

**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

CWPOA No:4662 of 2020

Decided on: 24.12.2025

Pyare Lal

...Petitioner

Versus

State of HP & Others

...Respondents

Coram:

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?. Yes*

For the petitioner: Ms. Shalini Thakur, Advocate.

For the respondents: Ms. Seema Sharma, Deputy
Advocate General, for the
Respondents-State.

Ranjan Sharma, Judge

Petitioner, Pyare Lal, being a Home Guards volunteer, having been discharged, leading to dismissal from service of the Home Guards Organization, had filed an Original Application No 3592 of 2018, before Learned Himachal Pradesh State Administrative Tribunal and upon abolition of Tribunal, the same was transferred to this Court as CWPOA No. 4662 of 2020, seeking the following relief(s):

“(a) Quash the impugned order dated

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

27.9.2017 (Annexure A-1) being arbitrary, malafide and illegal;

- (b). Direct the respondents to reinstate the applicant from the date of above illegal order along with arrears of salary with interest thereon @ 18% pa.”

FACTUAL MATRIX:

2. Case as set up by Learned Counsel is that the petitioner was enrolled as Volunteer in Home Guards on 15.12.1991 [*Annexure A-2*] but on 27.09.2017 [*Annexure A-1*], Respondents discharged the petitioner from service, resulting in his dismissal due to involvement in criminal cases, originating from FIR No 162 of 2015 and FIR No 186 of 2017 under Narcotic Drugs and Psychotropic Substances (*referred to as NDPS Act herein*), in an unfair, unjust and illegal manner, with the prayer to quash the dismissal orders and to direct reinstatement of the petitioner in service with all consequential benefits.

STAND OF THE STATE AUTHORITIES:

3. Pursuant to the issuance of notice, the State Authorities have filed the Reply-Affidavit

dated 09.08.2018.

3(i). Stand of the State Authorities in the Reply-Affidavit is that while the petitioner was serving as Home Guards Volunteer, petitioner had indulged in a serious offence and such a conduct was unbecoming of a member of a disciplinary force. Reply-Affidavit indicates that pursuant to registration of 162 of 2015, dated 19.07.2015 and FIR No 186 of 2017, dated 25.09.2017, the petitioner had remained in custody for a long period. It is averred that the Impugned order of discharge, resulting in dismissal of the petitioner from service has been opposed by State Authorities by invoking Section 6 of the Home Guards Act. It is in this backdrop, a prayer is made for dismissing the writ petition.

REBUTTAL BY PETITIONER:

4. Petitioner has filed a rejoinder placing on record the judgment passed by the Learned Special Judge, Ghumarwin, District Bilaspur, in Case Number [CIS Registration Number, 19

of 2017, originating from FIR No 186 of 2017] to assert that the petitioner stands acquitted on 20.12.2023 [Annexure P-1] and likewise, in Case Number [CIS Registration Number 56 of 2017, relating to FIR No 162 of 2015, petitioner stands acquitted in criminal case on 27.07.2023 also.

5. Heard, Ms. Shalini Thakur, Learned Counsel for the petitioner and Ms. Seema Sharma Learned Deputy Advocate General for the Respondents-State and perused the material available on record.

STATUTORY PROVISIONS:

6. Before proceeding to analyze the claim and rival contentions, it is necessary to have a recap of the Himachal Pradesh Home Guards Act and the relevant provisions of Section 6, 12(i) and 12(2) of the Home Guards Act, 1968, reads as under:-

“6. Power to discharge a volunteer of Home Guards-

Notwithstanding anything contained in sub-section (4) of section 5, the Commandant General or the Commandant

shall have the authority to discharge any volunteer of the Home Guards at any time subject to such conditions as may be prescribed, if, in his opinion, the services of such volunteer are no longer required.

