can and had to be done only after complying with the relevant service rule *ibid*.

8. *Apropos* the rule quoted above, there is a clear mandate that a delinquent employee be given an adequate opportunity of making any representation that he may desire to make and such representation be taken into consideration. Furthermore, if the same is to be dispensed with, then the authority shall record the same in writing with cogent reasons. It is in a way, protection accorded to an employee against any high-handedness of his superiors, in the event they resort to it. However, the petitioner was not given any opportunity to present his side of case to dispel the disagreement of the punishing authority. There is nothing on record to show that any such steps were being taken and even the said averments are made in the petition. It is settled position in law that the record

should speak for itself and as an afterthought, pleadings cannot be used as a tool to improve on what is otherwise factually reflected.

9. In the premise, the impugned order is set aside. Respondents are directed to pay the arrears of salary to the petitioner for the relevant period, subject of course to the permissible number of days of absence as per entitlement, as per the applicable rules, along with interest @ 5% p.a. from the date of filing of the petition till realization of the amount.

10. Let needful be done within a period of three months from the date of receipt of a certified copy of this order.

11. Petition stands allowed in the above terms.

12. Since the main case has been decided, pending civil miscellaneous application, if any, also stands disposed of.

(ARUN MONGA)
JUDGE

May 19, 2022
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No