

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 694 of 2014

Reserved On : September 14, 2015

Pronounced On : 24.09.2015

Raju

.... Petitioner

vs.

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

* * *

Present : Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

* * *

DEEPAK SIBAL, J. :

Under challenge is the order dated 13.08.2013 (Annexure P-4) passed by the Commandant, 4th Battalion, Indian Reserve Battalion, Manesar, discharging the petitioner from service, by invoking the provisions of Rule 12.21 of the Punjab Police Rules, 1934 (hereinafter referred to as – the Rules).

The precise grievance of the petitioner is that before passing

the order of discharge, no inquiry was conducted, as according to him, the order of discharge is on the basis of misconduct on his part, for having kidnapped a married lady, for which an FIR was lodged against him. In support of his case, counsel for the petitioner relied on the following two judgments of the Apex Court :-

1. **Sukhbir Singh etc. v. State of Haryana and others – Civil Appeal Nos. 93, 94 & 95 of 1989**, decided on **19.04.1990**,
2. **Prithipal Singh v. State of Punjab and others – Civil Appeal No. 3049 of 2000** reported as **2000 (3) RSJ 736**.

Reliance has also been placed on a Single Bench judgment of this Court in **Ex-Constable Jhirmal Singh vs. State of Punjab** reported as **2001 (3) RSJ 463**.

The facts, in brief, may be noticed.

The petitioner joined as a Constable on 16.08.2011. He had not even put in two years of service when on 06.04.2013, an FIR under Section 366 IPC for having abducted a married lady was lodged against him. Though the FIR was later cancelled on the statement by the lady that she had gone with the petitioner on account of her own sweet will, the entire matter was reported to the Commandant, who, after considering the entire facts, especially that the petitioner being himself a married man, had abducted (or, as per the statement made by the lady later, gone with) a married woman, for several days, formed an opinion that the petitioner

would not prove to be an efficient police officer and invoking the provisions of Rule 12.21 of the Rules, through a non-stigmatic and innocuous order, discharged the petitioner.

Rule 12.21 of the Rules, which is relevant, is reproduced below :-

“12.21 Discharge of inefficient :

A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent of police at any time within three years of enrolment. There shall be no appeal against an order of discharge under the rule.”

Whether a Constable like the petitioner, within three years of his service, can be discharged by invoking of the provisions of Rule 12.21 of the Rules, through an innocuous order, without holding an inquiry, is an issue, which stands decided by a Full Bench of this Court in **Sher Singh vs. State of Haryana** reported as **1994 (1) PLR 456**, wherein after relying upon judgments rendered by the Constitution Benches of the Apex Court in **Parshotam Lal Dhingra vs. Union of India - AIR 1958 Supreme Court 36**, **Jagdish Mitter vs. Union of India - AIR 1964 Supreme Court 449**, **Champaklal Chimanlal Shah vs. Union of India -**

AIR 1964 Supreme Court 1854 and A. G. Benjamin vs. Union of India

- **1967 (1) LLJ 718**, it was held as under :-

“39. *In view of the above it is held that -*

(1) *A constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him;*

(2) *A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material; and*

(3) *The provisions of Rule 16.24 and Article 311 shall be attracted only when the punishing authority decides to punish the constable.”*

The judgment of the Full Bench was considered and followed

by the Apex Court in State of Punjab and others vs. Rajesh Kumar reported as 2006 (12) SCC 418, as under :-

“7. In a similar case titled State of Punjab v. Balbir Singh, 2004 (4) RCR (Crl.) 999 (SC) : 2004 (7) JT 383 in which a constable was discharged from service under Rule 12.21 on the basis of specific charge of consumption of liquor in office and misbehaviour with a lady constable and this Court while affirming the order of discharge passed the following order :

“Order of termination cannot be held to be punitive in nature. The misconduct on behalf of the respondent was not the inducing factor for the termination of the respondent. The preliminary enquiry was not done with the object of finding out misconduct on the part of the respondent it was done only with a view to determine the suitability of the respondent within the meaning of Punjab Police Rules 12.21. The termination was not founded on the misconduct but the misbehaviour with a lady constable and consumption of

liquor in office were considered to determine the suitability of the respondent for the job, in the light of the standard of discipline expected from police personnel.”

