



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 8670/2009

Shyam Singh S/o Shri Laxman Singh, Constable Belt No.12,
Resident of P-3 Police Lines, Udaipur (Raj.)

-----Petitioner

Versus

1. State of Rajasthan, Director General of Police, Rajasthan
Jaipur

2. Inspector General, Police Range, Udaipur (Raj.).

3. District Police Superintendent, Udaipur (Raj.).

-----Respondent



For Petitioner(s) : Mr. Devesh Purohit
Mr. Harshil Vyas

For Respondent(s) : Mr. Ritu Raj Singh Bhati

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

13/11/2024

1. Having served for 26 years as constable, petitioner was meted out with the punishment of forfeiture of his entire past service for the alleged delinquency of absence of 15 days without sanctioned leave. No enquiry was conducted before awarding the punishment. Though a show cause notice was issued to petitioner, but his reply to the same was not found satisfactory.

2. The petitioner is thus before court, *inter alia*, seeking quashing of punishment order dated 30.12.2005 (Annex. 2), vide which his entire previous service was forfeited. Also assailed are appellate order dated 07.04.2006 (Annex. 3) dismissing the petitioner's appeal and revisional order dated 15.01.2009 (Annex. 5) rejecting his revision petition. Additionally, he seeks a direction

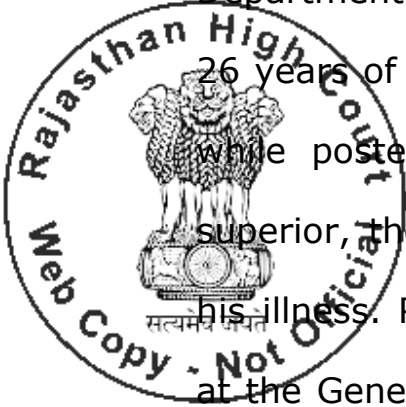
to the respondents to treat his past 26 years of service as regular service and grant him all consequential benefits.

3. Succinctly speaking, relevant facts for the purpose of adjudication of the case in hand are as follows :-

3.1 The petitioner was appointed as a Constable in the Police Department on 01.12.1979 and was serving as such for the past 26 years of service. On 02.12.2004, the petitioner suddenly fell ill while posted at the Police Lines in Udaipur. He informed his superior, the Havaldar Major, and requested casual leave due to his illness. Prior to that the petitioner had got medical treatment at the General Hospital in Udaipur, where an X-ray revealed a rib fracture. It is the rib fracture that made him feel unwell and he had to suddenly leave from duty. After resting/receiving treatment for 15 days, the petitioner resumed his duties on 17.12.2004.

3.2 However, on resuming duty, the petitioner was served with a notice under Rule 86(1) of the Rajasthan Service Rules, 1951 for his absence from 02.12.2004 to 17.12.2004. The notice also mentioned the proposed forfeiture of the petitioner's previous service under Article 311 of the Constitution of India and called for an explanation within 15 days. In response to the notice, the petitioner submitted an explanation, stating that his absence was due to sudden illness and subsequent treatment at the General Hospital, Udaipur. He also submitted the treatment slip, X-ray report, and medical bills upon resuming duty on 17.12.2004, which were attached to his file by the Force Clerk.

3.3 Despite submitting the explanation, the District Superintendent of Police, Udaipur, passed the impugned order (Annexure -2) on 30.12.2005, treating the period of absence from



02.12.2004 to 17.12.2004 as willful absence and forfeiting petitioner's 26 years of previous service under Rule 86(1) of the Rajasthan Service Rules. The petitioner filed an appeal against the order dated 30.12.2004 before the Inspector General of Police, but the same was dismissed vide impugned appellate order 07.04.2006. Subsequently, his review/revision petition also met the similar fate as it was dismissed vide revisional order dated 15.01.2009 (Annexure-5) passed by the Deputy Secretary to Government, Government of Rajasthan. Hence, the present petition



4 In response to the petition, the stand taken in the reply filed by the respondents *inter alia* is that the petitioner was on duty at the hospital to maintain vigilance over prisoner patients alongside a police party. However, the petitioner was absent from duty between 02.12.2004 and 17.12.2004 without informing any of his superiors. The fact of his absence was reported by Constable Vijay Singh (No. 486), who was also on duty with the petitioner at the hospital. Vijay Singh informed the authorities about the petitioner's absence via telephone, and based on this information, the absence was duly recorded.

