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**(2009) 10 AHC CK 0059**  
**In the Allahabad High Court**

Constable Hari Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 21-10-2009

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2010) 1 AWC 423

**Hon'ble Judges :** Rakesh Sharma, J

**Bench :** Single Bench

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## Judgement

Rakesh Sharma, J.—Heard Sri D.K. Srivastava, learned Counsel for the petitioner and learned standing counsel for the respondents.

2. Under challenge is an order of dismissal passed on 28.5.2003 by the Commandant, 39th Battalion, P.A.C., Mirzapur dismissing the petitioner, a P.A.C. constable from service.

3. It emerges from the record that a formal regular enquiry was conducted against the petitioner on account of charge that on 22.1.2003 at about 20.45 p.m., the petitioner was found drunk, and was causing nuisance in the campus of 39th Battalion P.A.C., Mirzapur. He had also been using abusive language and committed serious misconduct on the same date. A detailed charge-sheet was served against the petitioner. The P.A.C. constables who had heard commotion and the duty clerk making entries in the General diary who had recorded the events which had occurred on 22.1.2003 were produced as witnesses. The petitioner Hari Lal alongwith other constable Virendra Nath Rai were involved in the incident. Both were in drunken state using filthy language. Similar charges were levelled against the other constable, i.e., Virendra Nath Rai. As per learned standing counsel notices were sent to petitioner to appear on 6.3.2003, 20.3.2003, 2.4.2003, 5.4.2003 and 16.4.2003 fixing these dates for holding departmental enquiry. As per learned standing counsel, the petitioner could not submit his reply to the charge on account of serious illness. He had submitted medical certificate to demonstrate that he was seriously ill and as such he could

not appear before the enquiry officer. It was also found that the petitioner did not cooperate the then enquiry officer and ultimately an order of dismissal was passed against the petitioner on 28.5.2003. The petitioner's appeal was rejected by the D.I.G. P.A.C. Range on 23.7.2004 and subsequent revision was also dismissed by the Zonal Inspector General on 12.8.2005.

4. Sri D.K. Srivastava, learned Counsel for the petitioner has drawn attention of the Court that in the present case two constables Virendra Nath Rai and the petitioner constable Hari Lal were charge-sheeted for one and the same charge, that is, causing nuisance on the campus of 39th Battalion on 22.1.2003 at about 8.45 p.m. Constable Virendra Nath Rai was given almost the same charge-sheet containing the same charges. Thus, the subject-matter of accusation against Virendra Nath Rai and the petitioner Hari Lal was one and the same. The D.I.G. P.A.C. Varanasi Range had allowed the appeal of Virendra Nath Rai by recording the following findings:

vihydrkZ vkj{kh ohjsUnz ukFk jk; }kjk ek= "kjkC ihus dh iqf"V MkDVjh tkap ls gqbZ gSA ftlds IEcU/k esa IEiUu foHkkxh; dk;Zokgh ls Li"V gS fd vihydrkZ }kjk "kjkC ds lsou fd;s tkus dk izdj.k jkf= x.kuk ds i"pkr~ le; 20-30 cts ds vkl&ikl fd;k tkuk ik;k tk jgk gS A lexx tkap@foHkkxh; dk;Zokgh ls dgha Hkh izekf.kr ugh gS fd vihydrkZ }kjk "kjkC dk lsou M~;wVh ds e/; fd;k x;k vFkok mlus "kjkC ds u"ks esa fdLh vf/kdkjh@deZpkjh ls dksbZ nqoZO;ogkj@vuq"kkluhurk dh gS A ,slh fLFkfr esa vihydrkZ dks ek= "kjkC ds lsok ds vkjksi ls lsokP;qr fd;k tkuk mldh =qfV ds lkis{k vis{k kd`r vR;f/kd dBksj n.M gS ,oa ;g izkd`frd U;k; ds fl)kUr ds foijhr gS A

IEiw.kZ voyksdu ls vihydrkZ }kjk izLrqr vihy esa i;kZIr cy ik;k tkrk gS A vr% vihy ,rn~}kjk Lohdkj dh tkrh gS vkSj vihy vUrZxr lsukuk;d 39oha okfguh ih0,0lh0 fetkZiqj dk vkns"k la[k; ih,Q&2@03 fnukad 28-7-2003 dks fujLr djrs gq;s vihydrkZ vkj{kh ohjsUnz ukFk jk; dks iqu% lsok esa fy;s tkus dk vkns"k ikfjr fd;k tkrk gS A vihydrkZ dks lsok ls inP;qfr ds fnukad ls mlds vken gksus dh frfFk dks dke ugha rks nke ugha ds fl)kUr ij dksbZ osru vkfn ns; ugh gksxk ijUrq mDr vof/k dks vkj{kh ds lsok isa"ku vkfn esa vkxf.kr fd;k tk;sxk A

vihydrkZ vkj{kh ohjsUnz ukFk jk; dks izdj.k esa ek= "kjkC ds lsou dk nks"kh ik;k x;k gS A vr% lsukuk;d 39oha okfguh ih,lh fetkZiqj mDr dehZ ds fo:) mijksDr vkjksi ds IEcU/k eas xq.k voxq.k ds vk/kkj ij foHkkxh; dk;Zokgh IEiUu djus gsrq LorU= gksaxs A

