

STATE OF PUNJAB AND ORS.

v.

DHARAM SINGH

DECEMBER 16, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Punjab Police Rules :*

*Rule 16.21—Status and treatment of officer under suspension.*

*Service Law—Police Officer—Suspension—Absence from duty—Enquiry—Absence found wilful—Removal from service—High Court setting aside removal on the ground that subsistence allowance was not paid to him and therefore, absence was not wilful—Appeal preferred by State—Held as per Rule 16.21 even during the period of suspension the police officer is required to attend to roll call—The payment of subsistence allowance under the suspension rule is one facet of it and his duty to be present is another—Non-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty—The conclusion reached by the disciplinary authority that he was wilfully absence from duty is well justified—Authorities directed to consider passing an order of compulsory retirement instead of removal—He will be eligible to pensionary benefits under the Rule.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16983 of 1996.

From the Judgment and Order dated 4.10.95 of the Punjab & Haryana High Court in W.P. No. 9718 of 1994.

R.S. Suri and Rohit Agarwal for the Appellants.

L.K. Pandey for the Respondent.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

**A** This appeal by special leave arises from the order of the Punjab & Haryana High Court, made on October 4, 1995 in Writ Petition No. 9718 of 1994. Action was taken under Punjab Police Rules for taking disciplinary action against the respondent for his failure to report for duty during period from November 21, 1991 to October 31, 1992. An inquiry was conducted against the respondent and it was found that his absence was wilful. The High Court has set aside his removal from service on the ground that subsistence allowance was not paid to him and, therefore, his absence was not wilful. Rule 16.21 reads as under :

**B**

**C** "16.21 - *Status and treatment of officer under suspension* - (1) A police officer shall not by reason of being suspended from office cease to be a police officer.

**D** During the term of such suspension the powers, functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended."

**E** A reading of it would clearly indicate that even during the period of suspension the police officer is required to attend to roll call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one facet of it and his duty to be present is another. Non-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowance, go to the office and collect subsistence allowances and if it is not paid, necessary representation to the higher authorities and, if the grievance is not redressed, to the appropriate forum seeking payment, may be made. But that does not mean that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was wilfully absent from duty is well justified. However, on the quantum of punishment imposed, on the facts and circumstances of the case, we are of the view that instead of the removal, compulsorily retirement from service would be an appropriate punishment.

**G**

**H** The appeal is accordingly allowed. The order of the High Court

stands set aside. Instead of the order of removal, the authorities are directed to consider passing an order compulsorily retiring him from service so that he will be eligible to the pensionary benefits and other benefits under the rules. No costs. A

T.N.A.

Appeal allowed.