

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.1305 of 2016 (O&M)

Date of Decision: October 20, 2016

Pardeep Kumar

.....Appellant

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.N.C.Kinra, Advocate, for the appellant.

Ms.Palika Monga, DAG, Haryana.

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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?

Surya Kant, J. (Oral)

Notice of motion.

On our asking, Ms.Palika Monga, learned Deputy Advocate General, Haryana, accepts notice on behalf of the respondents.

Let five copies of the complete paper book be handed-over to her during the course of day.

The appellant was recruited as a Constable in Haryana Police on 10.08.2011. Within two years of service, he and one of his colleague were suspected to be involved in a case of committing sodomy. Preliminary enquiry was held in which that allegation was held to be not proved. The Appointing Authority nevertheless discharged the appellant from service vide order Annexure P-4 in purported exercise of powers under Rule 12.21 of the Punjab Police Rules, 1934, as applicable to the State of Haryana. But

instead of passing one line simpliciter order, the Appointing Authority has briefly narrated the nature of incident and thereafter has observed that it was not feasible to hold a 'departmental enquiry'. In the concluding paragraph, Rule 12.21 of the Punjab Police Rules has been invoked to discharge the appellant from service.

The above-stated order has been upheld by the learned Single Judge with the aid of case-law including a Full Bench of this Court in Sher Singh versus State of Haryana, 1994(1) PLR 456 which was later on approved by the Hon'ble Supreme Court in State of Punjab and others versus Rajesh Kumar, (2006) 12 SCC 418. The cited decisions unequivocally hold that a Constable can be discharged from service under Rule 12.21 of PPR at any time within three years of his enrollment inspite of the fact that there is a specific allegation which may even amount to misconduct against him.

In the light of the settled case-law, the discharge of the appellant who admittedly was still on probation and had not completed three years service, cannot be faulted with.

Learned counsel for the appellant, however, rightly contends that if the appellant applies in future for employment and is required to show the order of his discharge from service (P-4), there is every likelihood that the concerned Authority would not accept the said order as an innocuous order as it is *ex-facie* punitive in nature.

While we are not inclined to interfere with the order under appeal or the impugned order of discharge, and thus dismiss the appeal but the Commandant, 4th Indian Reserver Battalion, Manesar, District Gurgaon-respondent No.4 is directed to substitute the order (P-4) with same number

and date and re-issue a simpliciter order of discharge under Rule 12.21 of the Punjab Police Rules, 1934.

The needful shall be done within a period of three months from the date of receiving a certified copy of this order.

Ordered accordingly.

[SURYA KANT]
JUDGE

October 20, 2016
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

LPA No.1305 of 2016 (O&M)

[4]

CM No.2733 of 2016 in
LPA No.1305 of 2016

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Pardeep Kumar versus State of Haryana and others

Present : Mr.N.C.Kinra, Advocate,
for the applicant-appellant.

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For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and one day's delay in filing the appeal
is condoned.

CM stands disposed of.

(SURYA KANT)
JUDGE

October 20, 2016
mohinder

(SUDIP AHLUWALIA)
JUDGE