

Rajesh Kumar @ Rajesh Singh Vs. State of Haryana and Others

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Court : Punjab and Haryana

Decided On : Feb-26-2014

Appellant : Rajesh Kumar @ Rajesh Singh

Respondent : State of Haryana and Others

Judgement :

CIVIL WRIT PETITION NO.3705 of 2014 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CIVIL WRIT PETITION No.3705 of 2014
DATE OF DECISION: FEBRUARY26 2014 Rajesh Kumar @ Rajesh Singh
.....Petitioner VERSUS State of Haryana and othersRespondents CORAM:-
HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH1 Whether Reporters of local papers may be allowed to see the judgement?.

2.

To be referred to the Reporters or not?.

3.

Whether the judgment should be reported in the Digest?.

Present: Mr.R.N.Lohan, Advocate for the petitioner.

***** AUGUSTINE GEORGE MASIH, J.

(ORAL) Petitioner has approached this Court impugning the order dated 26.10.2012 (Annexure P3) passed by the Superintendent of Police, Jind-respondent No.4 vide which after a regular departmental enquiry, punishment of stoppage of two annual increments with cumulative effect has been imposed upon the petitioner for absence from duty of 93 days 18 hours 15 minutes.

Challenge has also been made to the order of dismissal of the appeal dated 10.01.2013 (Annexure P-5) passed by the Inspector General of Police, Hisar Range, Hisar-respondent No.3 and the order of rejection of revision dated 28.06.2013 (Annexure P-6) passed by Director General of Police, Haryana.

Briefly the facts are that the petitioner was appointed as Harish Kumar 2014.03.04 11:42 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.3705 of 2014 -2- Constable.

He was deputed to undergo the Lower School CouRs.at HPA Madhuban.

While the petitioner was on training, on the roll call on 13.02.2012, he was found absent.

This was recorded vide DDR No.32 at 7.15 PM in the Roznamcha.

The petitioner continued to remain absent till he reported back at his unit at Jind on 17.05.2012 at 1.30 PM.

The absence period was found to be 93 days, 18 hours and 15 minutes.

Regular departmental enquiry was initiated against the petitioner where six prosecution witnesses were examined.

Petitioner was given an opportunity to produce evidence but he preferred not to produce any witness in his defence.

The Enquiry Officer submitted the findings against the petitioner holding him guilty of absence from duty.

A show cause notice dated 06.10.2012 was issued to the petitioner, on which he had filed reply on 25.10.2012.

He was heard personally where he explained that he had received a telephonic message on 10.02.2012 that there was certain disputes in his family.

He tried his best to get leave but when it was not accepted, he lost his mental balance and became ill and went to his native village where he took treatment from Dr.

Suresh Redu, MBBS, Shakti Clinic, Jind.

He was declared fit to join duty on 11.05.2012 and after that, he reported at HPA Madhuban for duty but he was not allowed to join.

On 16.05.2012, he was told that he had been repatriated to his parent unit at Jind and on 17.05.2012, he reported at Police Lines, Jind.

The reply submitted by the petitioner was duly considered by respondent No.4 and came to a conclusion that the reasons which have been given by the petitioner in his explanation are all a concocted story.

He did not apply for any leave nor appeared before any Officer for getting leave.

Harish Kumar 2014.03.04 11:42 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.3705 of 2014 -3- The evidence to this effect has not come on record nor did the petitioner prefer to produce any witness in his defence.

On the basis of findings given by the Enquiry Officer which were accepted by the punishing authority, a lenient view was taken and he was awarded punishment of stoppage of annual increments with cumulative effect.

It was further ordered that the absence period i.e.from 13.02.2012 to 17.05.2012 be sanctioned as extra- ordinary leave without pay.

Petitioner preferred an appeal before the Inspector General of Police, Hisar Range, Hisar, which was not entertained and rather dismissed on the ground that it was not filed within a period of limitation vide order dated 10.01.2013 (Annexure P-5). Revision preferred by the petitioner, thereafter, before the Director General of Police was also dismissed vide order dated 28.06.2013 (Annexure P-6) with the conclusion that the punishment awarded to the petitioner is commensurate with the misconduct committed by him and there is no mitigating circumstances to interfere with the orders of the punishing/appellate authorities.

Petitioner, impugning the said orders, has approached this Court by filing the present writ petition.

It is the contention of the counsel for the petitioner that the petitioner has been issued the charge-sheet by the Enquiry Officer and he himself being the prosecutor cannot be a Judge and, therefore, the findings recorded by the said Enquiry Officer cannot be made basis for imposing the punishment upon the petitioner.

This contention of the counsel for the petitioner cannot be accepted as under the Punjab Police Rules, the charge-sheet has to be served by the Enquiry Officer, however, the same has to be FIRs approved by the Harish Kumar 2014.03.04 11:42 I attest to the accuracy and integrity of this document CIVIL WRIT PETITION NO.3705 of 2014 -4- punishing authority which procedure was duly complied with.

That apart, the contention of the counsel for the petitioner is that the punishment of stappage of two annual increments with cumulative effect is too excessive for absence from duty and there were justifiable reasons for having absented from duty.

This contention of the counsel for the petitioner cannot be accepted in the light of the categorical finding returned by the Enquiry Officer in his report where on the basis of the evidence led by the Department, he has come to a conclusion that the petitioner had indeed absented from duty.

The explanation given by the petitioner in response to the show cause notice served upon him, has not been accepted by the punishing authority and reasons for the same have also been given in the said order that the reason of his having approached the authorities for grant of leave or of his illness was a cock and bull story which is self created as an excuse.

The punishing authority has already taken a lenient view while awarding the punishment to the petitioner.

The misconduct attributed and proved against the petitioner of his absence from duty for about 94 days is one which can be termed as a gravest act of misconduct and thus the punishment imposed is very mild by taking a lenient view than the petitioner deserved.

As such the punishment cannot be said to be disproportionate to the misconduct attributed and proved against him.

No ground for interference in the impugned orders is made out.

The writ petition, therefore, stands dismissed.

February 26, 2014 (AUGUSTINE GEORGE MASIH) Harish JUDGE Harish Kumar 2014.03.04 11:42 I attest to the accuracy and integrity of this document

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