

CWP No.19833 of 2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19833 of 2019

Date of Decision: 26th February, 2020

Didar Singh

...Petitioner

Versus

Union Territory of Chandigarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Divya Sharma, Advocate
for the petitioner.

Ms. Aakansha Sawhney, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court praying for quashing of order dated 21.09.2016 (Annexure P-2) passed by the Commandant General Home Guards-cum-Inspector General of Police, Union Territory Chandigarh, vide which the petitioner was discharged from the rolls of Chandigarh Home Guards Organization as his services were no longer required.

2. It is the contention of the learned counsel for the petitioner that the petitioner was initially enrolled as a Home Guard Volunteer on 14.02.2000 and worked as such till the date of his discharge i.e. 23.01.2014. Thereafter, he was re-enrolled as Home Guard Volunteer on 12.01.2015 and continued as such till the passing of the impugned order dated 21.09.2016 (Annexure P-2). During this period, his work and conduct was never

adversely commented upon. She contends that a false criminal case relating to sale of liquor was registered against the petitioner being FIR No.115 dated 02.09.2016, under Section 61 of the Punjab Excise Act, 1914, at Police Station Kurali, for alleged recovery of 11 bottles of liquor namely 'Everyday Prestige Whiskey' for sale in Chandigarh only.

2-A. Referring to the information as has been received by the petitioner under the Right to Information Act (Annexure P-1 colly), she contends that the order of termination dated 21.09.2016 (Annexure P-2) passed by the Commandant General Home Guards-cum-Inspector General of Police, Union Territory Chandigarh, is based upon the fact that the above referred to FIR had been registered against him, wherein he has been arrested. She contends that in the garb of the discharge order, services of the petitioner have been dispensed with but as a matter of fact, this amounts to dismissal from service and thus, would be hit by Rule 27 of the Punjab Home Guards Rules, 1963 (hereinafter referred to as '1963 Rules'), which are applicable to the Chandigarh Home Guards. She contends that because of the above fact, the termination of the petitioner had been ordered. She further contends that the order of discharge, dated 21.09.2016 (Annexure P-2), was never conveyed to the petitioner and therefore, he did not have an occasion to file an appeal before the Government, as provided under the Rules. Her contention is that as per Rule 27 of the 1963 Rules, prior to dismissal of a member of the Home Guards Force, reasonable opportunity of showing cause against the action proposed to be taken against him has been mandated, which requirement has not been complied with as the petitioner,

prior to his order of discharge, has neither been given an opportunity of hearing nor any show cause notice was served on him. Her contention is that the petitioner was arrested on 02.09.2016 and remained in judicial custody till 09.09.2016. She, thus, contends that the reason for discharging the petitioner is his absence from duty, which amounts to misconduct for which the requirement of Rule 27 of 1963 Rules had to be fulfilled. Respondents have not disputed the fact that he was neither issued any show cause notice nor was he given an opportunity of being heard prior to passing of the discharge order.

3. Another contention which has been raised by the learned counsel for the petitioner is that the FIR, in which the petitioner has been found to be involved, is a false case which has been foisted on him. She contends that after the trial, petitioner has been acquitted of all charges by the Judicial Magistrate 1st Class, Kharar, vide judgment dated 25.09.2018, wherein it has clearly been recorded as a finding that the possibility of imposing a false recovery upon the petitioner could not be ruled out. In this regard, she has referred to the judgment dated 25.09.2018 (Annexure P-3). On the basis of the above, counsel for the petitioner states that the petitioner has been falsely implicated in a criminal case, for which he cannot be held responsible and the impugned order of discharge dated 21.09.2016 (Annexure P-2) cannot sustain and deserves to be set aside.

4. Her further submission is that the petitioner has submitted a representation for reinstatement after his acquittal in the criminal case on 13.03.2019 (Annexure P-4), which, when was not responded to, a notice

through counsel dated 24.05.2019 (Annexure P-5) was served upon the respondents, which again has not been responded to leaving the petitioner with no other option but to approach this Court. She, therefore, prays for setting aside the impugned order dated 21.09.2016 (Annexure P-2) and reinstating the petitioner in service.