4.1. The explanation given by the petitioner is a fabricated afterthought. Furthermore, the petitioner has not provided any documents, such as a medical slip, outdoor treatment slip, or medicine bills, to substantiate his claim. The X-ray report produced by the petitioner pertains to a date prior to the period of absence i.e. 14.11.2004 - and is not relevant to the period in question.

4.2 The punishment order was passed after providing proper opportunity to present his case. The petitioner was posted as a guard to maintain vigilance over prisoners in the hospital and his willful absence from such an important duty could have led to serious consequences, such as prisoners escaping. Petition thus lacks merit and deserves dismissal.

5. In the aforesaid backdrop, I have heard the learned counsel for the petitioner as well as learned counsel for the respondents and have perused the case file along with the record appended therewith.

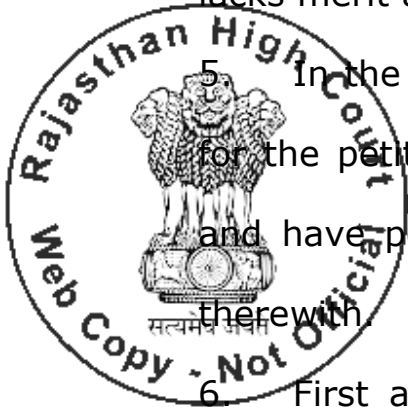
6. First and foremost, pertinent it is to note that petitioner's date of birth is recorded as 14.01.1959 in his Aadhaar card available on file. Accordingly, on attaining the age of superannuation, he has already retired.

7. Adverting now to the merits of case. Let us see the impugned order Annexure-2 dated 30.12.2005 passed by respondent No. 3, English translation thereof reads as under:

"Shri Shyam Singh Constable No. 12 remaining absent voluntarily for 15 days from 2.12.2004 PM to 17.12.2004, a notice was issued to Shri Shyam Singh Constable No. 12 under Rajasthan Service Rule 86 (1) by this office letter No. 14859-60 dated 20.12.2004 and a reply was sought. Constable submitted a reply, the brief details of which are as follows:-

Due to fracture in the rib bone, he got treated in the emergency ward of General Hospital, Udaipur on 14.11.2004. After examination, it was found that there was a fracture in the rib bone and he got the treatment done. As he was not given rest, the pain increased. He applied for casual leave but did not get leave due to Municipal Corporation election. He could not attend this office as he was incapable of walking, it is written. It is written that information about illness given to RI Sahab and Major Sahab.

The reply of the constable is not satisfactory because apart from the X-ray plate, the constable has not presented the treatment slip or medical bill. The X-ray plate cannot be trusted. The constable has mentioned in his reply that he was unable to walk, so in such a situation, there should be many consultation slips, bills, investigation reports of the doctor, but the constable has



not presented even a single such document in this office. It is also not logical for the constable to write that leave was not granted due to elections. Even during the leave ban, leave is sanctioned in case of illness of the employee himself / he is sent to the medical. In cases like inability to walk, the person is sent to the medical just by making a phone call from the hospital. Voluntary absence of the constable is proved by not presenting any document related to illness, not getting sent for medical etc. The constable has acted arbitrarily.

Shri Shyam Singh Constable no. 12 was recruited on 7.12.1979 and has been absent 34 times in his service till date. It is proved that the Constable was absent voluntarily for 15 days from 2.12.2004 PM to 17.12.2004. Therefore, considering the voluntary absence of Shri Shyam Singh Constable no. 12 from 2.12.2004 PM to 17.12.2004 as certified, his previous service period is forfeited by the Government under Rajasthan Service Rule 86 (1)."



8. It would be seen that impugned order is premised, *inter alia*, on the basis that since appointment on 07.12.1979, the petitioner has remained absent on 34 occasions. There is not even a whisper in the show cause notice dated 20.12.2004 Annexure A-1 to the effect that since appointment on 07.12.1979, the petitioner had remained absent on 34 occasions. In my opinion, the impugned order is influenced and vitiated by the reference to, reliance upon and use of this extraneous material against the petitioner (since appointment on 07.12.1979, the petitioner had remained absent on 34 occasions) qua which there is not even a whisper in the show cause notice.

