

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

**CWP-3268-2012
Date of decision : 10.10.2018**

Gurminder Singh

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Arun Takhi, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr.DAG, Punjab.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for issuance of a writ in the nature of Certiorari for quashing impugned order dated 15.07.2011 (Annexure P-6) passed by respondent No.4 whereby the petitioner had been called off from duty with immediate effect and further for issuance of a writ in the nature of Mandamus directing respondent No.4 to reinstate the petitioner in service with continuity and all consequential benefits.

It is the case of the petitioner that he was appointed as Home Guard Volunteer in the year 1989 and since then he had been discharging his duties continuously, without any break and to the entire satisfaction of his seniors. During the course of his service he was rewarded with various cash awards and commendation certificates. However, vide impugned order dated 15.07.2011 (Annexure P-6), without affording any opportunity of

hearing, the petitioner's services were ordered to be called off with immediate effect.

Learned counsel for the petitioner contends that the impugned order is bad in law having been passed without conducting any inquiry after affording an opportunity of hearing to the petitioner. The impugned order has been passed even without recording any reasons for the action taken.

On the other hand, learned State counsel submits that the regular inquiry in the matter was not conducted as there was material available with the respondents that the petitioner was in touch with the persons dealing with narcotic substances. Two different FIRs were also registered against him. The action against the petitioner was taken on the basis of the report of the fact finding inquiry conducted by the Department, wherein, the provision of opportunity of hearing is not envisaged. Even the Rules do not provide for a regular inquiry as the petitioner was a volunteer and not a regular appointee.

Heard.

Rule 27 of the Punjab Home Guard Rules, 1963 notified vide notification dated 04.09.1963 contemplates that before passing the order of discharge, reasonable opportunity of showing cause against the action proposed should be granted to the petitioner. Relevant extract of the provision reads thus:-

*27. Dismissal- (1) any member may, for misconduct or for absence from duty without sufficient cause, be dismissed from service:
Provided that no order of dismissal shall be*

passed unless reasons of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.”

Similar controversy became subject matter before Hon'ble the Supreme Court in ***Davinder Singh Vs. State of Punjab and others, 2010(13) SCC 88***, wherein, the following observations were made:-

(28)The order terminating the services of the appellants specifically cites indiscipline at the Amritsar Railway Station as the cause for the termination. Therefore, it is not a case where the appointing authority is discharging the services of the appellants on the ground that their services are no longer required but it is a case where their services are sought to be dispensed with on the ground of indiscipline, which would come within the meaning of the expression 'Misconduct'. In such a situation, the respondents cannot terminate the services of the appellants without following the procedure prescribed under Rule 27 of the Rules, the said rules, specifically deals with Discipline. It reads as under :-

"Dismissed :- (1) Any officer may for misconduct or for absence without sufficient cause, be dismissed from service.

Provided that an order of dismissal shall not be passed unless reason of dismissal are recorded in writing and

the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him."

(29)The language employed in the Rule is clear and unambiguous. The Rule envisages that any officer may be dismissed from service either for misconduct or for unauthorized absence. Proviso appended to the Rules speaks of giving an opportunity of hearing to the delinquent officer or the member appointed under the Act and the Rules. It is an admitted position that no such opportunity of hearing or notice was given to the appellants in the present case as is required under Rule 27. In this view of the matter, the respondents cannot be permitted to contend that the appellants being 'volunteers', their services could be terminated without complying with the procedure prescribed in the Statutory Rules, which speaks of providing an opportunity of hearing to the person who would be affected by the proposed action.

(30)To us, it appears, after going through the Act and the Rules framed thereunder, that the expression 'volunteers' appears to be misnomer. We do not intend to dwell on this issue, since we are told that the writ petitions for the regularization of similarly placed persons are pending before the High Court. The facts and circumstances pleaded by the appellants and the number of years they have spent as 'volunteers' and since they have no other avenue for their alternate employment because of their age factor,

we are impelled to look into the reason for the termination of the services of the appellants. The letter discharging their services explicitly states that the reason for discharge is the indiscipline at Amritsar railway station before the appellants were to board the train for Maharashtra on election duty. Therefore, in our view, it is not a case of discharge simplicitor. Under Rule 18 of the 1963 Rules, any member appointed under the rules may be discharged at any time by the authority which had appointed him when his services are no longer required. If it is instance of discharge simplicitor, it would necessarily relate to instances where the post has been abolished or where there is a surplus of employees or other similar circumstances. The respondents have not raised the existence of any circumstances which required the discharge of any volunteers, neither has it been urged that there exists any condition which would require the appellants specifically to be discharged apart from the allegation of indiscipline. Therefore, in our view, services of the appellants are discharged for acts of alleged misconduct. It casts a stigma on their competence and affects their future career.

(31) In our considered view, even in matters of discharge, the authority concerned cannot act arbitrarily while discharging an employee. However, in the instant case, the appellants are being discharged from service for indiscipline. Therefore, as provided in proviso to rule 27 of the rules, the appellants should have been given a

reasonable opportunity of showing cause against the action proposed to be taken against them. Admittedly, no such opportunity was given to them. Therefore, we are of the view that the action of the respondents is contrary to their own statutory rules and in violation of principles of natural justice.

(32)Even without going into the question whether the appellants are eligible for the protection under [Article 311](#) of the Constitution, in our view, the respondents seem to have acted in an arbitrary manner by terminating the services of the appellants, who have been working as Home Guards for the last 15-17 years. They are all over-aged. They may find it difficult to find alternate employment. Therefore, in the facts and circumstances of this case and in the interest of justice, we deem it proper to set aside the order of termination passed by the respondents dated 02.12.2004 and direct the respondents to reinstate the appellants as Home Guards without back wages.”

The petitioner had more than 22 years of service to his credit. The impugned order was passed without issuing any show-cause notice which is clearly against the spirit of the Rules which specifically provide that unless reasons for dismissal are recorded in writing and opportunity of hearing is given to the employee to show-cause against the action proposed, order of dismissal/discharge could not have been passed.

In view of the above, the instant petition is allowed and the

impugned order is hereby quashed. The petitioner is ordered to be reinstated as Home Guard Volunteer forthwith without any back-wages. However, the respondents shall be at liberty to issue show-cause notice to the petitioner as per Rules and pass the order afresh after affording opportunity of hearing to the petitioner as envisaged under the Rules.

Allowed.

10.10.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No