5. Learned counsel for the petitioner, in support of her arguments, has placed reliance upon the judgment of the Hon'ble Supreme Court in **Davinder Singh & others Vs. State of Punjab & others** {2010 (13) SCC 88}, wherein, with reference to termination on the ground of misconduct, non-compliance of Rule 27 of 1963 Rules has not been taken note of and has held that the volunteer is entitled to reinstatement because of the violation of the principle of natural justice. Reliance has also been placed upon the judgment of this Court in CWP No.12594 of 2014, titled as 'Sakattar Singh Vs. State of Punjab & others', decided on 12.10.2017 and CWP No.18043 of 2012, titled as 'Rakesh Kumar Vs. State of Punjab & others', decided on 28.05.2013 (Annexure P-6 colly).

6. Counsel for the respondents, on the other hand, contends that the Home Guard Volunteer is not a civil service. It is a volunteer service, for which an honorarium is paid. She has referred to an order dated 16.10.2017 passed by the Central Administrative Tribunal, Chandigarh Bench, in OA No.060/00243/2017, titled as 'Gauri Shankar Vs. Chandigarh Administration & others', where it has been held that the Home Guard Volunteer, not being a civil servant having no statutory right, cannot move the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. It

is further submitted by the counsel for the respondents that as per Rule 18 of the 1963 rules, power is granted to the Appointing Authority to discharge a member when his service is no longer required. It has further been stated that as per 1963 Rules, there is no rule for re-employment of Home Guard Volunteers and therefore, reinstatement cannot be demanded/asked for as a matter of right. This is a volunteers organization and the volunteers present/offer themselves to be a part of it. Her further contention is that the petitioner is mixing up two terms 'discharge' and 'dismissal'. Discharge is covered by Rule 18 of the 1963 Rules, whereas dismissal is provided under Section 27. In the instant case, the Competent Authority has discharged the petitioner vide order dated 21.09.2016 (Annexure P-2) and has not dismissed him from service, therefore, Rule 27 of 1963 Rules would not be applicable.

6-A. It is, however, admitted by her that the order of discharge is an outcome of an FIR, which was registered against the petitioner, referred to above, and the arrest of the petitioner in the said case. In this regard, it has been pointed out by the counsel for the respondents that the said action had to be taken by the Competent Authority to maintain and restore the public confidence in the organization. Her further contention is that the petitioner was well aware of the fact that he has been discharged from duty on 21.09.2016, as during the pendency of the trial and after his bail, no effort was made by him for clarifying his stand nor was any appeal preferred by him under Rule 14.5, which lies to the Government, within 30 days of the date on which a notice is served upon him of the concerned order. She

further contends that the petitioner, on his acquittal by the Court vide judgment dated 25.09.2018 (Annexure P-3) in the FIR, which was registered against him, had submitted his representation for reinstatement only on 13.03.2019, which is after a period of about 5½ months. This further shows that the petitioner being aware of his discharge had not challenged the same and at this belated stage, has approached this Court for the relief. The claim of the petitioner deserves to be rejected on the ground of delay itself. Prayer has, thus, been made for dismissal of the writ petition.

7. Learned counsel for the respondents has placed reliance upon the judgment of this Court in CWP No.2680 of 2014, titled as 'Jatinder Singh Vs. State of Punjab & others', decided on 08.01.2008, wherein it has been held that a person working on contract basis has no right to hold the post and on his involvement in an FIR, his services were justifiably terminated in view of the nature of his employment. His subsequent acquittal does not change the position that the petitioner had absolutely no right to hold the post. Reliance has also been placed upon the judgment passed by this Court in CWP No.19229 of 2018, titled as 'Joginder Singh & others Vs. State of Punjab & others', decided on 06.06.2019 along with 17 other writ petitions, where it has been observed that the Home Guard Volunteers cannot be considered permanent, temporary, *ad hoc* or daily-wage employees but only a volunteer. Reference has also been made to para 14.4 of the compendium of instructions on Home Guards, as issued by the Government of India, according to which the Competent Authority can

discharge a volunteer from duty at any time, if in its opinion, the services of such volunteer are not required.