9. It transpires that by the accretion of annual increments and the grant of enhanced Assured Career Progression (for short ACP) following the initial appointment on 07.12.1979. The petitioner's basic pay was also raised from time to time when the impugned order dated 30.12.2005 was passed forfeiting his entire past service. Vide impugned order, he was treated as a fresh entrant/appointee in the minimum pay on the post of constable.

10. Assuming that instead of forfeiture of his past service, the petitioner had been removed from service when the impugned order dated 30.12.2005 was passed, the position would be as under:



10.1 Removal from service without disqualifying from future employment is a major penalty as per Rule 14(iv) read with Rule 16(1) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.

10.1.1 It follows that removal simplicitor from service would not per se take away or affect the benefits already earned by petitioner including pension, gratuity and other retiral benefits for the past service.

10.2 In terms of Rule 54(2)(a) of the Rajasthan Civil Services (Pension) Rules, 1996 if a Government servant retires on completing qualifying service of 28 years, his pension shall be calculated at 50 per cent of the last drawn monthly emoluments.

10.2.1 On that formula, the petitioner's pension would have been 50% of his last drawn monthly emoluments multiplied by 26 and divided by 28.

10.2.2 Besides, his service of 26 years would also be taken into account for calculating amount of gratuity and other retiral benefits like leave encashment.

11. As against aforesaid position, by the impugned order forfeiting the past service, the petitioner's basic pay (which was revised from time to time) was withdrawn. Consequently, he was

treated as a fresh entrant/appointee on the starting minimum pay on the post of Constable. Moreover, benefit of the past service of over 26 years which was his qualifying service already rendered for computing pension was also taken away. The impugned order treating the petitioner as a new appointee meant that he would be left with only the reduced period of 13 years and one month of service with effect from 30.12.2005 till his superannuation on attaining the 60 years in January, 2019.

12. Considering the overall consequences flowing from the impugned order for the forfeiture of petitioner's past service of over 26 years, in comparison to the scenario, if he was awarded penalty of removal from service, I am of the opinion, the impugned order resulted in much worse position than removal from service.

13. Reference now may be had to Sub-rule (1) of Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. Same mandates that no order imposing on a Government servant any of the penalties specified in clauses (iv) to (vii) of Rule 14 including removal from service which does not disqualify from future employment shall be passed except after an inquiry held in the manner provided after the sub-rule *ibid*. Relevant of both the Rules *ibid* is as under :-

“14. Nature of Penalties.— *The following penalties may, for good and sufficient reasons, which shall be recorded, and as hereinafter provided, be imposed on a Government servant, namely :—*

- (i) censure;*
- (ii) withholding of increments or promotion;*
- (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of any law, rule or order;*
- (iv) reduction to a lower service, grade or post; or to a lower time scale or to a lower stage in the time scale or in the case of pension to an amount lower than that due under the rules;*
- (v) compulsory retirement on proportionate pension;*

- (vi) removal from service which shall ordinarily not be a disqualification for further employment ;
(vii) dismissal from service which shall ordinarily be a disqualification for further employment.

16. Procedure for imposing major penalties.—

(1) Without prejudice to the provisions of the Public servants (Inquiries) Act, 1850, no order imposing on a Government Servant any of the penalties specified in clauses (iv) to (vii) of rule 14 shall be passed except after an inquiry held as far as may be in the manner herein after provided.



(2) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges together with statement of the allegations on which they are based, shall be communicated in writing to the Government Servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority, a written statement indicating whether he admits the truth of all or any of the charges, what explanation or defence, if any, he has to offer and whether he desires to be heard in person:

Provided that it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement of allegation made by the person charged in the course of his defence.”

14. Admittedly, in this case no inquiry was held in the manner provided after Sub-rule (1) of Rule 16 *ibid*. No doubt, petitioner's past service has been forfeited under Rule 86 of Rajasthan Service Rules, 1951, however, both the Rules i.e. of 1951 and 1958 have to be read harmoniously and homogenously, being equally applicable. As already held, forfeiture of past 26 years of service is akin to nay worse than removal.

