

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

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**CM No.5306-C of 2012 in/and
RSA No.1899 of 2012 (O&M)
Date of Decision : 08.11.2017**

Mohan Lal

..... Appellant

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Ms. Anju Sharma, Advocate
for the appellant.

Ms. Anita Balyan, Advocate
for respondents No.1, 2, 5 & 6-BSF.

AJAY TEWARI, J. (Oral)

CM No.5306-C of 2012

For the reasons recorded, the application is allowed. Delay of 176 days in re-filing the appeal is condoned.

RSA No.1899 of 2012

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant.

The appellant was enrolled as a Constable in the Punjab Armed Police on 26.11.1966 and was absorbed in the Border Security Force in August, 1968. At one stage in the year 1992 he applied for voluntary retirement which was granted to him and thereafter he submitted an application for withdrawal of the voluntary retirement notice but the same was rejected. He challenged the same in the Delhi High Court which set aside the order of voluntary retirement and he was reinstated in the year

2000. In 2001 he was again dismissed by an order dated 06.06.2001. He

challenged that order by CWP No.8769 of 2001. However, before the notice of that case was served upon the respondents they withdrew the order and on 20.07.2001 and reinstated him in service. The present incident occurred after he rejoined back. Chargesheet was issued to him and after regular Court of inquiry the punishment first of reversion and then dismissal was ordered.

It was thereafter that the instant civil suit was filed. Both the Courts below held that the civil suit at Moga was not maintainable. Even on merits the Courts found that the appellant had not even placed on record the order of punishment. They also found that he did not prove the documents he had relied upon but merely tendered them into evidence with the result that he could not cross examined regarding those documents. The Courts below further held that the appellant was not able to prove that the inquiry was conducted in an illegal manner because he had admitted in his statement that he had cross examined 4/5 witnesses. Ultimately both the Courts dismissed the civil suit.

Learned counsel for the appellant has stated that she would not challenge the findings but the punishment which has been imposed is disproportionate to the extent that it would shock the conscience of the Court.

On the other hand learned counsel for the respondents No.1, 2, 5 & 6 has argued that the chronology of events leading up to the present charges merely show that the appellant deserved the punishment of dismissal. She states that the appellant was posted on the Gurdaspur Border when he requested for permission to go to town to make a telephone call

sent out to locate him. They found him checking documents of private vehicles. He immediately left the place and the search party also proceeded for other duty presuming that he had returned back to the post. However, he did not return back. Then the officiating Company Commander went to look for him and found him sitting by the side of the road in a drunken condition and when he was asked to return back he misbehaved with the Company Commander. He only reached the post back at 8.00 p.m. When he was detailed for ambush duty at ambush point No.6 he refused and somebody else had to be deputed for that duty and it was in these circumstances that the punishment was imposed upon him.

I regret my inability to agree with the learned counsel for the appellant that the punishment is so excessively disproportionate as to shock the conscience of the Court.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

08.11.2017

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No