

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

Sr. No. 212 (3 cases)

CWP-28322-2013

Decided on : 31.03.2016

Manjit Kumar @ Manjit Singh

..... Petitioner

VERSUS

The 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.R.N.Lohan, Advocate, for the petitioner;
in CWP-28322-2013.

Mr.N.C.Kinra, Advocate, for the petitioner;
in CWP-25563-2013.

Mr.Ramesh Goyat, Advocate, for the petitioner;
in CWP-20514-2014.

Mr.Harish Rathee, Senior DAG, Haryana.

DEEPAK SIBAL, J.

Through this order, I dispose of CWP-28322-2013, CWP-25563-2013 and CWP-20514-2014 which raise similar questions of fact and law. For the sake of convenience, facts are being taken from CWP-28322-2013.

Through the present petition, the petitioner who served the Haryana Police as a Constable, seeks quashing of order dated 26.03.2013 (Annexure P-4), passed by the Commandant, 4th Indian Reserve

Battalion, Manesar, Gurgaon, discharging the petitioner from service and order dated 02.05.2013 (Annexure P-6), passed by the Inspector General of Police, Indian Reserve Battalion, Bhondsi, Gurgaon, dismissing the appeal filed by the petitioner against the afore-referred order of his discharge from service holding the same to be not maintainable.

After having heard learned counsel for the parties and perusing the record with their able assistance, the relevant facts which have emerged, are that on 10.08.2011 petitioner-Manjit Kumar was appointed as a Constable in the Haryana Police. Within two years of his appointment, on the conduct of a fact finding inquiry, it was found that one Constable Parveen Kumar (petitioner in CWP-20514-2014), who was friends with one Harish on the Facebook, brought the said Harish and left him in the company of the petitioner and one Constable Pardeep Kumar (petitioner in CWP-25563-2013), in a bathroom, where turn by turn, the petitioner and the said Pardeep Kumar committed sodomy on him. On going through the report and after coming to a conclusion that the petitioner was unlikely to prove to be an efficient police officer, he was ordered to be discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 (hereinafter referred to as the '1934 Rules') (as applicable to the State of Haryana).

The afore-referred order of discharge from service is challenged by the petitioner primarily on the ground that the same was on the basis of a misconduct and, therefore, could only have been passed after holding a regular departmental inquiry or at least after complying with the principles of natural justice. In support of his submissions,

learned counsel for the petitioner cites the following judgments: -

1. Const.Surinder Kumar vs. State of Haryana and others, 2009(2) ILR (Punjab) 253.
2. CWP -1045-1993 “ Bhagat Singh vs. State of Punjab and another”, decided on 28.11.2013.
3. Jagdish Mitter vs. Union of India, AIR 1964 SC 449.
4. Prithipal Singh vs. State of Punjab and others, (2002) 10 SCC 133.

I have heard learned counsel for the parties and perused the record.

The petitioner joined the Haryana Police as a Constable on 10.08.2011. He had not even put in two years of service when in a discreet fact finding inquiry, conducted by a senior officer of the level of Deputy Superintendent of Police, the petitioner was found to have indulged in the act of sodomy on the basis whereof through an innocuous and non-stigmatic order, he has been discharged from service under Rule 12.21 of the 1934 Rules. The order of discharge and Rule 12.21 of the 1934 Rules are reproduced below for ready reference.

Order of discharge: -

“Constable Manjeet Kumar no.4/483 of this Battalion is hereby discharged from service with immediate effect under Punjab Police Rule 12.21 as he is found unlikely to prove an efficient police officer.”

Rule 12.21 of the 1934 Rules: -

“12.21. Discharge of Inefficient.- A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal

against an order of discharge under this rule.”

Whether the petitioner within three years of his service as a Constable could be discharged by invoking the provisions of Rule 12.21 of the 1934 Rules through a nonstigmatic and innocuous order, without holding an inquiry, is an issue which stands conclusively decided against him by a Full Bench of this Court in **Sher Singh vs. State of Haryana**, 1994 (1) PLR 456 wherein it was held as follows: -

“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.”

(Emphasis supplied)

The judgment of the Full Bench in **Sher Singh's** case (supra) was considered and approved by the Apex Court in **State of Punjab and others vs. Rajesh Kumar**, (2006) 12 SCC 418, by holding as follows : -

“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, 1 994 (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**, (2004) 11

SCC 743, the Apex Court while considering a similar issue, held to the same effect as follows: -

“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 Incharge 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."

A Similar view was expressed by a three-Judges Bench of the Apex Court in **State of Punjab and others vs. Sukhwinder Singh**, (2005) 5 SCC 569, wherein it was 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.”

The above-referred law was traced out and followed by me in a recent judgment rendered in CWP-694-2014 “**Raju vs. State of**

Haryana and others”, decided on 24.09.2015.

As per the facts, narrated above, when read in the light of the law settled by this Court as also the Apex Court, it is clear that a Constable, under Rule 12.21 of the 1934 Rules, can be discharged within the first three years of his service on the subjective bonafide opinion of the Superintendent of Police on the passing of an innocuous and nonstigmatic order.

A perusal of the order impugned in the present case which has already been reproduced earlier leaves no manner of doubt that the same is nonstigmatic and innocuous. It may be noted that no malafide has even been alleged either against the author of the afore-referred fact finding report or that of the impugned order.

Even otherwise, in a preliminary fact finding inquiry conducted by a senior officer of the rank of a Deputy Superintendent of Police the petitioner having been found to have indulged in the act of sodomy, deserves no relief. Same is the case with regard to Parveen Kumar, who brought his friend Harish and left him in the company of the petitioner and Pardeep Kumar, both of whom committed acts of sodomy upon Harish. For that reason also, no fault can be found in the impugned order of discharge.

The judgment cited by counsel for the petitioner in **Jagdish Mitter's** case (supra) was considered by the Full Bench of this Court in **Sher Singh's** case (supra) and after considering the same, the Full Bench came to the conclusion as quoted earlier.

So far as **Prithipal Singh's** case (supra) is concerned, the

same was considered by the Apex Court in Constable Avtar Singh's case (supra) and it was held that Prithipal Singh's case was a judgment by a two-Judge Bench of the Apex Court and the same issue having been decided to the contrary by a three-Judge Bench of the same Court in Sukhwinder Singh's case (supra), Sukhwinder Singh's case would be binding. In this regard, the relevant observation by the Apex Court in Avtar Singh's case (supra) are 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 facts and position of law as discussed above, I find no merit in any of the three writ petitions being CWP-28322-2013, CWP-25563-2013 and CWP-20514-2014 and consequently dismiss the same but with no order as to costs.

31.03.2016
shamsher

[DEEPAK SIBAL]
JUDGE