8. *The Full Bench of the High Court of Punjab and Haryana has held in the case of Sher Singh v. State of Haryana, 1994 (2) S.L.R. Page 100 that a constable can be discharged from service under Rule 12.21 of Punjab Police Rules, 1934 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him. It was further held by the Full Bench that a Superintendent of Police can form his opinion on police officer not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material. In view of the above decision, the constable can be discharged from service even if there is specific allegation which may amount to misconduct against him.*

9. *The High Court, in our opinion, has also failed to notice that departmental enquiry is not required before passing an order under Rule 12.21 of Punjab Police Rules to discharge a constable on ground of his unauthorised absence and being habitual absentee who is not suitable to become a police officer. [Emphasis supplied]”*

In State of Punjab and others vs. Balbir Singh reported as 2004 (11) SCC 743, the Apex Court, while considering a similar issue, held as under :-

“11. *According to the facts on record, no enquiry of the nature specified above, was held in the present case. It is a case of discharge simplicitor. Nothing much turns upon the observations made by the Deputy Inspector General of Police in his order dated October 8, 1993 while deciding the appeal of the respondent. Respondent consumed liquor and misbehaved with a lady constable. He was medically examined. On this basis, coming to the conclusion that he was unlikely to prove himself an efficient Police Officer, an order of discharge under Punjab Police Rule*

12.21 was passed. There was no enquiry. There was no stigma of punishment. It seems that while deciding the appeal of the respondent, the Deputy Inspector General of Police has referred to prima facie finding out of approved facts as a departmental enquiry and the observations of Deputy Inspector General of Police have been misconstrued by courts below.

12. The nature of enquiry was preliminary and not a full scale formal enquiry so as to lead to the inference that the object of the enquiry is to determine the guilt of the respondent. The basis of the discharge in the present case was not the misconduct on the part of the respondent, his services were terminated under Rule 12.21 of the Punjab Police Rules, 1934 considering the standards of discipline expected from police personnel.

13. In State of Punjab & ors. v. Bhagwan Singh, 2002(1) SCT 253 (SC) : [(2002)9 SCC 636], an order of discharge passed under the Punjab Police Rule 12.21 read as under :

"It has been reported to me by In-charge of PTC, Ladha Kofthi, Sangrur, Inspector Joginder Singh, RI Police Lines, Faridkot and

Inspector Sadhu Ram, PS City Kot Kapura that the act and conduct of Const. Bhagwan Singh, No. 1819/Fdkt. on the whole is not satisfactory and he is unlikely to become a good police officer. I am also satisfied with their reports. I, Jasminder Singh, IPS, SSP/Faridkot being competent authority do hereby discharge Const. Bhagwan Singh, No. 1819/Fdk. from service w.e.f. today i.e. 4.9.1992 A.N. under PPR 12.21 as he is found to be unlikely to prove a good police officer."

The aforesaid order of discharge had been held to be illegal by the District Judge and the judgment of the District Judge was affirmed by the High Court. Allowing the appeal of the State, this Court held that the order of discharge to the extent it stated that the officer was unlikely to prove a good police officer, was in terms of the relevant Rule 12.21. Even in respect of the sentence in the impugned order that the performance of the officer on the whole was 'not satisfactory', this Court held that that also does not amount to any stigma. The contention urged on behalf of the employee that the reference in the impugned order to the reports of the

Inspectors on the basis of which the assessment was made would itself amount to stigma was rejected.”

Similar view was expressed by the Apex Court in **State of Punjab and others vs. Constable Avtar Singh (dead) through LRs** reported as **2008 (7) SCC 405**, which is reproduced as under :-

“9. The learned counsel appearing for the State of Punjab submitted that the controversy involved in this case is no longer *res integra*. He placed reliance on a three-Judge bench decision of this court in *State of Punjab & Others v. Sukhwinder Singh*, 2005(3) SCT 616 : (2005)5 SCC 569. The facts of this case are almost similar to the facts of the case in hand. In the said case, the respondent was appointed as a police constable. Before completion of the probation period of three years, he absented from duty without seeking permission for 22 days. The SSP discharged him from service with immediate effect by invoking Rule 12.21 of the Punjab Police Rules, 1934. The respondent challenged the order of discharge before the civil court. The civil court held that order is null and void and the appellate court also upheld that decision. The High Court dismissed the second appeal and held that absence from duty was a misconduct and imposition of

the punishment of discharge on the respondent without holding a formal inquiry as envisaged under Rule 16.24 (ix) of the Rules vitiated the order of discharge. The State of Punjab aggrieved by the order of the High Court filed an appeal by special leave before this court.

10. *The State of Punjab contended before this court that the respondent was only a probationer in terms of the Rules. That the impugned order of discharge was neither stigmatic nor did it affect him with any evil consequences. The impugned order was passed in exercise of the power conferred by the Rules. That since no disciplinary action had been taken against the respondent there was no necessity of holding any formal enquiry.*

11. *On the other hand, the respondent submitted that the impugned order of discharge, although apparently innocuous, had in fact been passed on the ground of misconduct viz. the continued absence from duty and therefore amounted to an order of dismissal. That, therefore, it was obligatory upon the appointing authority to have held a formal departmental enquiry. This court held as under :*

"20 In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was a habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of the Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16-3-1990 was, in fact, based upon misconduct and was, therefore, punitive in nature, which should have

*been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in **Ajit Singh v. State of Punjab, (1983)2 SCC 217** the period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules."*

This court set aside the impugned judgment

of the High Court. The ratio of this case is fully applicable to the facts of the case in hand. In the aforesaid case, the court dealt with the case of police constable who was dismissed from the service without holding the enquiry and by invoking Rule 12.21 of the Punjab Police Rules, 1934 and the charge was absence of 22 days from the duty.”

