

Admittedly, the respondent was a Lt. Colonel on 1st January, 1986 and the holding of a selection grade on that date would not entitle him to have his pay fixed in the rank of Colonel. We, therefore, set aside the judgment of the learned single Judge on this score as well, and hold that the respondent would be entitled to have his pay fixed on 1st January, 1986 at Rs. 3,900 plus the rank pay.

(12) We have also considered the submissions of the learned counsel for the parties in the connected writ petitions mentioned above. The submissions regarding the number of chances for review for purposes of promotion have already been dealt with by us. On merits, it has been argued that the cases of the petitioners were considered for promotion ignoring their service record and not fully appreciating their outstanding careers. We have heard the learned counsel for the parties on this matter as well and have also examined the record minutely. We find that the cases of the petitioners were fully considered by various selection committees consisting of officers of very high rank. We also find that a correct appreciation seems to have been made in each case. Undoubtedly, an officer beyond the rank of Lt. Colonel must seek his promotion through selection and there is no time-scale promotion. The selection is to be made by a selection Board and this Court would be hesitant to interfere in the proceedings of the Board until some glaring shortcoming is pointed out. We find no such infirmity in the proceedings of the various selection Boards in which the cases of the petitioners were considered for promotion.

(13) For the reasons recorded above, the L.P.A. No. 900 of 1990 is allowed, whereas the Civil Writ Petition Nos. 10133 of 1988, 14714 and 16795 of 1989 and 2044 of 1991 are dismissed, but with no order as to costs.

R.N.R.

Before : A. L. Bahri & H. S. Bedi, JJ.

EX. HC MUNSHI RAM,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 7237 of 1991.

6th August, 1991.

Punjab Police Rules, 1934—Rl. 16.2—Absence during suspension period cannot be treated as absence from duty—Such absence cannot form basis of dismissal from service.

Ex. HC Munshi Ram v. The State of Haryana and others
(A. L. Bahri, J.)

Held, that the impugned order of dismissal based on the finding that the petitioner remained absent from duty for 174 days after he was suspended from service cannot be sustained in law. However, it would be open to the punishing authority, if so advised, to pass an appropriate order taking into consideration the period of absence prior to the order of suspension.

(Para 2)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:—

- (i) complete record of the case may kindly be summoned;
- (ii) a writ in the nature of Certiorari quashing the order dated 11th April, 1989, by which the petitioner has been suspended and the order dated 26th July, 1990, Annexure P/4 by which the petitioner has been terminated and the order dated 10th October, 1990, Annexure P/5 by which the appeal of the petitioner has been rejected and the order dated 5th March, 1991 Annexure P/7 by which the revision of the petitioner against the rejection of the appeal has been rejected, be issued;
- (iii) in the peculiar circumstances of this case this Hon'ble Court may be pleased to issue any other appropriate, writ, order or direction that it deems fit;
- (iv) issuance of advance notices to the respondents under the High Court Rules & Orders may kindly be dispensed with;
- (v) filing of certified copies of Annexures may kindly be dispensed with;
- (vi) costs of the petition may kindly be awarded to the petitioner.

P. S. Patwalia, Advocate, for the Petitioner.

Jai Vir Yadav, DAG, Haryana, for the Respondents.

JUDGMENT

A. L. Bahri, J.

(1) The short question for consideration in this writ petition is as to whether the period of absence of the petitioner after he was suspended from service is to be treated as absence from duty an allegation of charge-sheet resulting in his dismissal.

(2) Petitioner Munshi Ram was working as a Head Constable in the Haryana Police. On 11th April, 1989 he was suspended with effect from 23rd February, 1989. He was charge-sheeted on 25th May, 1990 on the ground of deliberate absence from duty for several days, details of which are given in the charge-sheet, (Annexure P-1). This period starts from 18th September, 1988 and is up to 7th May, 1990. After the inquiry, a show-cause notice was also sent to the

petitioner on 12th June, 1990. Consequently, the order of dismissal from service was passed on 26th July, 1990 (Annexure P-4). The appeal was rejected,—*vide* order dated 10th October, 1990, (Annexure P-5) and further revision was rejected on March 5, 1991, (Annexure P-7), Rule 16.2 of the Punjab Police Rules, 1934, provides the grounds for dismissal as (i) gravest acts of mis-conduct and (ii) cumulative effect of continued misconduct proving incorrigibility and complete unfitness from police service. If the entire period of absence had been taken into consideration as 174 days, the order of suspension and subsequent order of dismissal passed would have been maintained. However, in view of the decision of the Division Bench of this Court in *Ramesh Chander Chug, Assistant Engineer (Civil) v. The Haryana State Electricity Board* (1), a person, who had been suspended was not required to attend the office at his headquarters daily. In the aforesaid case, directions were given by the Chief Accounts Officer directing Ramesh Chander, who was under suspension, to attend the office at his headquarters daily, which was held to be without jurisdiction and liable to be quashed. Applying the ratio of the aforesaid decision to the facts of the present case, the absence of 174 days could not be a ground for dismissal of the petitioner. The period prior to his suspension was hardly about 46 days. It is not for this Court to adjudicate as to whether on proof of the allegation of absence of 46 days order of dismissal could be passed or not. It is for the authorities dealing with the case to pass an appropriate order of punishment if the petitioner's absence was for 46 days. At this stage, it may be mentioned that as per the case of the petitioner, by calculation, this period is only 44 days. Be that as it may, since the impugned order is based on the finding that the petitioner remained absent for 174 days, the same cannot be sustained in law. The order of dismissal of the petitioner Annexure P-3 and the subsequent orders passed on appeal and revision Annexures P-4, P-5 and P-7, are quashed leaving the punishing authority, if so advised, to pass an appropriate order taking into consideration the period of absence prior to the order of suspension. The petitioner will get all the benefits in consequence of quashing the orders of dismissal, subject to the observations made above. It is hoped that necessary benefits accruing to the petitioner would be made available to him within a period of six months from today and reinstatement of the petitioner be effected forthwith. It is left to the authorities concerned to pass an appropriate order which would have prospective effect.

(3) The writ petition is allowed as above with no order as to costs.

R.N.R.

(1) 1986 (3) S.L.P. I.

4093/HC—Govt. Press, U.T., Chd.