

CWP No.18594 of 2015(O&M) and CWP No.7773 of
2016(O&M)

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

Date of Decision: 13.03.2023

1. CWP No.18594 of 2015(O&M)

Khurshid Ahmed

.....Petitioner

Vs

State of Haryana and others

.....Respondents

2. CWP No.7773 of 2016(O&M)

Khurshid Ahmed

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.K. Redhu, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CWP No.18594 of 2015 titled Khurshid Ahmed Vs. State of Haryana and others and CWP No.7773 of 2016 titled Khurshid Ahmed Vs. State of Haryana and others are being decided. Both the writ petitions have been filed by the petitioner for some how different cause of action, which are overlapping in nature, therefore, common facts are being noticed.

[2]. The petitioner was recruited as a Constable in Haryana Police on 17.01.1989. He was awarded 8 Commendation Certificates to his decoration with or without cash reward by the superior authorities. The petitioner was deputed in the Lower School Course on 23.12.2011 at Haryana Police Academy, Madhuban in Batch No.55. During the training, the petitioner had acute unbearable stomach pain and he requested the authority to sanction leave in order to get himself checked up. The petitioner was not granted any leave or permission to get himself checked. Ultimately, the pain became unbearable and the petitioner went home and took treatment. The petitioner joined his duties on 31.05.2012. Again the petitioner had an acute pain on 13.06.2012 and he requested the authority to grant him leave/permission to get himself checked and the same was not granted. Since the pain was unbearable, therefore, the petitioner went home and got the treatment from the doctor and again joined his duties on 27.06.2012. On 02.07.2012, the petitioner again felt acute pain in his stomach. The petitioner went to Government Hospital, Madhuban, where the doctor prescribed him some medicine and referred him to General Hospital, Karnal. The respondent-authority did not depute any attendant along with the petitioner. Since the pain was unbearable, the petitioner had to go home from where he

went to nearby Mittal Hospital, Alwar. Various tests were conducted. After getting the report of ultrasound, doctor advised him to get himself admitted for surgery on 10.07.2012. The petitioner got himself admitted in the hospital on 09.07.2012 and the petitioner was operated on 10.07.2012 for removal of stone in his gallbladder. The doctor advised him rest from 15.07.2012 to 14.08.2012 and also advised to avoid heavy exercise and heavy work for the next three months.

[3]. On 15.08.2012, the doctor again advised him to take complete rest from 15.08.2012 to 15.11.2012 as the operation was a major operation and the same was on account of 'Acute Colecystitis with Cholelithiasis with Empyema GB' (avoid heavy exercise and heavy work for next three months). Again on 16.11.2012, the doctor advised further rest for 25 days upto 09.12.2012 to recover completely from PVO. The petitioner was suffering from 'Acute Colecystitis with Cholelithiasis with Empyema GB' which was beyond his control and remained under treatment. Since the petitioner did not report back, therefore, he was repatriated to his parent place of posting from the training by the Director, Haryana Police Academy, Madhuban vide order dated 19.10.2012. Further Superintendent of Police, Palwal vide order dated 30.10.2012, initiated departmental enquiry against the petitioner.

[4]. The Enquiry Officer was appointed. The Enquiry Officer submitted his findings and held the petitioner guilty on the ground that the petitioner remained under treatment due to illness and did not submit any medical leave or any cogent reason for his absence from duty from 24.05.2012 to 31.05.2012 and 13.06.2012 to 27.06.2012 total 21 days. The Enquiry Officer on the basis of material on record has given his report on 19.02.2013 that the petitioner was admitted in Mittal Hospital, Alwar on 09.07.2012 and was operated for gallbladder stone. The petitioner remained in Mittal Hospital, Alwar from 09.07.2012 to 15.07.2012. The complete rest was advised from 15.07.2012 to 14.08.2012. Thereafter, again complete rest was advised by the doctor from 15.08.2012 to 15.11.2012. From the statement of Doctor Sudhir Gupta and documents placed on record, it was found by the Enquiry Officer that the petitioner was in fact ill, but did not show any medical prescription for the period 24.05.2012 to 31.05.2012 and 13.06.2012 to 27.06.2012. Due to the aforesaid period of absence from lower school course, the Enquiry Officer though found the petitioner to be really ill, but for want of medical prescription for the aforesaid period of 21 days, the Enquiry Officer found the petitioner to be guilty.

[5]. On the basis of enquiry report, Superintendent of

Police, Palwal vide order dated 22.03.2013, imposed the penalty of stoppage of two annual increments with permanent effect. The absent period was sanctioned to be leave without pay. The appeal was preferred by the petitioner before the Inspector General of Police and the same was dismissed by the Inspector General of Police, South Range, Rewari vide order dated 24.07.2013. The petitioner remained unsuccessful in the revision petition filed before the Director General of Police, Administration, Haryana, who dismissed the revision petition vide order dated 15.10.2013.