Similarly, a three Judge Bench of the Apex Court in **State of Punjab and others vs. Sukhwinder Singh – (2005) 5 SCC 569** has held as under :-

“20. In the present case neither any formal departmental inquiry nor any preliminary fact finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a statement made in the written statement that the respondent was habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has

further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16.3.1990 was, in fact, based upon the misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh and others etc. vs. State of Punjab and another (supra) the period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the

master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24 (ix) of the Rules.”

From the above, it is clear that the issue with regard to discharge of a Constable within the first three years of his service, by invoking the provisions of Rule 12.21 of the Rules, on the subjective bona fide opinion of the concerned Superintendent of Police, on the passing of an innocuous non-stigmatic order, is settled against the petitioner.

It is not disputed that the order impugned by the present petitioner is non-stigmatic and innocuous. No mala fides have been alleged against the author of the impugned order.

Even otherwise, the peculiar facts of the case do not warrant

any interference and it is virtually admitted that the petitioner, being a married man, had immorally spent several days with another married lady. This is the least expected from a man in uniform, who is the embodiment and symbol of the Government's Authority and upon whom, the public in general looks up in times of need.

The judgment cited by counsel for the petitioner in Sukhbir Singh's case (*supra*) was considered by the Full Bench in Sher Singh's case (*supra*) and after considering the same, the directions as reproduced above and which are being followed by me, were passed. It was held as under :-

“29. It is thus clear that in both these cases, the court found that the orders had been passed by way of punishment. Similar was the position in the case of Sukhbir Singh etc. v. State of Haryana and others, (C.A. Nos. 93-95 of 1989 – an unreported decision of their Lordships of the Supreme Court). Their Lordships have observed as under :-

“It is mentioned that on 3rd August, 1985 at about 10.30 a.m., the appellants had visited the house of the complainant and had informed the inmates that they desired to search the house as they had information that a girl of ill-repute had been brought to the house. It may hereby

mentioned that the prosecution emanating from the first information report of 9th August, 1985 ended in an order of discharge since the evidence led by the prosecution did not in any manner reveal the commission of the alleged offence by the appellants. It is, therefore, clear from the above facts that the real reason for the discharge of the appellants was the incident of 3rd August, 1985. The vague statement that the Superintendent of Police, Bhiwani had taken into consideration the overall work and conduct of the appellants in coming to the conclusion that they were unlikely to prove efficient police officers is only a camouflage and the real reason for discharge is the incident of 3rd August 1985. If the real cause for their discharge is the incident of 3rd August 1985, it is clearly action for misconduct and has nothing to do with the efficiency of the appellants. (Emphasis supplied).

30. *Such is not the position in the cases before us. There is nothing on record to indicate that the 'authority' wanted to punish the petitioners. Furthermore, even if*

it is assumed, as suggested by the counsel for the petitioners, that the three cases referred to above, represent a departure from the old and traditional view expressed by the larger benches, we follow as we are bound to, the view expressed and the law as laid down by the Constitution Benches. [Emphasis supplied]”

So far as the case of **Prithipal Singh** (*supra*) is concerned, the same was considered by the Apex Court in the case of **Avtar Singh** (*supra*) and it was held that the case of **Prithipal Singh** (*supra*) was a judgment by a two Judge Bench and the same issue having been decided in **Sukhwinder Singh's** case (*supra*) by a three Judge Bench, the law laid down in **Sukhwinder Singh's** case (*supra*) would be binding, by holding as under :-

“13. *We have heard learned counsel for the parties. We are in total agreement with the submission of the learned counsel for the State of Punjab that the controversy involved in this case is no longer res integra. Learned counsel appearing for the respondent had drawn our attention to a two-Judge bench decision of this court in **Prithipal Singh v. State of Punjab & Others (2002) 10 SCC 133**. The court held that once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. Even where an*

order of discharge looks innocuous, but on a close scrutiny, by looking behind the curtain if any material exists of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves no room for doubt that any consequential order, even of discharge, would be construed as stigmatic. The decision in Sukhwinder Singh (supra) was given by a three-Judge bench and in view of that decision in 2005, there is no scope for this court to take a different view. We are squarely bound by the said decision.”

In view of the above, finding no merit in the petition, the same is ordered to be dismissed.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 24.09.2015

monika