8. I have heard the learned counsel for the parties and with their assistance have gone through the pleadings as well as the judgments on which reliance has been placed.

9. The first plea which needs to be answered is with regard to the maintainability of the present writ petition by the petitioner being a Home guard Volunteer, which has been commented upon to be not a civil service but the volunteer service as its status is not permanent or temporary or *ad hoc* or daily-wage as observed by this Court in the case of *Joginder Singh's* case (*supra*), reliance whereon has been placed by the learned counsel for the respondents.

10. It is true that as per the observations of this Court in the above referred judgment, the nature of appointment and the status of a Home guard Volunteer could not be considered permanent, temporary, *ad hoc* or daily-wage employee but the services rendered by him are governed by the provisions of the statute as the Punjab Home Guards Organization is constituted under the Punjab Home Guards Act, 1947 (hereinafter referred to as '1947 Act'). The 1963 Rules have been framed in exercise of the powers conferred under Section 9 of the 1947 Act. All appointments are made to the Home Guards Volunteers under this 1947 Act and 1963 Rules, which admittedly are applicable to the Chandigarh Home Guards. Merely because, they are volunteers does not mean that they do not have any right whatsoever and the authority while exercising its powers under 1947 Act

and 1963 Rules, can act arbitrarily ignoring the provisions of the said Act and Rules. In case an employee approaches the Court with a grievance alleging violation of the provisions of the above Act and the Rules, this Court in exercise of its power under Article 226 of the Constitution of India as conferred, would not be bereft of the jurisdiction and the authority to exercise its power of judicial review. The Court may, in the given facts and circumstances of the case, refuse or refrain itself to exercise its power to delve into the matter, however, it cannot be said that the volunteers serving the Home Guard Organization have no right as far as their services are concerned and are at the mercy of the officers, who may exercise their discretion at their whims and fancies leaving the helpless volunteers without any remedy.

11. In the light of the above, this Court in exercise of its equitable writ jurisdiction, would, therefore, proceed to consider the grievance of the petitioner in the light of his contentions that Rule 27 of 1963 Rules stands violated by the respondents as in the garb of an order of discharge having been worded so it is a punishment, which has been imposed upon the petitioner for alleged misconduct i.e. absence from duty because of his arrest and registration of a criminal case against him.

12. From the perusal of Annexure P-1 (colly), which are the notings of the respondents, as supplied to the petitioner under the Right to Information Act, it is apparent that although these aspects with regard to the absence of the petitioner from duty and his arrest in an FIR registered against him, were made the basis for terminating the services of the

petitioner, to avoid the requirement of fulfillment of Rule 27 of the 1963 Rules, which would be attracted as it would amount to misconduct on the part of the petitioner, respondent No.4 has proceeded to pass an order of discharge, which is unsustainable in the light of the judgment of the Hon'ble Supreme Court in *Davinder Singh's* case (supra), where in paras 25 to 33, it has been held as follows:-

“(25) It is argued on behalf of the Respondents that the appellants were discharged under Rule 18 of the 1963 rules read with para 14.4 of compendium of instructions on Home Guards. Rule 18 of 1963 reads:

“Discharge of Members :- any member may be discharged at any time by the authority which had appointed him when his services are no longer required.”

(26) The expression ‘Discharge’ was interpreted by this Court in the case of *State of Kerala vs. Mother Anasthasia, Superior General and Others* (1997) 10 SCC 79, wherein, it is stated, “Discharge would connote for any other reason ejusdem generis due to abolition of the post or course of study or such similar circumstances except for discharge due to misconduct.”.

(27) The abovesaid Rule does not contemplate the requirement of conducting an enquiry or giving notice to the concerned person and, therefore, the respondents maintain that the termination order was therefore within

the scope and scheme of the Home Guards Act, 1947 and the 1963 Rules made thereunder.

(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.

