

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

CM-3946-CWP-2020 in/and
CWP No.9743 of 2016 (O&M)
Date of Decision: April 29, 2022

Bijender Singh

...Petitioner

Versus

State of Haryana etc.

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. G.S Gopera, Advocate
for the petitioner.

Ms. Kirti Singh, DAG Haryana.

JAISHREE THAKUR, J. (Oral)

with permanent effect has been awarded to the petitioner by the departmental punishing authority and upheld in appeal/revision.

2. In brief, the facts of the case are that the petitioner was serving as Constable in Haryana Police (Belt No.2/840) and was posted at 2nd IRB Bhondsi, Gurgaon, Haryana. On 03.07.2014, the petitioner went on leave of sickness for 7 days and as such, he was to return on 11.07.2014 before 12 noon. However, he could not return due to his peculiar medical conditions, for which he was continuously getting his treatment from the Anchal Maternity and Nursing Home, Vinod Gate Chowk, Bhiwani and Vashishth Neuro Care Medical, PGI Road, Second Floor, Narwana Diagnostic Centre, Rohtak. As the petitioner could not return on 11.07.2014, resultantly, he was reported as absent vide RAPAT No.13 dated 11.07.2014. Thereafter, on 16.09.2014, a regular departmental enquiry was ordered against the petitioner, with the allegation that he absented from duty without any permission or leave from the department. On 30.01.2015, the petitioner appeared in the Head Office, vide RAPAT No.5 dated 30.01.2005, after absenting himself w.e.f. 11.07.2014. The Enquiry Officer collected the evidence, recorded the statements of witnesses and held the petitioner guilty by observing that despite giving light duty work in the department by the authorities, he intentionally did not come present for his duty nor gave any information to the Head Office and absented himself from duty without any permission or leave from the department w.e.f. 11.07.2014 to 31.01.2015. After concluding the regular enquiry, on 08.07.2015 respondent No.4 served a show cause notice calling upon the petitioner to show cause for awarding punishment of stoppage of *three future annual increments with permanent*

effect, which notice was promptly replied to by the petitioner. It has been alleged that thereafter, on 24.08.2015 respondent No.4 passed an order of awarding punishment of stoppage of *three future annual increments with permanent effect* without considering the medical condition of the petitioner. The appeal preferred by the petitioner before the Inspector General of Police, IRB Bhondsi, Gurgaon against the order dated 24.08.2015 passed by the punishing authority, was dismissed by an order dated 29.10.2015 and even the revision filed by the petitioner before the Director General of Police, Haryana was too dismissed by an order dated 11.03.2016. Hence, the instant writ petition.

3. Notice of motion was issued in the matter, pursuant to which appearance has been caused on behalf of the respondents.

4. Mr. G.S. Gopera, learned counsel appearing on behalf of the petitioner would argue that the Enquiry Officer, while recording his verdict against the petitioner, has also noted that the petitioner got his treatment from Anchal Maternity and Nursing Home, Vinod Gate Chowk, Bhiwani and Vashishth Neuro Care Medical, PGI Road, Second Floor, Narwana Diagnostic Centre, Rohtak, but despite that the Enquiry Officer held him guilty of the charges framed. It is submitted that thereafter, respondent No.4 served a show cause notice upon the the petitioner for awarding punishment of stoppage of *three future annual increments with permanent effect*. It is contended that even a detailed reply submitted by the petitioner enumerating his stand was not considered, before passing the impugned order dated 24.08.2015 by respondent No.4. It is further argued that even the appeal and revision filed by the petitioner came to be dismissed, without

giving any heed to the relevant facts put forth by the petitioner.

5. Per contra, Ms. Kirti Singh, learned DAG Haryana, appearing on behalf of the respondents would argue that on careful consideration of the facts and circumstances of the present case, the punishing authority found himself in agreement with the finding given by the Enquiry Officer and imposed the penalty of stoppage of *three future annual increments with permanent effect*. It is contended that the petitioner absented himself from duty w.e.f. 11.07.2014 to 31.01.2015 i.e. for 204 days without any permission or leave, which shows his misconduct in the disciplined police force. It is argued that the punishment awarded by the punishment authority is legal and valid, as the same has been passed after affording sufficient opportunity to the petitioner and following the principles of natural justice.

6. I have learned counsel for the parties and have also gone through the pleadings of the case.

7. It is an admitted fact that the petitioner, while working as Constable in Haryana Police and posted at 2nd IRB Bhondsi, Gurgaon (now Gurugram), Haryana, absented himself from the duty w.e.f. 11.07.2014 to 31.01.2015 i.e. for 204 days without any permission or leave from his department, consequent to which, a regular enquiry was held and the Enquiry Officer, concluded the enquiry, while giving his verdict against the petitioner, holding him guilty of '*absent from duty*'. Thereafter, a show cause notice was served upon the petitioner by the punishing authority for stoppage of *three future annual increments with permanent effect* while in agreement with the finding of the Enquiry Officer and passed the order dated 24.08.2015. After that, the appeal and the revision filed by the

petitioner also came to be dismissed. The grouse of the petitioner is that despite the fact that he was continuously getting treatment from the hospital during the period he remained absent from duty, as such, the punishment awarded by the authorities is harsh and is liable to be set aside.