12. Punishment of volunteers for neglect of duty etc..-

- (1) The Commandant General or the Commandant shall have the authority to suspend, reduce in rank, or dismiss or fine to an amount not exceeding fifty rupees, any volunteer of the Home Guards under his control, if such volunteer, on being called out under section 8, without reasonable cause, neglects or refuses to obey such order or to discharge his functions and duties as a volunteer of the Home Guards or to obey any other lawful order or direction given to him for the performance of his functions and duties, is guilty of any breach of discipline or misconduct. The Commandant General or the Commandant shall also have the authority to dismiss any volunteer of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge.
- (2) When the Commandant General or the Commandant passes an order for suspending, reducing in rank, dismissing or fining any volunteer of the Home Guards under sub-section (1), he shall record such order, or

cause the same to be recorded, together with the reasons therefor and a note of the inquiry made, in writing and such order shall not be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.”

ANALYSIS:

7. Taking into account the entirety of facts and circumstances and the material on record and the statutory provisions and the mandate of law, this Court is of the considered view that the Impugned Order of Discharge dated 27.09.2017 [Annexure A-1], resulting in dismissal of the petitioner from service, does not suffer from any illegality or infirmity or perversity, *for following reasons:-*

CONSTITUTIONAL AND STATUTORY NON-COMPLIANCES VITIATES IMPUGNED ORDER:

7(i). Perusal of the Impugned orders dated 27.09.2017 [Annexure A-1] indicates that State Authorities have discharged the petitioner from service by attributing/alleging misconduct due to the registration of FIRs against him. Though the Impugned order was termed to be an order

of discharge but infact aforesaid order was an order dismissing the petitioner from service. Impugned Order passed by the State Authorities cannot sustain, for the reason, that firstly, the Impugned order of discharge, resulting in dismissal or dispensing with service has visited the petitioner with civil consequences illegally; and secondly, the impugned order visiting the petitioner with civil consequences could not be passed without giving prior notice and without affording a personal hearing to the petitioner before passing the adversial orders of discharge or dismissal from service. Employer is expected to act in a fair, just and reasonable manner and whole purpose is to breathe reasonableness into procedural regime. The principles of natural justice cannot be permitted to be displaced by the State Authorities arbitrarily, unjustly and unreasonably. The petitioner has a right to continue in service till his superannuation as per rules or till his dismissal or removal or compulsory retirement inaccordance with the

procedure established by law, before depriving the petitioner of his livelihood, which is an integral facet of right to life under Article 21 of the Constitution of India. Respondents could not deprive the petitioner of his livelihood, by taking away his job by giving a complete go-bye to the principles of natural justice. The non-compliances of the principles of natural justice by neither issuing a show cause notice nor in affording a personal hearing to the petitioner before passing the adversial orders vitiates the decision making process as well as Impugned Order ; and thirdly, the action of the State Authorities in not resorting to the aforesaid legal compliances outlined in Articles 14 and 21 of the Constitution of India vitiates the decision making process and also the resultant Impugned Order in the light of the principles mandated by the Honble Supreme Court, in the case of ***Aurelanio Fernandes vs State of Goa***, {CA No 2482 of 2014, reported in **2023 INSC 527, Paras 34 to 45**}; and

fourthly, the State Authorities could not issue the Impugned Order against the petitioner by inferring and alleging misconduct due to mere registration of criminal cases-FIR's, which were mere accusations, which were yet to be tested and proved against the petitioner in accordance with law; and fifthly, even the FIRs being mere accusations cannot solely be made the basis for divesting the petitioner of his job and livelihood by imposing the extreme penalty of discharge/dismissal and therefore, Impugned Order penalizing the petitioner on the basis of accusations-allegations cannot pass the test of judicial scrutiny; and sixthly, the Impugned Order could not be passed by giving a complete go-bye to the statutory provisions i.e. the Himachal Pradesh Home Guards Act/Rules ; and seventhly, after due selection, the petitioner was duly appointed-enrolled as Home Guards Volunteer against a sanctioned post and his conditions of service were governed by the HP Home Guards Act/Rules, including the right

