

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

119

RSA No.5461 of 2018(O&M).

Decided on:16.08.2023

Ashwani Kumar

...Appellant

Versus

The State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Inderjeet Sharma, Advocate
for the appellant.
Mr. Sandeep Chopra, DAG, Punjab.

ANIL KSHETARPAL, J.

1. Though this appeal has been filed along with an application for condonation of delay of 2954 days in filing the appeal, however, this court has heard the learned counsel representing the appellant on merits of the case.

2. The appellant was recruited as a Constable in the Punjab Police, a disciplined armed force. He was suspended on 10.08.2002 as he failed to attend the course meant for commandos at Training Centre, Bahadurgarh. Thereafter, a charge sheet was issued, inquiry was held in which he was found to have indulged in service misconduct. Ultimately, the disciplinary authority dismissed him from service vide order dated 03.02.2003. The appellant did not join the disciplinary proceedings. A civil suit was filed which, as already noticed, was dismissed by both the courts below on appreciation of the evidence.

3. The learned counsel representing the appellant contends that the appellant has been condemned unheard and the absence of the appellant was not intentional. He further submits that the given punishment is disproportionate to the misconduct.

4. This court has considered the submissions of the learned counsel representing the appellant.

5. With reference to the first argument, it may be noticed that both the courts have found that the appellant's absence was intentional and he was given sufficient opportunities to participate in the inquiry. The appellant absented himself from the duty from 03.08.2002 onwards. During the disciplinary inquiry, the notice was served on the appellant, however, he failed to participate in the inquiry. The courts found that the plaintiff intentionally did not appear before the Enquiry Officer. The courts also noticed that the plea taken by the plaintiff is false because he is a resident of village Gandhian, whereas he is trying to justify his absence on the basis of some treatment card produced from Primary Health Centre, Madhopur which is at a distance of 40 Kms. from Gandhian. Thus, the appellant has not been condemned unheard.

6. With reference to the second argument of the learned counsel representing the appellant, it may be noted that the appellant did not attend the office or the commando course from 03.08.2002 onwards. The disciplinary proceedings were ordered after taking note of continuous absence of the appellant. Ultimately, the order was passed after a passage

of nearly six months. He failed to prove that he was prevented by sufficient cause for his absence. Hence, there is no substance in the second argument.

7. The last submission of the learned counsel representing the appellant is with reference to the fact that the punishment awarded is disproportionate.

8. As already noticed, the appellant was a member of the disciplined armed force. He remained absent from his duty continuously for months. In these circumstances, the punishment awarded is not disproportionate to the misconduct.

9. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

10. Dismissed.

11. Because the appeal has been heard and dismissed on merits, hence, no further order on the application for condonation of delay in filing is appeal is required to be passed.

12. All the pending miscellaneous applications, if any, are also disposed of.

August 16, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO