
(2012) 11 P&H CK 0109
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1920 of 2009

Krishan Lal

APPELLANT

Vs

Punjab and Haryana, High Court and Another

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32

Citation : (2013) LabIC 398

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : J.S. Mehndiratta, for the Appellant; Rajesh Garg, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner, who was a driver on the establishment of District Judge, Yamuna Nagar, has filed the instant writ petition impugning the order dated 23.11.2010 passed by respondent No. 2 whereby he has been dismissed from service. Still further, challenge has been laid to the order dated 9.9.2011 whereby the service appeal preferred by the petitioner has been rejected by this Court on the administrative side. Briefly noticed, the petitioner was charge-sheeted on 21.1.2009 for having wilfully absented from duty from 15.8.2008 to 9.9.2008 and 11.10.2008 to 10.11.2008 including the intervening period from 15.8.2008 to 17.8.2008. He was placed under suspension on 10.2.2009. The petitioner submitted his reply dated 11.10.2009 to the charge-sheet and finding the same to be unsatisfactory, the Additional Civil Judge (Senior Division), Jagadhri was appointed as the Enquiry Officer. On following due procedure, the Enquiry Officer returned findings holding the petitioner guilty of having remained wilfully absent from duty from 15.8.2008 to 9.9.2008, 11.10.2008 to 10.11.2008 and from 2.2.2009 till the date he was placed under suspension dated 10.2.2009. Agreeing by the findings returned by the Enquiry Officer, the Punishing Authority issued a show-cause notice to the petitioner contemplating the extreme penalty of dismissal from service. A copy of

the enquiry report was also sent to the petitioner along with the show-cause notice. The petitioner responded to the show-cause notice in terms of submitting reply and upon considering the same, the impugned order of dismissal dated 23.11.2010 was passed by the District Judge, Yamuna Nagar. Even the service appeal stands rejected in terms of a reasoned order dated 3.9.2011.

2. Mr. J.S. Mehndiratta, learned counsel appearing for the petitioner, at the very outset, submits that even though the article of charge framed against him of having wilfully absented from duty stands duly proved, yet he is confining the scope of the present writ petition only as regards the quantum of punishment. Learned counsel would vehemently argue that the petitioner had joined service on the post of driver in February, 1992 and as such, had a length of service of almost 17 years and that the punishment imposed by the Disciplinary Authority is wholly disproportionate to the gravity of the charges levelled and proved against the petitioner. Learned counsel would, accordingly, urge that a lesser punishment would meet the ends of justice. Towards such submission, learned counsel has placed reliance upon the following judgments:--

- i) Jagdish Singh Vs. Punjab Engineering College and Others,
- ii) Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, and
- iii) Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others,

3. Per contra, Mr. Rajesh Garg, learned counsel for respondents 1 and 2 has contended that the petitioner has been held guilty of gross misconduct as also deliberate and habitual negligence in the performance of his duties and findings had been returned against the petitioner after following due procedure envisaged under the Haryana Civil Services (Punishment and Appeal) Rules, 1987 read with Rule 12 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997. Learned counsel would argue that there has been complete compliance of the principles of natural justice while imposing the penalty of dismissal upon the petitioner and in any case, the facts do not call for any leniency to be shown to the petitioner.

4. The scope and extent of judicial review in matters relating to decisions of the Disciplinary Authority and quantum of punishment has come up for consideration before the Hon"ble Supreme Court in a catena of judgments. In State of Gujarat Vs. Anand Acharya @ Bharat Kumar Sadhu, the Hon"ble Supreme Court had held in the following terms:--

The well-settled proposition of law that a Court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, then the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider

the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof (See Bhagat Ram Vs. State of Himachal Pradesh and Others, ; Ranjit Thakur Vs. Union of India (UOI) and Others, and U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others,

5. Still further, in the case of The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar, , it had been observed in the following terms:--

Moreover, it appears from the impugned order that the High Court has in exercise of power of judicial review interfered with the punishment of dismissal on the ground that it was disproportionate. In Union of India and Others Vs. R.K. Sharma, , this 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 this 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, the Division Bench of the High Court ought not to have interfered with the order of dismissal from service.

6. The facts of the instant case are glaring. Apart from having been held guilty of being wilfully absent from duty for the period from 15-8-2008 to 9-9-2008, 11-10-2008 to 10-11-2008 and 2-2-2009 to 10.9.2009 in pursuance to regular departmental proceedings, the petitioner had, on earlier occasions, also been punished for being wilfully absent from duty and fined Rs. 2,000/- vide order dated 20.4.2006. Still further, a penalty of Rs. 2,500/- had been imposed upon the petitioner vide order dated 6.2.2008 and he had been issued a warning to be careful in future along with an observation that such behaviour in future may cost him removal from service. The petitioner is clearly a habitual absentee which, in turn, amounts to a gross violation of discipline and dereliction of duty. I do not find that the punishment awarded to the petitioner is strikingly disproportionate or shocking to the conscience of the Court.

7. The judicial precedents upon which learned counsel for the petitioner had placed reliance would be clearly distinguishable on facts. In the case of Jagdish Singh Vs. Punjab Engineering College and Others, , it had been noticed that the employee therein was not a habitual absentee but otherwise possessed a good and unblemished service record.

8. In the case of Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, the period of absence and the extreme penalty imposed upon the employee therein had been considered in the light of Rules 8 and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 which provided that punishment of dismissal from service could have been imposed only on account of an act of

grave misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service. Such decision would have no applicability in the light of the facts of the instant case. Still further, in the case of Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, the Hon"ble Apex Court had intervened in the order of punishment in the light of the peculiar facts wherein the employee had fairly admitted his guilt, explained the reasons of his absence and in the light thereof had even sent his resignation which had not been accepted by the competent authority who had rather chosen to pass an order of removal.

9. In the light of the facts of the present case, I do not find any basis that would warrant interference as regards the quantum of punishment imposed upon the petitioner. No merits. Dismissed.