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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP- 16038-1992

Date of Decision : August 10, 2018

Ex. Constable/GD Ram Naresh

.... Petitioner.

Versus

Union of India and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Arun Singla, Advocate
for the petitioner.

Mr. Anil Chawla, Advocate
for the respondents.

SHEKHER DHAWAN, J.

Present writ petition under Article 226 of the Constitution of India is for quashing of order of dismissal dated 06.12.1991(Annexure P/4) passed by respondent No.2 on account of violation of various statutory and mandatory provisions.

2. Facts relevant for the purpose of decision of this writ petition; that in the month of April, 1991, the petitioner was enrolled with the ITBP on 22.09.1987 as Constable (GD). In the month of April, 1991, the petitioner was deployed with 'E' Coy of 16 Bn ITBP. He had received intimation regarding marriage of his sister, which was fixed for 21.06.1991. The petitioner put up his request for grant of five days leave to his Guard Commander, who was initially reluctant to grant the said leave as Force

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being committed for duties during Punjab elections. The petitioner found this reason to be unjustified as two other Constables, namely, Dal Chand and Uday Chand were allowed leave w.e.f. 18.06.1991 to 24.06.1991 and 17.06.1991 to 01.07.1991 respectively. The petitioner submitted his application for five days leave and left the place of his work on 20.06.1991 at 10:30 hours in anticipation of grant of leave without getting the same sanctioned. The petitioner came back for duty on 08.07.1991. On return, he was questioned as to why he had overspent the period of five days which he had sought as leave w.e.f. 20.06.1991. The petitioner explained the circumstances.

3. Respondents initiated departmental enquiry and one Lakha Singh, Company Commander was detailed as Enquiry Officer. Article of charges (Annexure-P2) was sent to the petitioner was letter dated 12.10.1991. The enquiry commenced on 18.11.1991 and was concluded on 28.11.1991 and the petitioner was held guilty under Section 11(1) of the C.R.P.F. Act, 1981. On the basis of enquiry report (Annexure-P3), the petitioner was finally dismissed from service vide order dated 06.12.1991 (Annexure-P4). The petitioner has challenged the said dismissal order by way of present petition.

4. Learned counsel for the petitioner has contended that the punishment awarded to the petitioner is harsh and disproportionate to the alleged misconduct and the petitioner is entitled for the relief of reinstatement. In support of his contention, he has relied upon the decisions from Hon`ble Supreme Court in **Union of India and others vs.**

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Giriraj Sharma, AIR 1994 (SC) 215; and Civil Appeal No.2608 of 2012-Union of India & Ors. vs. Ram Lakhan Sharma, decided on 02.07.2018.

5. Learned counsel for the respondents contended that there are no grounds to set-aside the impugned order, Annexure P/3 because the petitioner was working in a disciplined force and he had left the work place without getting any leave sanctioned. He further contended that the petitioner had deserted while being on responsible duty without permission of the competent authority and also left his arm and ammunition without informing any body. More so, in the application, the petitioner had written that he was going to attend the marriage and the leave applied for was only for two days, but he reported back after 18 days. The petitioner had submitted an inland letter in which the date of marriage was given as 14.06.1991 and the letter was in his own handwriting and was having stamp of Ahamdgarh only, where he was posted and the same was dropped from Post Office Ahmdgarh. All these facts clearly show that there is no ground to interfere in the dismissal order and the judgments referred to by learned counsel for the petitioner are distinguishable on these facts.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record as also the law cited by learned counsel for the petitioner, this Court is of the considered view that certain facts are not disputed that the petitioner was working in a disciplined force and had deserted the respondents without getting any leave sanctioned or without handing over his arm and ammunition and reported back for duty only after 18 days. The respondents had considered this conduct to be

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highly intolerable in such a disciplined force. More so, as it has come on the file that the petitioner had dropped the inland letter written in his own hand from the same place of posting, his contention was not accepted and the order of punishment was passed. The said order was passed on the basis of departmental enquiry conducted in the matter.

7. In view of the above, the facts of the present case are distinguishable from the facts of **Giriraj Sharma's case (supra)** wherein the delinquent official had got his leave sanctioned and then had sent the request for extension of the same, but the facts of the present case are quite at variance because no leave was ever got sanctioned by the present petitioner and subsequently, there was no intimation regarding extension of leave. In **Ram Lakhan Sharma's case (supra)**, the allegation against Ram Lakhan Sharma was absence from duty for a short duration (about 40 minutes). But, in the present case allegations are desertion and leaving the work place for 18 days' and even without depositing the arms and ammunition. Thus, the facts of that case are also distinguishable from the facts of the present case on this account.

8. In view of the above, there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 10, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes