

(2006) 01 AHC CK 0252
In the Allahabad High Court
Case No : C.M.W.P. No. 19099 of 2003

Dileep Kumar Shukla

APPELLANT

Vs

Commandant 4th Battalion P.A.C. and Others

RESPONDENT

Date of Decision : 05-01-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 5 AWC 4999 : (2006) 2 UPLBEC 1391

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : Kamla Kant Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Heard learned Counsel for the parties.

2. This petition is directed against a termination order dated 28.3.2003/4.4.2004 and subsequent appellate and revisional order upholding the said termination.

3. The Petitioner, a constable in the Provincial Armed Constabulary was detailed on guard duty on the annual inspection of the Battalion by the Inspector General on 11.9.1997 at 8.30 a.m. He was found absent from guard duty and on enquiry it was learnt that he had left the battalion the previous night without any information, permission or leave. It was further found that he had been arrested by the Government Railway Police at Moghal Sarai Railway Station while carrying 8 Kgs. of cannabis sativa (ganja) under the N.D.P.S. Act and was lodged in jail. Thus, he was suspended vide order dated 13.9.1997 in contemplation of an enquiry. After service of the charge-sheet his services were dispensed with after due opportunity and which order has been upheld in appeal and revision.

4. Learned Counsel for the Petitioner has urged that he was not provided reasonable opportunity by the Enquiry Officer and was not allowed to cross-examine the witnesses.

5. A copy of the enquiry report is annexed with the petition. The prosecution examined Subedar Major Sher Bahadur, who had detailed the Petitioner for guard duty and who proved that the Petitioner remained absent from his duty without any application or permission of leave and in fact left the battalion at 2.30 in the night on 10.9.1997. The other witness Deb Dutt Mishra who was the G.D. writer who proved that absentee report against the Petitioner was lodged by Subedar Major on 11.9.1997 at 8.35 a.m. and he proved the G.D. report. It further examined Shri V. M. Bhatt, Assistant Commandant who had preliminary enquiry and had recorded the statement of the Petitioner while he was lodged in jail, who proved the statement and other papers. It is mentioned in the enquiry report that the Petitioner was given liberty to cross-examine the three witnesses but he declined. There is neither any specific averment in the writ petition nor there is any shred of evidence to show that the Petitioner was refused opportunity to cross-examine any of the three prosecution witnesses. In any event, the three prosecution witnesses only proved the records and the entry in the records have not been denied by the Petitioner either before the enquiry officer or before this Court and he has also not demonstrated as to how his case was prejudiced. Therefore, the argument cannot be sustained.

6. The learned Counsel has then urged that the punishment of dismissal for absence from duty for one day was too harsh and not commensurate with the alleged misconduct.

7. Normally, Courts do not interfere with the award of punishment to a delinquent by the employer unless the punishment is so much disproportionate to the misconduct that it shakes the conscience of the Court. While awarding punishment the employer is entitled to take into consideration all factors including attending circumstances and the service record of the delinquent. In the counter-affidavit it is alleged in paragraph 5 that the Petitioner was awarded two minor punishments in 1990, three in 1991 and one punishment in 1994. It is further alleged that he was granted adverse entries in 1990 and 1991. This fact has not been denied in the rejoinder-affidavit. It is also not denied that the Petitioner was actually arrested at about 3.45 a.m. along with 8 kgs. of cannabis sativa and a criminal case is pending. As noted hereinabove, during the course of fact finding enquiry the statement of the Petitioner was recorded by the Assistant Commandant while he was lodged in jail and when asked for the reason for leaving the unit, the Petitioner disclosed that in the night of 10.9.1997, he came to know that his sister was seriously ill and, therefore, he had left the battalion to see her. However, during the enquiry he took a complete about turn and gave a new reason for his absence that his brother was seriously ill in Varanasi and, therefore, he had gone there but by that time since his brother died and after performing some rituals while he was returning from Varanasi via Moghal Sarai he was falsely arrested and imprisoned. The Petitioner has given out new reasons at different stages which are contrary to each other. The Petitioner is a member of an armed and disciplined force, and is expected to maintain strict discipline and be truthful to his duties. He was on guard duty and no member of the

disciplined force is expected to leave such duty without at least informing his superiors. The story of informing the Subedar Major and the G.D. writer has been found to be absolutely false as they have clearly stated before the Enquiry Officer that the Petitioner did not inform them at all. It is on record that the Petitioner remained absent from 11.9.1997 till 9.12.1997, when he joined duty after being granted bail. On these facts, the Court is not convinced that the punishment awarded to the Petitioner is in any way harsh.

8. No other point has been urged.

9. For the reasons given above, I do not find that this is a fit case for interference under Article 226 of the Constitution of India. Rejected.