
(2020) 08 SHI CK 0149
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2085 Of 2020

Vishwajeet

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 25(1)
Punjab Police Rules, 1934 — Rule 16.32
Himachal Pradesh Police Act, 2007 — Section 87(2)

Citation : (2020) 08 SHI CK 0149

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ajay Sharma, Aanandita Sharma, Ashok Sharma, Ranjan Sharma, Vinod Thakur, Svaneel Jaswal

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The Director General of Police, Himachal Pradesh vide order dated 28.5.2018 has dismissed the revision petition preferred by the petitioner against

penalty of "removal from service" imposed upon him by the Disciplinary Authority, hence instant writ petition has been preferred.

2. Facts.

2(i) A regular departmental inquiry was initiated against the petitioner, a Constable with Constabulary No. 1061, on 7.10.2015 for remaining willfully

absent from duty for a period of 241 days in a number of spells while posted at Police Station, Baijnath. It was also reported that petitioner had

created nuisance while posted at Police Station, Baijnath and used filthy language under the influence of alcohol on 10.1.2015. His MLC dated

10.1.2015 reported "clinically under the effect of Alcohol" and RFSL report determined quantity of alcohol in his blood and urine to be 134.66

mg% and 224.25 mg%, respectively.

2(ii) Petitioner was again reported to be willfully and unauthorisedly absent from duty between 6.1.2016 to 22.8.2016 for a period of 132 days in

different spells.

2(iii) Petitioner was removed from service vide order dated 22.8.2016. In an appeal preferred by him, the Inspector General of Police (Northern

Range), Dharamshala i.e. the Appellate Authority vide order dated 21.11.2016 directed S.P., Kangra to hold a De-novo inquiry into the entire matter

and to restore the status of the petitioner on the date of his removal. Consequently, petitioner was re-instated in service with new Constabulary No.

1239.

2(iv) Fresh departmental inquiry was initiated against him on 22.11.2016. After completion of the fresh inquiry the Inquiry Officer submitted his report

whereunder charges of remaining willfully absent from duty for 373 days in different spells were proved against the petitioner. Copy of the inquiry

report was delivered to the petitioner and he was directed to submit his representation to the same. It is alleged that despite repeated notices, the

petitioner did not bother to submit any representation against the inquiry report.

2(v) Considering the facts, circumstances, misconduct, casual and indifferent approach of petitioner towards duty, show cause notice proposing

punishment of "removal from service" and "Dues-Non" for 373 days for the specified period of willful absence was issued on 19.6.2017.

After considering all the documents, the Superintendent of Police, Kangra/ Disciplinary Authority vide order dated 13.7.2017 imposed punishment of

"removal from service" as an appropriate and justified punishment for meeting the misconduct of the delinquent. The operative part of the order

imposing the punishment is extracted hereafter:

"Whereas, there seems no chance for improvement as such. However, he was given ample of opportunity to improve upon, but he did not respond

to any opportunity rather setting an example of insincerity and non performance. Such behavior is not appreciable rather need stringent departmental

view. He is to be removed from the service and this is the only way to weed out incorrigible and indisciplined officials. Therefore, any sympathetic

view towards unbecoming official that too, one whose conduct is chronically incorrigible and official indifferent towards duty will prove only laxity and

tolerance for indiscipline. Hence, this for granted behavior needs to be dealt by way of firm and stern decision. As such a punishment of "Removal

from service" is appropriate and justified to meet the misconduct done by delinquent. In view of facts and circumstances, Const. Vishwajeet No.

1061 (now No-1239) is hereby removed from service with immediate effect in accordance to Chapter XI, Section 87(2) of HP Police Act, 2007. Also,

his entire absentee period i.e. 373 days is hereby treated as "Dues-Non" in accordance to Rule 25(1) CCS (Leave) Rules 1972.

2(vi) The appeal preferred by the petitioner treated as revision petition under Rule 16.32 of Punjab Police Rules was dismissed by the Director

General of Police, Himachal Pradesh vide order dated 28.5.2018 holding that fact of habitual absenteeism of the petitioner is clearly established from

the record and that his repeated acts of unauthorised absence from duty indicate his indiscipline, lack of devotion to duty and recalcitrant attitude,

which are not acceptable in the uniform service.

3. Aggrieved against the order of imposition of penalty of "removal from duty" imposed upon him on 13.7.2017 and the rejection of his revision

petition on 28.5.2018, instant writ petition was instituted on 16.6.2020.

