

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

Civil Writ Petition No.5651 of 1995

Date of Decision: May 13, 2015

Ex.Constable Mangal Sain

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: None for the petitioner.

Mr.Ashok Kumar, DAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 20.12.1991 (Annexure P-3), whereby the petitioner has been discharged from the police service under Rule 12.21 of the Punjab Police Rules (for short “the Rules”) with immediate effect and the order dated 21.10.1994 (Annexure P-7), whereby the appeal filed by the petitioner against the aforementioned order has been dismissed.

It has been averred in the petition that the petitioner was appointed as a Constable on 3.10.1989 in District Sonapat. Copy of the appointment letter has been annexed as Annexure P-1. Thereafter, the petitioner had undergone the training. He was transferred out of the cadre and sent to the 1st Bn. H.A.P. It has further been averred that the petitioner

went on sanctioned leave and due to some unavoidable circumstances, i.e., due to illness, he could not come for five days and was marked absent for five days and owing to the said report, was dismissed in the garb of discharge by the Commandant 1st BN vide order dated 20.12.1991 (Annexure P-3) and even the appeal filed against the same was also dismissed vide order dated 21.10.1994 (Annexure P-7).

It has also been averred that the petitioner has been discriminated qua the similarly situated discharged and dismissed employees from service and the petitioner could not be dismissed from service without holding an enquiry.

The State has filed reply and it has been averred that the petitioner had been habitual absentee. In the month of December, 1991, some constables were deputed for Commando Course. The name of the petitioner was also put in the said list. However, on 9.12.1991, he remained absent from the Police Lines and refused to go for Commando course and in view of the refusal of the petitioner to submit his arrival reports, some other officials were sent in place of the petitioner and the said act of the petitioner amounted to gross indiscipline in the disciplinary force, much less, disobedience of the orders of the Commandant and, therefore, he was discharged from service within a period of three years of service under Rule 12.21 of the Rules.

There is no representation on behalf of petitioner, though on previous dates petitioner was represented.

I have heard the learned State counsel, appraised the paper book and the case law cited.

The law of discharging/dispensing with the petitioner during the probation is no longer in dispute. The Full Bench of the Hon'ble Supreme Court in State of Punjab and others Versus Sukhwinder Singh, 2005(4) RSJ 46 has held that a probationer can be discharged on the premise that he may not likely to be efficient police officer and such discharge cannot be termed to be punitive as probational has no right to post. The period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and in case he is found not suitable for the post, the master reserves a right to dispense with the services without anything more during or at the end of the prescribed periods. The aforementioned case also pertained to the applicability of Rule 12.21, *ibid*, and the case set up by the petitioner was that he could not be discharged without holding the departmental enquiry and on considering the averments made in the petition, the Hon'ble Supreme Court by noticing the aforementioned provisions of law, held that no departmental enquiry is required to be conducted during the period when the employee is on probation. In the instant case also, the petitioner was on probation and, therefore, the averment that he could not be discharged without holding departmental enquiry falls flat on his face and, thus, has no merit.

In view of what has been observed above, there is no merit in the writ petition and the same is accordingly dismissed.

May 13, 2015
ramesh

(AMIT RAWAL)
JUDGE