



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

**CWP-11537-2001 (O&M)
Date of Decision:22.11.2024**

NISHAN SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ashwani Talwar, Advocate and
Mr. Deepak Goyat, Advocate
for the petitioner.

Dr. D.S. Lamba, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:

(I) Order dated 03.11.1998 (Annexure P-1) whereby he was dismissed from service;

(II) Order dated 09.11.2000 (Annexure P-2) whereby his appeal was dismissed;

(III) Order dated 30.04.2001 whereby his revision was dismissed.

2. The petitioner joined Punjab Police on 13.03.1992. He remained absent from duty from 16.12.1997 to till the passing of order of dismissal from service. The respondent registered DDR No.45 dated 26.12.1997 with respect to his absence from duty. He did not join inquiry despite service of notice. The Senior Superintendent of Police, Rupnagar vide order dated 03.11.1998 dismissed him from service. He preferred



appeal after almost 2 years against order of dismissal from service. The Appellate Authority vide order dated 09.11.2000 dismissed his appeal. He further unsuccessfully preferred revision which was dismissed vide order dated 30.04.2001.

3. Mr. Ashwani Talwar, Advocate for the petitioner submits that petitioner was not holding good health and due to illness, he was absent from duty. He had served from 1992 to 1997. He had unblemished record, thus, there is need to take lenient view.

4. Per contra, Dr. D.S. Lamba, DAG, Punjab submits that petitioner was part of disciplined force and prolonged absence from duty cannot be ignored. The petitioner intentionally avoided his presence, thus, failed to discharge his duties.

5. I have heard the arguments of counsel for the parties and perused the record.

6. From the perusal of record, it is evident that the petitioner was dismissed from service on account of absence from duty from 16.12.1997 to 02.11.1998. He did not join inquiry despite notice. He filed appeal after two years from the date of his dismissal. His appeal and revision were dismissed. The petitioner was part of disciplined force where discipline is of paramount consideration.

7. Supreme Court in **Ex Sepoy Madan Prasad v. Union of India and others, (2023) 9 SCC 100** while advertng to disciplinary action in case of absence from duty has held that the Court should not set aside order of dismissal where delinquent is part of Armed Forces and remained absent from duty. The relevant extracts of the judgment read as:



“11. It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at Serial No. (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.

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18. For the aforesaid reasons, we do not find any infirmity in the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887] passed by the AFT. The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not deserve any leniency by infliction of a punishment lesser than that which has been awarded to him.”

8. A Division Bench of this Court while dealing with similar issue in ***‘Balwinder Singh versus State of Punjab and others’***, (LPA-934-2023, decided on 21.02.2024) has held that act of remaining absent from duty for a man in uniform is a gravest act of misconduct. The relevant extracts of the judgment read as:

“That a man in uniform has to maintain greater discipline and the act of remaining absent from duty is



a gravest act of misconduct. Reliance can be placed upon the judgment in State of Punjab & others Vs. Mohinder Singh, 2005 (12) SCC 182 wherein the Apex Court allowed the appeal by noticing that there was absence of 5 ½ months and it was reprehensible conduct by the Constable. The basic principle which has been time and again laid down is that remaining absent from duty after the sanctioned leave by a uniformed personnel is fatal. Keeping in view the fact that the appellant voluntarily kept away from his duties which were very much required by his department and the fact that the matter was duly enquired upon. Copy of the notice was sent to his foreign address through registered post to which he had not replied and also copy had been sent to his father which would be clear from the order of dismissal.”

9. As the petitioner despite being member of disciplined Police Force remained absent for a quite long time, this Court does not find it appropriate to look into the quantum of punishment awarded to him.
10. In the wake of above facts & findings, judgment of the Apex Court in **Madan Prasad (Supra)** and Division Bench Judgment of this Court in **Balwinder Singh (Supra)**, this Court is of the considered opinion that the present petition being bereft of merit deserves to be dismissed and accordingly dismissed.
11. Pending misc. application, if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

22.11.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No