



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

106

CWP-3190-2001(O&M)
Date of Decision : **March 24, 2025**

BHUPINDER SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Kamaldeep Kaur, Advocate and
Mr. Rangat Joshit, Advocate for
Mr. G.S.Kaura, Advocate the petitioner.
Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through the instant petition under Articles 226/227 of the Constitution of India is seeking setting aside order dated 10.9.1998 whereby the petitioner was dismissed from service.

2. The petitioner joined Punjab Police in 1979. An FIR No.136 dated 6.11.1992 under Section 7 of Essential Services Maintenance Act, 1968 (for short 'ESMA') at Police Station Roopnagar came to be registered against him. The respondent conducted an enquiry and found him guilty. He unsuccessfully preferred an appeal before the Appellate Authority. Learned Addl. Chief Judicial Magistrate, Roopnagar vide judgment dated 02.04.1998 acquitted him from the charges under Section 7 of ESMA.

3. Ms. Kamaldeep Kaur, Advocate submits that the petitioner was suffering from illness, thus, he remained absent from duty for the alleged period. There was no intentional lapse on his

part. The punishment of dismissal from service was harsh and contrary to Rule 16(2) of the Punjab Police Rules, 1934 (for short 'PPR'). The petitioner had no past history of absence or punishment. The respondent did not consider the question of entitlement of pension and mechanically passed the order of dismissal from service.

4. Per contra, Mr. Aman Dhir, DAG, Punjab submits that it was not the first time offence of the petitioner. He remained absent for 97 days from April 1991 to July 1991 and for 26 days from May 1992 to June 1992. The instant misconduct of absence from duty was third time offence. This time, he remained absent from duty for 243 days. He was repeatedly served notices, however, he did not bother, which compelled the authorities to dismiss him from service. There is no evidence on record disclosing that the petitioner was suffering from illness. The authorities under compelled circumstances lodged FIR under Section 7 of ESMA.

5. I have heard the arguments and perused the record.

6. On the perusal of record, it is evident that the petitioner was dismissed from service on account of absence from duty. He remained absent from duty for 243 days from 6.11.1992 to 7.7.1993. He was issued notices and an enquiry was conducted by the competent authority. The petitioner did not come forward to join the proceedings and he came to be dismissed from service. This was not the first offence of absence from duty. On the earlier occasions, he remained absent from duty for 97 days during April 1991 to July 1991 and 26

days from May 1992 to June 1992. The petitioner was part of police 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 5½ 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. In the instant case, the petitioner on three occasions remained absent from duty and the period of absence was quite long. He was acquitted by the trial Court from the charges under Section 7 of ESMA on technical grounds i.e. absence of complaint/sanction. As the petitioner despite being member of disciplined Police Force was habitual absentee and did not mend his behaviour, this Court does not find it appropriate to look into the quantum of punishment awarded to him.

10. In view of the above legal propositions, the instant petition is dismissed.

11. Pending misc. application, if any, shall also stand disposed of.

(JAGMOHAN BANSAL)

JUDGE

March 24, 2025
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No