

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

CWP-2013-2023

Date of decision : 20.04.2023

Priya Sharma

...Petitioner

Vs.

Union of India and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. P.S.Jammu, Advocate for the petitioner.

MANOJ BAJAJ, J.

By means of this writ petition filed under Article 226 Constitution of India petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 26.12.2019 (Annexure P-3) passed by respondent No.5, whereby her husband (now deceased) was dismissed from service. Further, the petitioner has challenged the orders dated 18.02.2020 and 01.12.2020 (Annexures P-4 and P-6) passed by respondent Nos.4 and 3, respectively whereby challenge to order dated 26.12.2019 through appeal and revision also failed.

Learned counsel for the petitioner has argued that the petitioner's husband, namely, Dinesh Sharma had joined the post of Constable/driver with Central Reserve Police Force on 26.05.2003 and was posted in Group Centre, Central Reserve Police Force, Sonapat on 08.09.2018. He further submits that Dinesh Sharma was illegally dismissed from service on the ground of absence from duty. According to learned counsel, petitioner's husband had obtained 15 days earned leave w.e.f. 21.05.2019 to 04.06.2019, but he could not join the duty as he was attending his ailing father. Learned counsel has drawn the

attention of the Court to the averments contained in para No.3 of the writ petition to contend that as the health of Dinesh Sharma's father deteriorated on 05.06.2019, who was got admitted in hospital, therefore, the petitioner's husband was prevented by these circumstances to return back to his place of work. Learned counsel submitted that on 14.12.2019, Dinesh Sharma visited the Group Centre, Sonapat to report his joining, but he was not allowed to join the duties. According to the learned counsel, in the given facts, the extreme decision of dismissal from service is bad in law, as the punishment inflicted is disproportionate to the alleged misconduct. He prays that the impugned orders passed by the punishing authority dismissing him from service and subsequent decisions by the higher authorities upholding the order dated 26.12.2019 be set aside.

During the course of hearing, it is not disputed by learned counsel that as per record of the departmental proceedings, various notices were issued to Dinesh Sharma for joining the duties, but, according to learned counsel, he failed to join, as those communications were not received by him.

After hearing learned counsel and considering the material on record, this Court finds that the absence of Dinesh Sharma from service started w.e.f. 06.06.2019 as his sanctioned leave w.e.f. 21.05.2019 came to an end on 05.06.2019. A perusal of the impugned order dated 26.12.2019 shows that this is not the solitary incident of absence from the duty by the petitioner's husband as previously on numerous occasions also this kind of misconduct by him was noticed, and the charge in this regard is at item No.3 in the chargesheet. But on previous occasions only minor punishments were inflicted upon Dinesh Sharma with an expectation that he would improve, however, he failed to

change himself. It may be noticed here that after ordering inquiry against Dinesh Sharma, the first notice was sent on 14.10.2019 and the copy of the inquiry report was also sent to the petitioner through registered post on 10.12.2019. Though the learned counsel has taken a specific stand during the course of arguments that notices issued to Dinesh Sharma for joining the duty, were not received by him, however, this Court is not inclined to accept it, because he after completion of ex parte inquiry, went to the Group Centre, Sonipat on 14.12.2019, where he was supplied copy of the departmental inquiry report, and he also had submitted his response to the said report.

While examining the defence submitted by the petitioner's husband, it comes out that of course, he raised a ground of deterioration of his father's health on 05.06.2019, but more than that he relied upon his own poor health for his absence and submitted that on 01.08.2019 he lost his brother-in-law, which caused his mental imbalance, and he took treatment from Neurologist, at Jaipur. Further, a reading of the impugned order dated 26.12.2019 passed by the punishing authority shows that it has carefully examined the material on record along with the previous conduct of the Constable Dinesh Sharma while holding him guilty for his misconduct, being a habitual absentee and the said decision has been upheld by the appellate authority as well. The decision by appellate authority has also noticed the earlier punishments awarded to Constable Dinesh Kumar and the same read as under:-

- 30 days line imprisonment and absence period of 97 days from leave has been regularized in (E.O.L.)
- Period of absence of 03 days has been regularized in Half-Pay-Leave

without pay.

- Period of absence of 358 days from leave has been regularized in Die Non and punishment of stoppage of one increment has been awarded for 03 years.

The above findings by the appellate authority were further upheld when his revision petition was dismissed on 01.12.2020. Since, the findings recorded by the respondent No.4 on the subject are based on correct appreciation of the facts and evidence on record, therefore, no case is made out for judicial review.

Thus, finding no merit in this writ petition, this Court is not inclined to exercise extra ordinary writ jurisdiction.

Dismissed.

(MANOJ BAJAJ)
JUDGE

20.04.2023

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