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2023:PHHC:063692

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

CWP-13195-2017

Date of Decision: 16.03.2023

SAT SAROOP

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Abhimanyu Singh, Advocate, for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

JAISHREE THAKUR.J

1. The petitioner herein seeks a writ in the nature of certiorari for quashing order dated 23.12.2015 Annexure P-11 vide which he was imposed penalty of five increments on permanent basis and denied back wages.

2. Brief facts of the case are that the petitioner was appointed on the post of Constable on 30.10.1991 in Haryana Police. However, for remaining absent from duty for 13 days and 20 minutes i.e. w.e.f. 23.11.2006 to 06.12.2006, he was placed under suspension vide order dated 06.12.2006 passed by the Superintendent of Police, Gurgaon, respondent No.5. Departmental enquiry was initiated and he was served with a charge-sheet which he replied to by stating that at the relevant period, he was suffering from viral fever and was taking treatment from his family doctor Mr. A.K. Pandey, MBBS, Senior Medical Officer, Primary Health Centre, Mehrauli, New Delhi, as from the General Hospital, Gurgaon, he did not get any relief. He submitted that he made a request for leave before HC Akbar Khan, MHC, Police Line, Gurgaon, but

due to paucity of employees in the Police Line, said leave was not granted. The Enquiry Officer, vide his report dated 17.05.2007, rejected the medical certificate submitted by the petitioner on the ground that he neither submitted any document relating to the treatment taken from Government Hospital, Gurgaon nor the refusal of MHC, Police Line, Gurgaon not granting him leave. It was further observed by the Enquiry Officer that Mr. A.K. Pandey is a government doctor and a government doctor can never be a private doctor. On the basis of said enquiry report, the petitioner was issued with a show cause notice dated 17.05.2007, which he replied to by stating that he remained absent from duty on medical ground and his absence be treated as leave on medical ground. However, after going through the departmental enquiry file, the Superintendent of Police, Gurgaon, respondent No.5 vide order dated 06.06.2007, dismissed the petitioner from service. An appeal was preferred against the said order before the Commissioner of Police, Gurgaon, respondent No.4, however, appeal was dismissed vide order dated 13.06.2009. Revision preferred before the Director General of Police, Haryana, respondent No.3, was also rejected, vide order dated 18.02.2015, being time barred, as the petitioner preferred revision petition in the year 2014 against the order dated 13.06.2009, whereas according to the provisions of Rule 16.32 of the Punjab Police Rules, an officer whose appeal has been rejected, may apply within a month of the date of dispatch of appellate order to the authority next above. Against the said order, mercy petition was also filed by the petitioner before respondent No.2- Additional Chief Secretary to Government Haryana, Home Department, Chandigarh. He was afforded a personal hearing before the Secretary, Home, on 24.08.2015, who after hearing the petitioner, gave his opinion that the petitioner

remained absent due to his illness and the punishment of dismissal appeared to be very harsh and recommended to reduce his punishment of dismissal to that of stoppage of two annual increments with permanent effect. After going through the facts of the case and the views of the then Secretary, Home; respondent No.2 observed that the punishment of dismissal was highly disproportionate to the act of commission proved against the petitioner and the order does not indicate any other previous service record influencing the decision of the punishing authority and set aside the dismissal order vide order dated 23.12.2015 and ordered imposition of penalty of five increments on permanent basis and the petitioner be taken back in service, but back wages were denied. It is the said order which has been challenged by way of present writ petition.

3. Learned counsel appearing on behalf of the petitioner herein would contend that the medical record for the period of absence was rejected by the Enquiry Officer on the basis of assumption and presumption, without there being any contrary evidence brought on record by the department to prove the charge of absence from duty. Moreover, in view of the observation of the then Secretary, Home, as reflected in order dated 23.12.2015 that absence of the petitioner was not willful but due to his illness for which he had submitted medical certificate as well, there was no occasion for imposing penalty of five increments with permanent effect and to decline back wages. The punishment awarded cannot be sustained in the eye of law being highly disproportionate to the misconduct alleged to be proved. Further, the petitioner remained out of service from 06.06.2007 to 23.12.2015, without any back wages, which is already a severe form of punishment.

4. On the other hand, learned State counsel would submit that the story of illness was a fabricated one as in his defence statement, the petitioner stated that he was taking treatment from his family doctor, namely, Dr. A.K. Pandey, but that person was a government employee and as such cannot be a family doctor. Moreover, he has not produced any defence witness. Therefore, the Enquiry Officer found him guilty of the charges framed. Lenient view has already been taken by the competent authority by converting the dismissal order to that of stoppage of five increments with permanent effect. Before the appellate authority, the petitioner was afforded three opportunities to appear for personal hearing, but he chose not to appear. His misconduct stands fully proved.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the pleadings of the case.

6. In *B.C.Chaturvedi Versus Union of India, 1996 (1) SCT 617*, the Supreme Court authoritatively laid down that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review would be exercised to ensure that the delinquent receives fair treatment, but not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court. It has been held in a catena of judgments rendered by the Supreme Court that the High Court while exercising powers of judicial review cannot substitute its own opinion on penalty and impose some other penalty. It is only if the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, then it would be appropriate to mould the relief either by directing the Disciplinary Authority to reconsider the punishment imposed or to shorten

the litigation and in exceptional and rare cases, to pass an order imposing appropriate punishment in the light of cogent reasons being assigned.

7. The Supreme Court in ***Union Of India Versus Subrata Nath Civil Appeal Nos.7939-7940 of 2022*** has held as under:-

“ It is well settled that courts ought to refrain from interfering with findings of facts recorded in a departmental inquiry, except in circumstances where such findings are patently perverse or grossly incompatible with the evidence on record, based on no evidence. However, if principles of natural justice have been violated or the regulations have not been adhered to or there are malafides attributable to the Disciplinary Authority, then the courts can certainly interfere.”

8. In the case of ***Union of India and another Versus S.S.Ahluwalia, 2007(7) SCC 257***, Supreme Court held as follows :-

".... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty....."

9. In the case in hand, the petitioner has been reinstated in service with imposition of stoppage of five annual increments with permanent effect by respondent No.2 after it was found that the punishment of dismissal from service was disproportionate to his misconduct of remaining absent from duty

for 13 days and the respondents have not been able to establish that on any previous occasion too, the petitioner remained absent from duty. The punishment of stoppage of five increments with cumulative effect is disproportionate to the offence of remaining absent from duty for a period of 13 days. It has also come on the record that the petitioner took medical treatment from Government Hospital, Gurgaon, which would be evident enough to establish that the petitioner was not willfully absent or that that he was guilty of grave misconduct. Consequently, the instant writ petition is partly allowed. The punishment of stoppage of 5 annual increments with permanent effect is hereby set aside and reduced to that of censure.

10. As far as the question of non-payment of back wages is concerned, the petitioner did not file his revision within a reasonable time which was consequently dismissed on the ground of limitation. It is in 2015 that he approached by way of mercy petition which was allowed and he was taken back in service. He cannot be permitted to claim back wages on the principle of 'no work no pay', especially when he himself slept over the matter for a considerable period.

(JAISHREE THAKUR)
JUDGE

16.03.2023

sanjeev

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