



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

CWP-18510-1998 (O & M)
Date of Decision: 21.01.2025

Lal Singh

.....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Manu Gaur, Advocate,
for Mr. Manu K. Bhandari, Advocate,
for the petitioner.

Mr. Aman Dhir, 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 show cause notice dated 12.04.1997, order dated 29.05.1997 whereby he was dismissed from service, order dated 03.04.1998 whereby Appellate Authority dismissed his appeal and order dated 22.06.1997 whereby his revision was also dismissed.

2. The petitioner joined Punjab Police as Constable on 17.04.1994. He from 1994 to 1996 remained absent from duty on more than 20 occasions. On 06.01.1996, he proceeded on one day leave. He claims that he remained under treatment from 08.01.1996 to 15.03.1996 and reported for duty on 16.03.1996. He was served charge sheet. The Inquiry Officer conducted inquiry and thereafter Disciplinary Authority ordered to dismiss him from service. He unsuccessfully preferred appeal before Appellate Authority and Revisional Authority.

3. Mr. Manu Gaur, Advocate appearing on behalf of Mr. Manu K. Bhandari, learned counsel for the petitioner submits that Departmental Authorities did not consider medical certificate submitted by the petitioner. He



has been dismissed for absence from duty on one occasion which was beyond his control. There was no other allegation in the charge sheet as well as departmental proceedings still harsh action of dismissal from service was taken. As per Rule 16.2 of Punjab Police Rules, 1934 (in short '1934 Rules'), punishment of dismissal from service can be awarded in case of gravest misconduct or if competent authority comes to a conclusion that act and conduct of Police Officer is incorrigible and he is not fit for the Police Force. He was not served copy of inquiry report and impugned order was passed.

4. *Per contra*, Mr. Dhir submits that petitioner worked only for three years and during a short span of three years, remained absent from duty on more than 20 occasions. He was awarded punishment on different occasions but he did not mend his behave which compelled the authorities to dismiss him from service.

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

6. The petitioner served respondent-force for three years. From the perusal of record, it comes out that he remained absent from duty on more than 20 occasions. He claims that he had submitted medical certificate for the absence from duty and was not supplied copy of inquiry report, thus, he could not properly put forth his stand. From the perusal of order of disciplinary authority, it is evident that petitioner filed reply to show cause notice which culminated in his termination. Though, in the show cause notice it was not noticed that he was habitual absentee, yet in the order dated 29.05.1997, it was noticed that employee has again absented from duty. The Disciplinary Authority was duty bound to consider previous record of the petitioner especially when he was habitual absentee. The petitioner is not denying the fact



span of three years. It is apt to notice that the period of almost three decades from the date of order of dismissal has passed away. There was no stay in favour of the petitioner. Thus, he except for small period of three years, has not served the respondent.

7. Supreme Court in ***Ex Sepoy Madan Prasad v. Union of India and others, (2023) 9 SCC 100*** while advertent 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 was habitual absentee and did not mend his behavior, this Court does not find it appropriate to look into the quantum of punishment awarded to him.

10. In the wake of above facts and 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 application, if any, shall also stand disposed of.

21.01.2025

shivani

Whether reasoned/speaking

Whether reportable

Yes

Yes

(JAGMOHAN BANSAL)
JUDGE