of the petitioner to hold the post till his superannuation at age of 58 years, extendable upto 60 years. There is no express prescription in the HP Home Guards Act and Rules that mere registration of FIR against an enrolled volunteer will constitute misconduct, so as to enable the authorities to form an opinion that services of petitioner were no longer required. The decision making process and “formation of opinion” in inferring “misconduct due to mere registration of FIR(s) is without any authority of law and the impugned order is violative of Section 6 of the Act is perverse, arbitrary and unsustainable; and eighthly, as per the provision of Section 12 (1) of HP Home Guards Act, it is only the conduct of a home guards volunteer, which leads to conviction, which can form the basis for depriving the petitioner of his job {by resorting to discharge, removal or dismissal etc} and in instant case, once “factum of conviction was non-existent” then, the Respondents could not be permitted to

pass the Impugned Order leading to discharge /dismissal of petitioner from service is violative of Section 12 (1) of the Act ; and ninthly, the passing of the impugned order due to mere registration of FIRs amounts to presuming the guilt of the petitioner in criminal case ; and lastly, Impugned order, resulting in dismissal, alleging misconduct could not have been passed in a slipshod manner, by giving a complete go-bye to the statutory compliances of holding an inquiry and affording an opportunity to delinquent-petitioner for leading his defence before passing the adversial order is violative of Section 12 (2) of the HP Home Guards Act. Non-compliance and non-adherence of the legal requirements vitiates the decision making process and the resultant adversial Impugned Order discharging the petitioner from service. In view of the above discussion, the Impugned Order cannot pass the test of judicial scrutiny and therefore, for non compliance of principles of natural justice, the Impugned Order dated

27.9.2017 (Annexure A-1) is interdicted and is quashed and set-aside.

**FIRs WHICH WERE MADE BASIS FOR PASSING
IMPUGNED ORDER RESULTED IN ACUITTAL:**

7(ii). The State Authorities have passed the Impugned Order on 27.09.2017 [Annexure A-1], on the basis of FIRs {i.e. FIR No 162 of 2015 and FIR No 186 of 2017, registered under NDPS Act}. The petitioner stands acquitted in both criminal cases on 27.07.2023 and on 20.12.2023 [Annexure P-1] and in view of the acquittal, the petitioner claims reinstatement in service with all consequential benefits.

Per contra, Learned State Counsel opposes the claim for reinstatement by submitting that mere acquittal of the petitioner in the criminal cases shall not entitle the petitioner for any benefits including automatic reinstatement.

Plea of Learned State Counsel carries weight, for the reason, that firstly, the petitioner was discharged from service on 27.09.2017 and it was during pendency of instant petition petitioner was acquitted in criminal cases on

27.07.2023 and on 20.12.2023 ; and secondly, nothing has been placed on record to establish that the judgments passed in criminal cases have attained finality; and thirdly, on a query by this Court, Learned Counsel for petitioner was unable to respond as to whether aforesaid judgments have attained finality ; and fourthly, even after conclusion of criminal proceedings, resulting in acquittal, no mandamus can be issued either in directing reinstatement automatically and for release of other benefits but it is for the State Authorities-competent authority to consider and pass an order *on twin aspects*, as to whether upon acquittal in criminal cases, the petitioner was entitled for reinstatement in service *and* whether the period from date of discharge (resulting in dismissal) was to be treated as duty period or not *and* whether petitioner would be entitled for other benefits i.e. pay and allowances, if any (wholly or in part); and sixthly, the claim of the petitioner for reinstatement is not automatic but the same is

to considered by the State Authorities-competent authority by taking into account various factors as to whether acquittal in criminal cases was an honorable acquittal or was an acquittal was on technical grounds or was an acquittal based on benefit of doubt or insufficiency of evidence *and* whether the delay in conclusion of criminal proceedings was attributable to the petitioner or not; *and* in case, the competent authority proposed to deny pay and allowances (wholly or in part) then, the same could be denied only after giving a show cause, calling for an explanation and recording reasons therefor ; and seventhly, mere acquittal in criminal cases shall neither preclude the competent authority from initiating disciplinary proceedings nor will such an acquittal automatically discharge the petitioner from service in the light of the principles mandated by the Honble Supreme Court in **CMD, United Commercial Bank versus P C Kakkar**, (2003) 4 SCC 364 and in **SBI versus P Zadenga**, (2023) 10 SCC 675 and

