

**119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.6424 of 2017 (O&M)
Date of Decision : 05.04.2017**

Naresh Kumar

..... Petitioner

versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Dr. S.K.Redhu, Advocate
for the petitioner.

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the punishment order.

The petitioner was facing an inquiry and was under suspension when on 01.12.2010 he went missing. It later came to light that he had made an entry that he was going to attend a Court hearing and proceeded. Thereafter he did not report back for duty and reported back only after 31 days. It transpired that the Court hearing for which he had gone was not a case where he was to give evidence on behalf of the prosecution but was a hearing where he was himself an accused. He was charge-sheeted for the act of having made a false entry and for having proceeded on leave without applying for the same/getting the same sanctioned. Having been found guilty the disciplinary authority proposed punishment of stoppage of 4 increments with permanent effect. The petitioner gave his reply and after considering the same he was imposed punishment of stoppage of two

increments with permanent effect. In the appeal, the punishment was further modified to stoppage of two increments with temporary effect. Thereafter he filed a revision which was rejected and that is how he is before this Court.

The first question which arises is whether the petitioner had applied for leave on 02.12.2010 when he was to attend the Court in a case where he was accused.

Learned counsel states that though the petitioner had not applied in writing yet he had appeared before the Deputy Superintendent of Police-respondent No.8 and verbal permission was granted to him. However, when the petitioner cross-examined the respondent No.8 his line of cross-examination was entirely different, because he accused the respondent No.8 of wrongly denying him the leave. It is on the basis of this cross-examination that the learned counsel is arguing that the petitioner had applied for leave.

In my opinion, a cross-examination may carry value if it illicit an admission but where the allegations made in the cross-examination are denied no such conclusion can be arrived at. As regards the unauthorized absence for 31 days it is the case of the petitioner that just after the Court case he was unwell and could not join his duty and had in fact applied for leave on 04.12.2010. Even if this is accepted yet by the application dated 04.12.2010 the petitioner had applied only for leave for 7 days and admittedly thereafter he never applied for extension of the leave. It is against the back drop of these facts that the claim of the petitioner has to be adjudicated. It can not be lost sight of that while sitting in writ

jurisdiction this Court is not sitting as an Appellate Authority and particularly as far as disciplinary matters are concerned the Court has only to satisfy itself that due opportunity was granted to the petitioner. Admittedly the petitioner was granted full opportunity to meet the charges against him. The only circumstance in which this Court would be justified in interfering would be if the punishment imposed is so disproportionate to the charge that it shocks the conscience of the Court. In the present circumstances, where the best case of the petitioner is that he had duly taken permission to attend the Court hearing and had applied for 7 days leave it still can not be lost sight of that even after that the petitioner was absent for 24 days for which there was not even an application. The punishment imposed is stoppage of two increments with temporary effect. I regret my inability to agree with the learned counsel for the petitioner that the punishment imposed is so disproportionate that it would shock the conscience of the Court.

Consequently, the petition stands dismissed.

Since the main case has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

05.04.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No