[6]. In CWP No.18594 of 2015, the petitioner has assailed the enquiry report and consequent orders passed by the authorities in hierarchy. In CWP No.7773 of 2016, the petitioner has questioned the in-action on behalf of the respondents in not deputing the petitioner in Lower School Course i.e. Batch No.55 to take final examination in view of Chapter-V of Training Manual issued by the Director General of Police, Haryana, Police Academy, Madhuban and for directing the respondents to depute the petitioner in lower school course to take final examination in view of aforesaid training manual.

[7]. Learned counsel for the petitioner submitted that the Enquiry Officer and the competent authority have calculated total period of 125 days as absent period, out of which, the

petitioner has successfully demonstrated his justified absence based on medical evidence for a period of 104 days. The period of 21 days was in respect of period in which, the petitioner had suffered initial pain in the academy, for which, he took treatment and repeatedly joined back the academy after feeling some relief. The period from 24.05.2012 to 31.05.2012 i.e. 7 days and from 13.06.2012 to 27.06.2012 i.e. 14 days total 21 days have been calculated to be absent period without any medical prescription, for which order of punishment was passed and the petitioner was repatriated to his parent department without considering his further prospects of deputing in the course in question. The competent authority/Superintendent of Police, Palwal vide order No.184-188/ST dated 22.03.2013 has sanctioned leave without pay for the total period of absence of 125 days.

[8]. Perusal of the aforesaid order would show that the competent authority has considered the total period of absence of 125 days by regularising the same to be leave period without pay and thereafter, the petitioner cannot be vexed twice for the same alleged misconduct. Even though, the petitioner has successfully demonstrated his absence of 104 days with reference to medical documents before the Enquiry Officer and the Enquiry Officer has found him to be really ill for that period

on the basis of material on record and ultimately, found him guilty only for the absence period of 21 days without any medical proof. Learned counsel for the petitioner further submitted that imposition of penalty of stoppage of two increments with cumulative effect is not justified after the period of absence having been regularized by ordering the same to be without pay. In a way, the aforesaid regularization of absence period is also a punishment for the same misconduct. The petitioner cannot be vexed twice by imposing stoppage of two annual increments with permanent effect. Learned counsel for the petitioner further highlighted that the perusal of order dated 24.07.2013 passed by the Inspector General of Police and order dated 15.10.2013 passed by the Director General of Police, Administration, Haryana would show that the authorities in hierarchy were not alive to the factual position as the orders are totally non-speaking inasmuch as that the appellate as well as revisional authority did not point out anything on the basis of material available on record in the form of *bona fides* of the petitioner based on medical evidence. The appellate authority and the revisional authority have passed the orders by treating the total period of absence to be 125 days and by presuming that the departmental enquiry has implicated the petitioner for wilful absence of 125 days. The appeal was in continuation of

the orders passed by the prescribed authority and the appellate authority was under legal obligation to consider the grounds/submissions of the appellant meticulously by way of threadbare consideration.

[9]. Learned counsel for the petitioner placed reliance upon **Dharam Pal Vs. State of Haryana and another, 2008(5) SLR 413, Jarnail Singh Vs. State of Punjab, 2001(20) RSJ 175** and **State of Punjab Vs. Bakhshish Singh, 1998(5) SLR 625** and contended that once the period of absence was considered to be leave without pay, the petitioner could not be punished for that very lapse. The Enquiry Officer has not recorded any finding that the absence of 21 days was wilful or deliberate, rather the finding was returned solely on the ground that no medical document was placed by the petitioner to explain the absence from 24.05.2012 to 31.05.2012 and from 13.06.2012 to 27.06.2012 for a total period of 21 days, which was initial absence when the petitioner felt unbearable pain, for which he took medicine and repeatedly joined back the academy. It was only on 02.07.2012, the petitioner felt unbearable stomach pain and thereafter, visited Government Hospital, Madhuban, where the doctor referred him to General Hospital, Karnal and thereafter, the petitioner had no alternative, except to go home and got himself treated in Mittal Hospital, Alwar and was

operated accordingly for the removal of stone in gallbladder. In the absence of any such finding of deliberate absence, the order of punishment is wholly unsustainable on the strength of **Chhel Singh Vs. M.G.B. Gramin Bank Pali and others, 2015 AIR (SC) 598**, wherein the Hon'ble Apex Court appreciated the allegation of absence, which was beyond the control of the delinquent. There was no evidence of wilful and deliberate absence and no finding was returned that the absence was deliberate or wilful. There was no allegation that the medical reports were forged. 24 days absence in the aforesaid case was considered to be of no consequence/misconduct.

