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**(2011) 01 P&H CK 0458**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.W.P. No. 12590 of 2010 (O and M)

Joginder Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision:** Jan. 13, 2011

**Citation:** (2011) 162 PLR 806

**Hon'ble Judges:** Mahesh Graver, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Mahesh Graver, J.

The Petitioner has impugned the order dated 27.6.2007 (Annexure P-5) passed by Respondent No. 4 awarding him the punishment of dismissal from service on account of his remaining absent from duty. He has also prayed that the subsequent orders by which his appeal has been dismissed be also quashed. A further prayer has been made that the punishment awarded to the Petitioner is harsh as the competent authority did not take into account the length of service and in fact ends of justice would have been met if he would have been compulsorily retired so as to enable him to get a pension keeping in view the length of service that the Petitioner has rendered to the Respondents.

2. The Petitioner was employed as a Constable on 3.10.89 with the Haryana Police. He proceeded on 5 days sanctioned leave on 8.4.2006 and was required to report back on duty on or before 14.4.2006 whereas he reported for duty on 25.11.2006 after absenting himself for 214 days and 17 hours. Thereafter, again on 7.1.2007 he proceeded on 10 days casual leave and was required to report back on duty on 18.1.2007 but did not report back for duty and thus invited a chargesheet against himself resulting in the initiation of disciplinary proceedings against him. A departmental inquiry was held and the Petitioner was indicted in the said inquiry. The Petitioner as a measure of defence set up a plea that he was unwell but was unable to produce any material to substantiate such a plea.

3. After the said inquiry, a show cause notice was issued to the Petitioner as to why the punishment of dismissal be not awarded to him and thereafter considering the stand of the Petitioner, Respondent No. 4 passed the impugned order on 27.6.2007 awarding the punishment of dismissal.

4. Learned Counsel for the Petitioner contends that the Petitioner had rendered a substantial number of years of service to the Respondents and this should have been weighed with the punishing authority but rather the latter has been dealt with in a cursory manner.

5. Learned Counsel for the Petitioner further referred to two judgments of this Court which have been attached alongwith petition as Annexure P-8 and P-9 wherein this Court set aside the order of punishment and asked the disciplinary authority to re-consider the question of punishment to be awarded to the Petitioner while doing so, it has been observed as under:

The Petitioner's mis-conduct for remaining absent on two occasions has been established. Even if the act of the Petitioner is not considered as "gravest misconduct" as it does not fall within the purview of explanation appended to Rule 16.2, it definitely is an act which constitutes misconduct. There are at least two acts of misconduct. Cumulative effect of misconduct also makes a police officer incorrigible and unfit for police service. However, the authorities have not applied their mind and not taken into consideration the length of service of the Petitioner and his right to pension while awarding the punishment. It has been stated by the Petitioner in ground (c) of this petition that he has rendered 11 years 9 months service. No. rule has been brought to our notice that the Petitioner is not entitled to any pensionary benefits for rendering about 12 years of service. Giving consideration to the length of service, the right to pension is inherent under Rule 16.2 itself and thus it cannot be ignored. The authorities having failed to adhere to the rule while awarding punishment renders the impugned order of punishment illegal and unwarranted. It is also settled law that when a relevant provision is given go by, it amounts arbitrary exercise of power and such an order is not sustainable.

6. I have heard learned Counsel for the Petitioner and have considered his contentions but I am unable to accept the pleas which have been raised herein for the reason that the Petitioner has not been able to show any justifiable reason for remaining absent from duty initially for a period of 214 days and thereafter subsequently again by defaulting by not reporting on time. A perusal of the impugned orders shows that the Petitioner on earlier occasions had also been playing truant. His service record reveals that there were six good and 11 adverse entries to his credit and that on prior occasions he had committed a mis-conduct inviting punishments on 10 occasions while he was chargesheeted on 11 occasions. Even during the course of proceedings he remained absent as observed by the competent authority in para 5 of the impugned order "that he is still running absent from duty, therefore, notices No. 221/ST dated 29.5.2007 and 303/ST dated

20.6.1971 were sent to him at his home address as per special messenger directing him to appear before the undersigned for personal hearing on 4.6.2007 and 25.6.2007 respectively but till date he has not turned up. Thus, he could not be heard in person."

7. Rule 16.2. contemplates dismissal of an employee for the gravest acts of mis-conduct or a cumulatively effect of continued misconduct proving incorrigibility and complete unfitness for police service. Relevant portion of the rule is extracted herein:

16.2 Dismissal - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

8. If the repeated acts of indiscipline and mis-conduct of the Petitioner are to be considered and juxtaposed against the provision of law then it is apparent that the punishing authority had taken into consideration the cumulative effect of the continued mis-conduct which amounts to proven incorrigibility and unfitness for the police service. 9. A person belonging to the armed forces is expected to maintain a sense of discipline which is higher than the normal standards of discipline. His conduct should be a manifestation of exemplary sense of duty. But if the conduct of the Petitioner is to be seen then out of total period of 14 years that he has rendered he has invited action against him on 11 occasions prior to the present incidents of two absentations and during the course of disciplinary proceedings against him. There is thus No. redeeming factor in the case of the Petitioner which would warrant interference with the impugned orders.

No merit.

Dismissed.