

(2012) 07 DEL CK 0087
In the Delhi High Court
Case No : Writ Petition (C) 498 of 2000

Rakesh Kumar

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Citation : (2012) 191 DLT 419

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : R.P. Sharma, for the Appellant; Ruchir Mishra, Advocate and Mr. Mukesh Kumar Tiwari, for the Respondent

Judgement

Pradeep Nandrajog, J.—Learned counsel for the petitioner, after some arguments, states that keeping in view the peculiar facts of the instant case he would restrict arguments to the quantum of the punishment levied upon the petitioner, and thus we note only such facts as would be relevant for the punishment levied. Working as a Constable with BSF and rendering unblemished service for 8 years and having won commendation certificates from superior officers on at least 20 occasions, in the month of April 1997, the petitioner was on leave and unfortunately was named as an accused in a matter relating to the murder of a person in the village. He was arrested by the police and due to which he was suspended. The petitioner was admitted to bail on October 17, 1997 but did not join back the unit and for which he was charge-sheeted for remaining absent till February 05, 1998 and in respect of which charge the petitioner pleaded guilty. But the petitioner claims that he did not understand what he was actually admitting of. Petitioner claims that he intended to admit the factual content of the charge i.e. as a matter of fact not reporting back for duty and not his guilty intention, and for which petitioner states that the reason he could not report back for duty was his requirement to be present in Court, a term or a condition, whatever may be the expression appropriate, of the order admitting petitioner to bail. The petitioner attended Court on 24.10.1997, 4.10.1997,

12.12.1997, 21.12.1997, 12.01.1998 and 27.01.1998. Additionally, the petitioner claims that his sureties would not let him leave the village, lest he absconds and they have to pay for the surety bond amount.

2. On this backdrop it is urged that the penalty of dismissal from service is harsh.

3. We concede.

4. Our reason is that keeping in view the past service record of the petitioner and the peculiar circumstances under which petitioner could not report for duty and highlighting that the charge is of remaining absent without leave, it cannot be said that the penalty imposed i.e. dismissed from service is commensurate with the gravity of the offence.

5. We allow the writ petition and quash the penalty of dismissal from service requiring the Disciplinary Authority to decide what appropriate penalty should be imposed, and needless to state, this would include a decision on the subject as to in what manner the period interregnum levy of penalty till further order is passed, is to be treated.

6. We highlight, for record, that at the criminal trial where he was charged for the offence of murder, the petitioner stands acquitted.

7. The order imposing penalty as also the appellate order dated June 10, 1999 rejecting the statutory appeal are quashed. The Disciplinary Authority is directed to take a fresh decision on the penalty to be imposed as also the manner the period interregnum levy of penalty till further order is passed, is to be treated. No costs.