eighthly, nothing has been placed on record to establish that the petitioner had informed the competent authority-respondents about acquittal and had requested the authorities to reinstate him in service and to release other benefits. Inaction of petitioner in not resorting to these compliances cannot form basis for bye-passing the competent authority-State Authorities from considering the entire issue in the light of Rule 54-A of Fundamental Rules, (subject to its applicability) in view of the fact that impugned order has not been set-aside on merits coupled with the fact that the petitioner was not a regular employee and being a home guards volunteer he was not granted pay but was granted remuneration or "Call Duty Allowance or Duty Allowance as per the HP Home Guards Act and Rules, as interpreted by the Honble Supreme Court in **Grah Rakshak Home Guards Welfare Association vs State of Himachal Pradesh** and others, (2015) 6 SCC 247, which was further clarified regarding the admissibility of enhanced Duty Allowance in

Prakash Chand Jena vs State of Orissa,
CA No 8836 of 2022, decided on 17.03.2023;
and ninthly, even claim of the petitioner for
admissibility of other benefits has to be examined
by the State Authorities-competent authority by
taking into account all material factors that
the home guards volunteers were not regular
employees *and such* home guards volunteers were
not given any pay but were paid honorarium
which was termed as Call Duty Allowance *and*
the service rendered by home guards volunteers
did not qualify for retiral benefits and to examine
other aspects ; and lastly, even upon acquittal,
reinstatement is not automatic but the State
Authorities are bound to examine the claim for
reinstatement after examining the suitability and
fitness of the petitioner, in the light of the
principles outlined by the Honble Supreme Court
in the case of ***Imtiyaz Ahmed Malla vs The***
State of Jammu and Kashmir, SLP © 678 of
2021, decided on 28.02.2023, in the following
terms:

“15. In all the above cases, the requirement of integrity and high standard of conduct in police force has been highly emphasized. The High Court in the impugned judgement has also elaborately dealt with each and every aspect of the issues involved, while upholding the order of the Single Bench to the effect that the ***Director General being the highest functionary in the police hierarchy, was the best judge to consider the suitability of the petitioner for induction into the police force.*** The impugned order being just and proper, we are not inclined to interfere with the same in exercise of our jurisdiction under Article 136 of the Constitution of India.”

Based on the above discussion, once the Impugned Order of discharge, resulting in dismissal, passed by Commandant on 27.09.2017 (*Annexure A-1*) on the basis of mere accusation contained in FIRs is quashed and set-aside; **and** during the pendency of the instant case, petitioner stands acquitted in the criminal cases, then also, mere acquittal will neither confer any right or claim for automatic reinstatement nor

for any other benefits, but entire matrix {claim for reinstatement and admissibility of benefits, if any} needs to be examined/considered by State Authorities-competent authority hereinafter, inaccordance with law. It is made clear that reinstatement and admissibility of benefits, shall be subject to the outcome of the orders to be passed by the competent State Authorities hereinafter.

DIRECTIONS:

8. In view of above discussion and for the reasons recorded herein, the instant petition ***is partly allowed***, in following terms:-

- (i). Impugned Orders dated 27.09.2017 (*Annexure A-1*), discharging petitioner from service is quashed and set-aside;
- (ii). State Authorities are directed to examine the admissibility of claim of the petitioner for reinstatement and other benefits, upon acquittal, in accordance with law ; within a period of two months from date of receipt of certified/downloaded copy of this judgment ;
- (iii). Upon consideration, in terms of

direction no (i) and (ii), the State Authorities shall pass appropriate orders thereon within the same period.

(iv). Parties left to bear respective costs.

In aforesaid terms, the instant petition and all pending miscellaneous application(s), if any, shall accordingly, stand disposed of.

(Ranjan Sharma)
Judge

December 24, 2025
[Shivender]