15. Let us now see Rule 86 of 1951 Rules, invoked for passing the impugned order. For ready reference, same is reproduced hereinbelow:-

Rule 86.-Absence after expiry of leave:

(1). A Government servant who is absent from duty without leave or before leave applied for has been sanctioned by the competent authority shall be treated to have remained willfully absent from duty and such absence shall amount to interruption in service involving forfeiture of past service unless, on satisfactory reasons being furnished, the absence is regularized by grant of leave due or is

commuted into extraordinary leave by the authority competent to sanction leave.

(2).(a) A Government servant who remains absent from duty after the expiry of the sanctioned leave or after communication of refusal of extension of leave is not entitled to any pay and allowances for the period of such absence and the period of such absence shall be commuted into extraordinary leave unless on satisfactory reasons being furnished, the period of absence is regularized by grant of leave due by the authority to grant leave.

(b). Willful absence from duty after the expiry of leave renders a Government servant liable to disciplinary action.

(3). Notwithstanding, the provisions contained in sub-rules (1) and (2) above the disciplinary authority may initiate departmental proceedings under Rajasthan Civil Services (Classification, Control and Appeal) Rules against a Government servant who willfully remains absent from duty for a period exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service.

(4) No Government servant shall be granted leave of any kind for a continuous period exceeding 5 years.

A Government servant shall be deemed to have resigned from the service if he:-

(a) is absent without authorization for a period exceeding one year from the date to expiry of sanctioned leave or permission, or

(b) is absent from duty for a continuous period exceeding five years even if the period of unauthorized absence is for less than a year, or

(c) continues on foreign service beyond the period approved by the State Government:

Provided that a reasonable opportunity to explain the reason for such absence of continuation of foreign service shall be given to the Government servant before the provisions of this sub-rule are invoked."

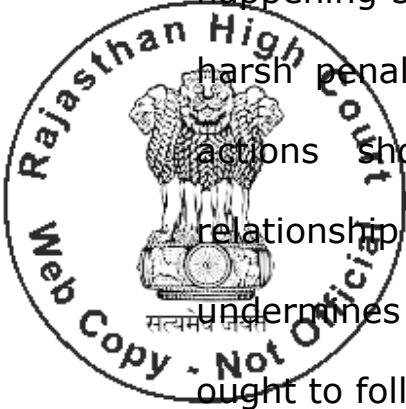
16. One has to examine proportionality of punishment in the light of aforesaid penal provision invoked by the punishing authority i.e. the Superintendent of Police. It appears that, given the other alternatives contained in the Rule, *ibid*, the punishment imposed on the petitioner—total forfeiture of 26 years of service for a 15-day absence—is excessive, disproportionate, and arbitrary.

16.1 The principle of proportionality is the mainstay and cornerstone of administrative law. Punishment should correspond



to the severity of the misconduct. The punishment should not be so disproportionate as to shock the conscience of the court. Moreover, the petitioner's absence did not result in any adverse consequences such as an escape of prisoners or security breach.

16.2 The respondents' speculative stand about potential risk of it happening seems too insufficient a justification so as to impose such harsh penalty. There is no gainsay to observe that disciplinary actions should aim to correct rather than terminate the relationship of employment. Imposing such a severe punishment undermines this rehabilitative objective which a welfare state ought to follow.



17. Aside all above, the impugned punishment order (as upheld in appeal and revision) suffers from serious procedural Lapses. The petitioner's explanation and supporting medical documents were summarily dismissed without proper enquiry or departmental proceedings or getting the same evaluated otherwise. Ribs bone fracture, even if prior in time (two weeks ago), can have alarming repercussions, including excruciating pain, if proper rest is not taken to enable it to recover. Rule 86(1), supra, must be applied judiciously, and the forfeiture of past service of 26 year by stroke of a pen cannot be invoked mechanically. The impugned order lacks sufficient justification for such a severe penalty.

18. As already opined above, in present case, firstly the impugned order dated 30.12.2005 is influenced and vitiated by the reference to, reliance upon and use of wholly extraneous material against the petitioner (to the effect that since appointment on 07.12.1979, the petitioner had remained absent

on 34 occasions) qua which there is not even a whisper in the show cause notice.