Pointing out the above observations and findings recorded by the DIG P.A.C., Varanasi Range, Varanasi, the Statutory Appellate Authority, Sri D.K. Srivastava,. learned Counsel for the petitioner submitted that the constable Hari Lal was also entitled for the same treatment. If his past conduct was considered by the Commandant while forming his opinion for dismissing the petitioner from service, the delinquent employee was never confronted by the said authority that his past conduct was to be used against him for dismissing him from service. As far as the subject-matter of accusation is concerned, the petitioner could have been

awarded a minor penalty, not dismissal from service. The petitioner is now 45 years old and he has four children and a large family to support. The petitioner would immensely suffer if he is dismissed from service in the event which took place on 22.1.2003. Learned Counsel for the petitioner has placed reliance on the cases of Hon''ble Supreme Court in the Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and Another, and of this Court in the cases of Sahdev Singh v. U.P. Public Service Tribunal, Lucknow (2001) 1 UPLBEC 865 : 2001 (2) AWC 983 and Ram Pratap and others Vs. State of U.P. and others, in support of his submission.

5. Learned standing counsel has opposed the writ petition and has submitted that a formal regular departmental enquiry was conducted against the petitioner. He was afforded opportunity of hearing at all the stages of departmental enquiry. Date, place and time of enquiry was fixed and in the present case the petitioner avoided to co-operate with the enquiry officer. In the circumstances of the case, the dismissal from service was appropriate punishment awarded to the petitioner. As far as the appellate order is concerned, it was open for the appellate authority to form his opinion on the basis of material on record and submissions of the delinquent officer. All the impugned orders are just, legal, valid and proper.

6. Heard learned Counsel for the parties and perused the record.

7. This Court has taken note of the fact that the same appellate authority, that is, D.I.G., P.A.C., Varanasi Range, Varanasi has dismissed the appeal of the petitioner and allowed the appeal of similarly placed constable against whom same charges were levelled. The charges against Virendra Nath Rai and Hari Lal petitioner was one and the same. Both of them were found in a drunken state on 22.1.2003 at about 8.45 p.m. in the P.A.C. campus of 39th Battalian, Mirzapur. They were similarly circumstanced. In both the cases hearsay evidence was taken note of by the competent authority. This Court has noticed the observations, findings conclusions recorded by the appellate authority in its order dated 4.6.2005 in dealing with the Virendra Nath Rai's appeal. The petitioner's case ought to have been dealt with in similar manner. The action is violative of Article 14 of the Constitution of India.

8. As far as his past conduct is concerned, he was not confronted with the same in the charge-sheet nor through the show cause notice that the appointing authority was going to rely on the past conduct of the delinquent employee. If this could have been done, it was open for the employee facing the departmental enquiry to have put forth his version and opportunity of hearing must have been afforded to him to meet this additional ground which has been used to give weightage to arrive at a conclusion by the competent authority to dismiss a Government servant otherwise he could have been awarded a minor penalty considering the nature of the charges. Even the appellate authority has held that the allegation of consuming liquor on 22.1.2003 at 8.45 p.m. on a wintry evening could not have been used to dismiss a Government servant having long service as constable in the department. He was 39 years old at the time of

dismissal from services. His case also finds strength from a judgment rendered by a Division Bench of this Court in 2001 (1) UPLBEC 865 (supra).

9. There is substance in the submissions of learned Counsel for the petitioner. His case is strengthened by the verdict of Hon''ble Supreme Court in the case of Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and Another, wherein it has been held that where three workmen, on almost identical charges, were found guilty of misconduct in connection with the same incident, one of them punished with one month''s suspension and another reinstated pursuant to court''s order, in such circumstances notwithstanding that they were found guilty in separate proceedings singling out the third one for punishment of dismissal rightly held by High Court as amounting to denial of justice and element of discrimination had come in to play. In the present case also the petitioner has been singled out while the other delinquent employee Virendra Nath Rai was exonerated and reinstated in the service. Similar views have been expressed in para 12 of the judgment rendered by this Court in 1999 (17) LCD 149 (supra).

10. In view of the above discussion, the writ petition is allowed. The dismissal order dated 28.5.2003 alongwith the orders passed by the appellate authority and the revisional authority on 23.7.2004 and 12.8.2005 are quashed. The petitioner shall be reinstated in service. He shall also be allowed the same benefits which were allowed to Virendra Nath Rai, similarly situate constable. However, the petitioner shall not be entitled for any salary for the period he remained out of service. However, the same period shall be counted for other benefits like pension, gratuity etc.. It shall be open for the appropriate authority if he so desires to take any other departmental action which he deems fit in the circumstances of the case. However, the petitioner shall not be awarded any major penalty in that event.