[10]. *Per contra*, learned State counsel by referring to Rule 8.16 of CSR Vol.-1, Part-I submitted that the total period of absence was 125 days and the leave was not sanctioned at any point of time. The imposition of punishment was on account of issuance of show cause notice.

[11]. I have considered the submissions made by the learned counsel for the parties and have perused the record.

[12]. After perusal of the record, I find that the petitioner felt unbearable stomach pain when he was deputed in a lower school course from 23.12.2011 onwards and he took medicine and joined back the course repeatedly upto 27.06.2012. On 02.07.2012, he again felt unbearable pain and was referred to

Government Hospital, Karnal by the Government Hospital, Madhuban. Since no attendant was provided to the petitioner and the pain became unbearable, therefore, he had no alternative, except to go home, where he got himself admitted in Mittal Hospital, Alwar and was diagnosed to be case of 'Acute Colecystitis with Cholelithiasis with Empyema GB'. The petitioner was operated and was advised rest and avoid heavy exercise and heavy work for certain period. On the basis of medical evidence on record, Enquiry Officer considered the absence of 104 days to be *bona fide* and held that the petitioner could not produce any material viz. medical proof of his absence of 21 days from 24.05.2012 to 31.05.2012 and 13.06.2012 to 27.06.2012. The Enquiry Officer has not returned any finding of wilful and deliberate absence of the petitioner for the aforesaid 21 days. No findings have been recorded that the medical evidence is forged, rather the Enquiry Officer has accepted the same for the absence of 104 days out of total absence of 125 days. For the absence of 125 days, the competent authority/Superintendent of Police, Palwal has already ordered the absence period to be sanctioned as leave without pay and in the light of aforesaid order, imposition of two annual increments with permanent effect appears to be wholly unjustified. The appellate authority as well as revisional authority were not alive

to the factual position of the case and they only considered the total period of 125 days without adhering to the prescribed period of the aforesaid absence in two different parts i.e. for 104 days of absence, the Enquiry Officer has considered the absence to be on *bona fide* note and for 21 days, no findings have been returned that the absence was wilful or deliberate and it was only on account of non-production of material to that effect for the said period. Thereafter, imposition of punishment ultimately resulted in non-consideration of the case of the petitioner for sending him to lower school course in 35% quota on the basis of seniority-cum-fitness. The stand of the respondents is that in view of imposition of punishment, the petitioner has been debarred from the course. On the basis of material on record, I find that the imposition of penalty of stoppage of two annual increments with cumulative effect is wholly unjustified, firstly, on the ground that out of absence of 125 days in total, the Enquiry Officer and the competent authority have found that the absence of 104 days was justified on the basis of medical evidence on record and secondly, for the absence of 21 days, there is no finding recorded by the Enquiry Officer that the same was on account of wilful or deliberate absence. The absence of 125 days has already been sanctioned as leave without pay vide order No.184-186/St.

dated 22.03.2013 by the Superintendent of Police, Palwal.

[13]. In the light of unrebutted facts, the order of punishment thereby awarding stoppage of two annual increments with cumulative effect is held to be not justified. Since the candidature of the petitioner has not been considered for sending him to lower school course after his repatriation to parent department, therefore, I find that non-consideration is wholly unjustified. The petitioner was considered in 35% quota on the basis of seniority-cum-fitness. As on date, the petitioner is running 57 years of age and would retire at the age of 58 years. The petitioner was not at fault as he was sufficiently prevented for attending the ongoing course due to compelling circumstances arising out of medical health. The absence period of 104 days on the strength of medical evidence produced by the petitioner was considered to be genuine. For remaining 21 days of absence, there was no allegation of wilful or deliberate absence.

[14]. In **CWP No.8958 of 2013** titled **EASI Satyawar Vs. State of Haryana and others** decided on 12.09.2017, this Court has considered the case of the aforesaid EASI Satyawar to the effect that rejection of his claim for sending him for lower school course was with reference to the award of marks for educational qualification which was contrary to the rules of

recruitment. Since juniors to him were sent for lower school course and with the passage of time, sending of EASI Satyawar for lower school course was not considered due to default of the respondent-Department in not following the 1934 Rules, therefore, he was granted exemption from undergoing lower school course. His case was considered for all service benefits at par with his immediate juniors, who were sent to lower school course ahead of him.

[15]. From the material on record, I find that the case of the petitioner who is running 57 years of age and is going to superannuate at the age of 58 years, needs to be considered for exemption from undergoing lower school course. With the grant of aforesaid exemption, the petitioner is held entitled to all the consequential benefits as would be available to him at the time of his superannuation.

[16]. For the reasons recorded hereinabove, impugned orders are quashed. Both the writ petitions are accordingly allowed. Normal consequences to follow.

13.03.2023

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No