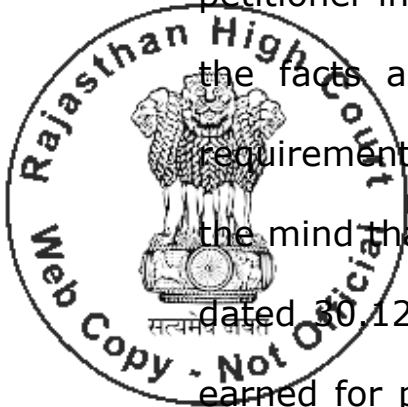
18.1 Secondly, as noted above, the overall consequences flowing from the impugned order for the forfeiture of petitioner's past service of over 26 years are more penal and have put the petitioner in worse position than even his removal from service. In

the facts and circumstances of the present case, as also the requirements of principles of natural justice and fair play, I am of the mind that it was necessary before passing the impugned order dated 30.12.2005 forfeiting and withdrawing the benefits already

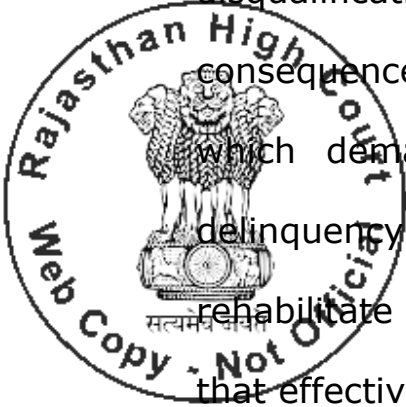
earned for petitioner's past service of 26 years, to hold a regular inquiry as is required sub-rule (1) of Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 for imposing the penalty of removal from service which does not disqualify from future employment. Admittedly, no such inquiry was held in present case.

19. I am also of the opinion that for absence from duty for 15 days, the penalty of forfeiture of the petitioner's service of over 26 years is grossly disproportionate to the alleged delinquency. The dismissal of the petitioner's X-ray report and the rejection of their explanation without further inquiry highlight an arbitrary decision-making process that fails to adhere to principles of fairness and due diligence. Medical records, even if incomplete, carry a presumption of credibility and should not be disregarded without expert evaluation to refute their authenticity.

20. To sum up, at the cost of repetition, administrative decisions, particularly those affecting an employee's entire career, must prioritize the principle of least harm. In this case, the penalty of



forfeiting 26 years of service by a side wind, as bolt from the blue, is grossly disproportionate. It disregards more measured alternatives, such as censure or withholding of increment on promotion or reduction to a lower time scale or compulsory retirement or removal from service with or without disqualification. Punishing health-related absence—unintended consequences of illness is against the ethos of proportional justice, which demands penalties commensurate with the gravity of delinquency. Furthermore, disciplinary action should aim to rehabilitate employees rather than impose irreversible penalties that effectively end their careers.

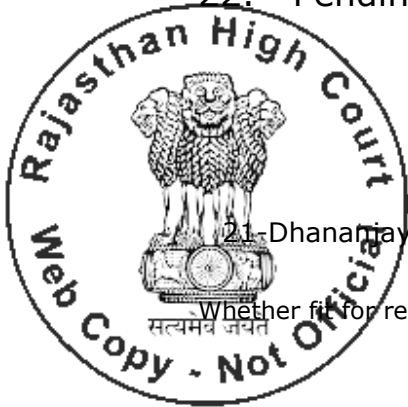


20.1 Rule 86, which allows for the regularization of absences through leave, provides a mechanism to address legitimate issues. The petitioner's long tenure of past service constitute sufficient grounds for invoking this Rule, but the denial of such invocation clearly undermines the intent of said Rule, particularly when there is no evidence to suggest deliberate dereliction of duty or *mala fide* intent on the petitioner's part. Imposing such excessive punishment as in present case, would lead to the risk of creating a chilling effect, where employees may hesitate to report health issues or request leave for fear of severe consequences. Pertinently, the forfeiture of 26 years of service inflicts severe financial loss, emotional distress, and societal stigma on the petitioner. Such an outcome demoralizes employees and establishes a regressive precedent. In light of these considerations, a more balanced approach, guided by fairness, proportionality, and the principle of rehabilitation has to be adopted.

21. As an upshot of the above discussion, the petition is allowed and the impugned orders dated 30.12.2005 (Annex.-2), dated 07.04.2006 (Annex.-3) and dated 15.01.2009 (Annex.-5) are quashed. The petitioner shall be entitled to all consequential benefits.

22. Pending application, if any, stands disposed of.

(ARUN MONGA),J



21-DhananjayS/-

Whether fit for reporting: Yes / No