8. A perusal of the written statement filed by the respondents would show that Mr. Hawa Singh, DSP, was appointed as an Enquiry Officer in the present case, who prepared the summary of allegations and served the list of prosecution witnesses and the list of documents upon the petitioner. Since the petitioner did not plead guilty, the Enquiry Officer proceeded to record the statement of witnesses in the presence of the petitioner and framed formal charge-sheet and served the same upon him. On examination, the petitioner did not admit the charges. The petitioner did not lead any evidence in his defence, however, submitted his defence in writing. The Enquiry Officer recorded the statement of Dr. Harish Vashistha, M.D. Psychiatry of Vashishtha Neuro Care Medical Mor, PGI Road, Rohtak and returned his finding dated 05.06.2015 holding him guilty of the charge framed against him. On careful consideration of the material available on record, the punishing authority served a show cause notice upon the petitioner for stoppage of *three future annual increments with permanent effect*. The reply supplied by the petitioner to the show cause notice was duly considered and an opportunity of personal hearing was afforded to him and thereafter, the punishing authority awarded him penalty of stoppage of *three future annual increments with permanent effect*.

9. In the present case, no witness was examined in defence by the petitioner, though the Enquiry Officer, on his own discretion, recorded the

statement of Dr. Harish Vashishtha, MD Psychiatry, from whom the petitioner was getting treatment, being the material witness. The said statement of Dr. Harish Vashishtha is available on record as Annexure P-1, as per which, the doctor advised medicine and rest to the petitioner for two weeks from 08.06.2014 (i.e. upto 22.06.2014). Thereafter, on 11.07.2014, the doctor advised light duty to the petitioner for two weeks along with medicine (i.e. upto 25.07.2014); then on 03.08.2014 again light duty for two weeks was advised and medicine was extended simultaneously (i.e. upto 17.08.2014); then on 23.09.2014 for one month (i.e. upto 22.10.2014); on 27.10.2014 for 10 days (i.e. upto 07.11.2014); on 20.11.2014 for one month (i.e. upto 20.12.2014); on 04.12.2014 for 07 days, while he himself did not turn up and only medicine was advised to the petitioner (i.e upto 11.12.2014); on 01.01.2015 when the petitioner himself appeared, the doctor advised light duty for 15 days simultaneously with medicine (i.e. upto 16.01.2015); and then on 15.01.2015 seven days rest was advised (i.e upto 22.01.2015). Thereafter, the petitioner joined his duty in the department w.e.f. 31.01.2015.

10. Even in his finding, the Enquiry Officer has taken note of the fact that as per medical record, the petitioner was advised light duty and as such, he was not advised to stay at home, as also the fact that the petitioner did not come on time for treatment and twice sent someone else for collecting medicine. It was also noted that despite being allowed by the doctor to do light duty work, he did not come present for duty, nor gave any information or intimation to the department. This court has gone through the orders passed by the respondents-authorities and the same are

and speaking one.

11. It is well settled proposition of law that under Article 226/227 of the Constitution of India, this court cannot act as a second court of appeal in the disciplinary proceedings, as the disciplinary authority is the sole judge of facts. Further, this court can only see whether; the enquiry is held by a competent authority; the enquiry is held according to the procedure prescribed in that behalf; there is violation of the principles of natural justice in conducting the proceedings; the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations; the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion; the disciplinary authority had erroneously failed to admit the admissible evidence and material evidence; the disciplinary authority had erroneously admitted inadmissible evidence which influenced the findings; and the finding of fact is based on no evidence. If the conclusion upon consideration of the evidence arrived at by the disciplinary authority is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of *certiorari* could be issued. The burden of proof in the disciplinary proceedings is not of beyond reasonable doubt as is the principle in the criminal trial, but it is on the probabilities of the misconduct. The delinquent, such as the writ petitioner, could examine himself to rebut the allegations of willful absent from duty.

12. In the present case, the allegations in the charge-sheet of

'*absent from duty*' is a reliable finding returned by the departmental authorities on the basis of evidence placed before them. Moreover, the petitioner himself choose not to lead any evidence. No infraction of any rule or regulation or the violation of principles of natural justice has been borne out from the facts of the present case.

13. In view of the foregoing discussion, facts and circumstances of the present case and the well settled proposition of law, no interference is called for in the well reasoned and speaking orders passed by the respondents-authorities. Consequently, the instant writ petition is hereby dismissed.

April 29, 2022
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes