

104.

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

CWP-22032-2020 (O&M)

Date of Decision: 17.05.2022

SHANKAR DASS

.... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vinay Kumar Gupta, Advocate, for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

JAISHREE THAKUR.J (Oral)

CM-8371-CWP-2021

This is an application filed on behalf of the respondents to place on record order dated 24.09.2020 passed by the Additional Chief Secretary, Punjab, Chandigarh.

For the reasons stated in the application, document Annexure A-1 is taken on record. Copy thereof is supplied to the counsel opposite.

CWP-22032-2020

The petitioner herein is seeking a writ in the nature of certiorari for quashing the impugned order dated 05.03.1994 (Annexure P-4) whereby he was dismissed from service for being absent from duty for a period of 96 days; order dated 20.12.1994 (Annexure P-5) dismissing his appeal; order dated 04.09.1995 (Annexure P-7) rejecting the revision and order dated 24.09.2020/13.10.2020 (Annexure P-11) declining the mercy appeal against such dismissal.

The petitioner has pleaded that he joined the police department on 28.08.1989 as Constable. He was implicated in a false case under an FIR under Sections 323, 324, 325, 34 IPC on 05.02.1991 and consequently, was dismissed from service. However, the trial Court, vide judgment dated 08.07.1993, acquitted him. He was ordered to be reinstated w.e.f. 05.02.1991. Since there was some family dispute with regard to agricultural land, the petitioner remained absent from duty for a period of 96 days w.e.f. 28.09.1992. Show cause notice was served upon him, however, he could not attend the departmental proceedings and was proceeded against ex-parte. He was charge-sheeted on 04.05.1993 and vide order dated 05.03.1994 (Annexure P-4) passed by the S.S.P., Ludhiana, he was dismissed from service. He filed an appeal before respondent No.4-Deputy Inspector General of Police, Ludhiana Range, Ludhiana, which was rejected vide order dated 20.12.1994 (Annexure P-5). Thereafter, he filed an appeal-cum-revision before respondent No.3-Inspector General of Police, which was also dismissed vide order dated 04.09.1995, Annexure P-7.

Aggrieved against the aforesaid three orders he filed a mercy appeal before respondent No.1-Additional Chief Secretary, Home Affairs and Justice, Government of Punjab, Chandigarh. While hearing the appeal, respondent No.1 issued direction to respondent No.2 to grant the petitioner an opportunity to personal hearing. Accordingly, the petitioner visited the office of the respondent and submitted his part and was informed, vide order dated 13.10.2020 (Annexure P-11), that his appeal has been dismissed, being time barred.

Learned counsel appearing on behalf of the petitioner would contend that the respondent authorities did not give him a reasonable opportunity of hearing and dismissal order has been passed at his back by proceeding against him ex-parte. He would submit that due to some family issue, he could not attend the duty for 96 days. His period of absence could be condoned and he could be imposed some lesser punishment and reinstated in service with consequential benefits keeping in view non-serious allegations of mere absence from duty for 96 days.

Notice of motion.

At this stage, Ms. Anju Arora, Additional Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondents. She would argue that the petitioner remained absent from duty for 96 days without intimation w.e.f. 28.09.1992 to 02.01.1993. Petitioner has been in fact habitual in remaining absent from duty. Earlier also, he remained absent from duty for a period of 3 months and 28 days w.e.f. 13.10.1990 to 12.02.1991, which shows that he was not sincere to his job. The punishment has been inflicted upon the petitioner by following the due procedure as per rules and thus no interference is required in this writ petition. The petitioner approached the State Government in mercy appeal after a long period of about 25 years just to create a ground to approach this Court in writ jurisdiction.

I have heard learned counsel for the petitioner as well as learned State counsel and perused the paper book.

Admittedly, for the absence of the petitioner from duty for 96 days w.e.f. 28.09.1992 to 02.01.1993, departmental proceedings had been

initiated against the petitioner as per rules but the petitioner did not join the proceedings and was proceeded ex-parte. He has already availed of the right of appeal, revision and even mercy appeal to the State Government. The mercy appeal appears to have been filed by the petitioner after a gap of considerable period of 25 years just to create a ground to approach this Court in writ jurisdiction. He slept over the order of dismissal of the revision on 04.09.1995 till 2020 and then woke up and filed mercy appeal to the State Government on 16.06.2020 with an application to condone 9052 days delay in filing the appeal. Vide order dated 11.09.2020/24.09.2020 Annexure A1, said appeal came to be dismissed being barred by time of 25 years. Said order has been passed after affording personal hearing to the petitioner.

I do not see any infirmity or illegality in the orders so passed by the respondents. No fault has been even alleged by the petitioner with the procedure adopted by the respondents in dealing with the petition in the departmental proceedings. It is now well settled that High Court cannot sit in appeal over the administrative authorities to go into the question of quantum of punishment being awarded. Finding no ground to interfere, the instant writ petition is dismissed.

(JAISHREE THAKUR)
JUDGE

17.05.2022
sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No