

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

**CWP-21540-2018
DECIDED ON: 21.08.2023**

INDER SINGH

...PETITIONER

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Tejpreet Singh, Advocate with
Mr. Sandeep Kumar, Advocate
for the petitioner.

Ms. Aditi Sharma, Advocate
for respondents.

SANDEEP MOUDGIL, J

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India for issuance of a writ in nature of certiorari seeking quashing of the order dated 02.04.2018 (Annexure P-1) passed by the respondent no.2 whereby the petitioner has been held not entitled to any ACP and that his unauthorised absence renders forfeiture of his past services. The petitioner has also sought quashing of the charge sheet dated 27.03.2018 (Annexure P-4).

2. Learned counsel for the petitioner contends that the petitioner was appointed as an Assistant Lineman with the respondents on 01.03.1978 and subsequently on attaining the age of superannuation retired on 31.10.2017. It has been alleged that the petitioner was entitled to ACP in lieu of promotions and after the retirement of the petitioner, only with the view to deny the benefit of ACP to the petitioner, charge-sheet dated 27.03.2018 has been issued for wilful absence from service.

3. It is further averred that benefits of ACP cannot be denied to the petitioner on account of absences and the minor punishment awarded to him as the ACP is in

lieu of promotions only and awarding minor punishments cannot be held to be a ground of denying him the benefit of ACP, which otherwise amounts to 'double jeopardy'. He further submits that even otherwise also, the respondents have passed punishment orders dated 16.03.2018 (Annexure P5 colly) wherein the petitioner has been awarded punishment of cut in pension and the period of absence in the said charge-sheet have already been regularised as leave of kind due.

4. On the other hand, the respondents have contended that the representation submitted by the petitioner have been decided by way of passing a speaking order dated 02.04.2018 (Annexure P-1) and the demand of the petitioner for grant of ACP was not found feasible as the petitioner did not have requisite spell of regular satisfactory service due to a large number of breaks in service as the petitioner was a habitual absentee (about 4333 days). The unauthorised absence from duty has resulted into forfeiture of past service and therefore, the petitioner has no pensionable service to his credit. As such, the petitioner is not entitled to ACP due to not having sufficient period of regular satisfactory service.

5. Heard learned counsel for the parties and gone through the record.

6. The factual matrix detailed in the impugned order (Annexure P-1) as well as the reply on record would show that the petitioner has repeatedly remained absent from his duty for a considerably long period. The petitioner is a habitual absentee and various disciplinary actions were issued against him during his service. The detailed charges and consequent punishment awarded has been mentioned in para 3B of the reply on record wherein instances of coming to work in drunken state, manhandling of officials and unauthorised absence have been recorded.

7. Rule 3.17A(e) of the Punjab Civil Services Rules, Vol-II (Rules relating to Pension, Death-cum-Retirement Gratuity, Commutation of Pension & Family Pension) provides as under:

“(e)An interruption in service of a Government employee caused by wilful absence from duty and unauthorised absence without leave will as hitherto entitle forfeiture of past service.”

Further, Govt. of Haryana Instructions No. 11/82/99-1FR-II dated 06.10.1999, placed before this Court, clarifies as under:

*“2. In order to prevent wilful absence by the Govt. employees, leave sanctioning authority must satisfy himself/herself with regard to the genuineness of the grounds on which the leave has been asked for. **If a Govt. servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty or overstays, the concerned employee should be told of the consequences viz. that the entire period of absence would be treated as unauthorised absence and it will become interpretation in service which entails for forfeiture of past service under rule 3.17A (e) of Pb. CSR Vol. II.**If the Govt. servant does not join duty, disciplinary authority should immediately institute disciplinary proceedings against the employee under rule-7 of Punishment and Appeal Rules. When an employee continuously remained on leave on medical grounds, leave sanctioning authority immediately should secure medical opinion of CMO/PMO.*

*In light of the above, it is again made clear that **the action of government servant who remains absent unauthorisedly tantamount to undiscipline.** Hence, leave sanctioning authority must take strict action against the defaulter.”*

8. It may be noted that no challenge has been made to the previous charge-sheets and the punishment awarded thereto. Even the impugned order dated 02.04.2018 (Annexure P-1) leaves no manner of doubt that the conclusion drawn by the respondent that the petitioner is a habitual absentee and his conduct is of such a nature rendering him incorrigible to be granted any benefit, is in line with

the prescribed Rules. In this regard, it may be apposite to refer to the judgment passed by the Division Bench of this Court in **Ajmer Singh v. U.T. Chandigarh**[2009(2) SLR 604.

9. Even otherwise, the petitioner has failed to point out if the inquiry is otherwise in violation of the rules of procedure or that he was prejudiced in any manner. In **Union of India v. R.K. Sharma**, [2001(4) SCT 828: (AIR 2001 Supreme Court 3053)], the Hon'ble Apex Court has taken the view that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the fact of it there is perversity or irrationality that there can be judicial review under Articles 226 and 227 or under Article 32 of the Constitution. Since the case in hand is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, this Court restrains itself from interfering with the action taken by the respondents.

10. In view of the above discussion, there is no merit in the present writ petition and the same is accordingly dismissed.

21.08.2023

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No