4. Learned Senior Counsel for the petitioner argued for quashing of penalty order on the ground that the same is harsh, oppressive and dis-

proportionate to the charge levelled against him. Learned Senior Counsel further argued that the charges levelled against the petitioner are only in

respect of alleged willful absence from duty, which are not major offences. He further submitted that the inquiry into the matter has not been

conducted in consonance with the provisions of Central Civil Services (Classification, Control and Appeal) Rules ("CCS(CCA) Rules" in short).

5. The record appended with the writ petition clearly reflects that:

5(i) The punishment of "removal from service" was imposed upon the petitioner vide order dated 13.7.2017. Revision petition against this order

was rejected on 28.5.2018. Petitioner can be reasonably presumed to have accepted the punishment imposed upon him. He instituted instant writ

petition after more than two years of the order passed by the Revisional Authority. There is no explanation much less any cogent explanation in the

writ petition with respect to delay of two years in preferring instant writ petition. The writ petition deserves dismissal on the ground of delay and latches alone.

5(ii) The petitioner was a member of uniform service. Discipline, devotion to duty, punctuality are the basic hallmarks of the uniform service. The record shows that the petitioner remained absent from duty repeatedly in different spells over the years. Despite having been directed to resume duty by the Competent Authority, he did not bother to turn up even though repeated reminders were served upon him.

5(iii) Reliance placed by the petitioner on (2018) 13 Supreme Court Cases 161, titled Manoj Kumar versus State of Uttar Pradesh And Others for award of lesser penalty, is misplaced in the given facts. No procedural infirmity or irregularity in the conduct of departmental proceedings have been brought to our notice. As it is, the punishment order passed on 13.7.2017 and affirmed by Revisional Authority on 28.5.2018 was accepted by the petitioner. He chose to institute this petition challenging the penalty order, at his leisure in the same indisciplined manner in which he had been discharging his duties over the period.

5(iv) (2007) 10 Supreme Court Cases 511, titled State of Punjab And Others Versus Sukhwinder Singh was a case where a Constable was charged for absence from duty for a period of 66 days. Punishment of dismissal from service was imposed upon him under Rule 16.2 of Punjab Police Rules, which provides for penalty of dismissal for gravest misconduct/cumulative effect of continued misconduct proving incorrigibility. The High Court had set aside the order of dismissal on finding that absence from duty was not willful. Under these circumstances, while allowing the appeal against the judgment of the High Court it was observed by the Honâ??ble Apex Court:

â??5. â?|â?|â?|..It is necessary that members of the police forces should attend the duties which they have been allocated and not absent themselves.

This is a paramount public interest that must overweigh private considerations. The High Court was, therefore, in patent error in looking benignly at the numerous acts of absence of the respondent.

6. The substance of that conclusion is to be found in that order. When a policeman is repeatedly absent from duty, it cannot but be reasonably concluded that there is incorrigibility in his continued misconduct.â??

5(v) Considering plethora of previous judgments on the issue, Honâ??ble Apex Court in (2020) 3 Supreme Court Cases 423, titled State of Karnataka

and Another versus N. Gangaraj after noticing the facts of the case wherein Disciplinary Authority agreed with inquiry officerâ??s findings about

delinquent police official being guilty of misconduct and imposed penalty of dismissal, which was affirmed in appeal, observed that the Tribunal and the

High Court could not have interfered with findings of facts recorded by re-appreciating the evidence as if they were the Appellate Authority. It was

also observed that power of judicial review is confined to the decision making process and is not akin to the power of Appellate Authority. Power of

Judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is

necessarily correct in eyes of law. The Court in its power of Judicial review does not act as an appellate authority to re-appreciate evidence and to

arrive at its own independent findings. It is only where the conclusion reached by disciplinary authority is perverse or suffers from patent error on face

of record or based on no evidence at all that interference will be called for. Question of adequacy of evidence is not required to be gone into.

Interference with decision of Departmental Authority is permitted if such Authority had held the proceedings in violation of prescribed procedure or in

violation of the principles of natural justice.

In the instant case, despite granting ample opportunities to the petitioner, a member of the disciplined force and seeing no chance for improvement,

therefore, to wide out incorrigible and indisciplined officer who remained recalcitrant, the punishment of removal from service imposed upon the

petitioner by the respondents cannot be said to be harsh, oppressive or disproportionate.

No specific lapse in conducting the inquiry proceedings has been brought to our notice. Vague and unfounded allegations of inquiry proceeding having

not been conducted in accordance with the procedure prescribed in CCS(CCA) Rules cannot be taken into consideration.

In view of above, no interference in the impugned orders is called for, hence, writ petition is dismissed in limine, so also the pending application(s), if

any.