(33) Before parting with the case, we should also notice

the minor issue raised by learned senior counsel for respondents. It is submitted that the appellants without exhausting the appeal remedy provided under rule 27(3) of 1963 rules could not have approached the High Court under Article 226 of the Constitution, inter-alia, requesting the High Court to quash the order passed by respondents dated 02.12.2004. We do not find any merit in their submission, for the reason that this issue was not raised nor argued before the High Court and, therefore, we will not permit this issue to be raised for the first time before us. It is also argued that para 14.4 of compendium of instructions on Home Guards authorizes the Commandant General or the Commandant to discharge a Home Guard at any time, if in his opinion, the services of the Home Guard are no longer required. These instructions are reiteration of Rule 18 of the Rules. We have already dealt with these rules. Therefore, repetition of our reasoning once over again may not be necessary."

13. Rule 27 of the 1963 Rules reads as follows:-

“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.

(2) The authority competent to pass an order of dismissal in the case of a Gazetted Officer shall be the Government and that in the case of a Non- Gazetted Officer and other members, the Commandant-General or the Gram Raksha Dal Chief, as the case may be.

(3) An appeal against an order of dismissal passed by the Commandant General or Gram Raksha Dal Chief shall lie to the Government.

(4) The order of the Government passed under sub-rule (2) or sub-rule (3) shall be final and shall not be called in question in any proceedings whatsoever.”

14. As per the above Rule, if an order of dismissal has to be passed, firstly reasons have to be recorded and the member concerned has to be given reasonable opportunity of showing cause against the action proposed to be taken against him. Admittedly, no such show cause notice or personal hearing has been given to the petitioner. It is also admitted that the action taken against the petitioner was for the misconduct i.e. registration of an FIR against him under the Punjab Excise Act and for his absence from duty, which would fall under the provisions of Rule 27 of 1963 Rules.

15. The plea which is now being taken by the respondents is about

the powers of the Competent Authority to discharge a Home Guard under Rule 18 of the 1963 Rules. The said power of discharge under Rule 18 although has been provided under the said Rules but that cannot be exercised arbitrarily. This issue which is being sought to be raised by the respondents was also raised before the Hon'ble Supreme Court in *Davinder Singh's* case (supra), which has been answered in negative by the Supreme Court keeping in view the facts and circumstances of the case, where the Court had come to a conclusion that the order of discharge simpliciter has been passed because of absence from duty as in the present case, which is apparent from the notings at Annexure P-1 (colly). The case of the petitioner is covered by the ratio of the law laid down by the Supreme Court on all aspects in *Davinder Singh's* case (supra). The impugned order, therefore, is unsustainable.

16. Another aspect which has been highlighted by the counsel for the respondents is the delay on the part of the petitioner in approaching the Competent Authority for reinstatement, suffice it to say that the petitioner awaited the conclusion of the trial and it is after the verdict of the Court, which declared him innocent, that he had approached the Competent Authority with the copy of judgment for recall of the order of his dismissal from service. In this process, there has been some delay, no doubt, on his part but as an ideal and conscientious employer, it is the bounden duty of the authority to consider such a request of an employee especially in the light of the observations, which have been made by the trial Court while acquitting him of the charges framed. Not only this, the Court on the basis

of the evidence, has very clearly observed that the possibility of imposing false recovery upon the petitioner cannot be ruled out. Such observations of the Court required a serious consideration on the part of the Competent Authority to come to a reasonable conclusion to at least consider the representation of the petitioner, which, admittedly, has not been responded to and the objections which have been taken in the reply, which had been filed, is that it has been submitted after a period of more than five months after his acquittal. This approach on the part of the respondents in the peculiar facts and circumstances of the present case appeared to be unjustified. Therefore, the objection of the respondents with regard to there being delay on the part of the petitioner in firstly approaching the respondents and thereafter, this Court, is not accepted as in the considered view of this Court, the petitioner has acted as a normal reasonable person would have in the given facts and circumstances.

17. Now coming to the judgments on which reliance has been placed by the learned counsel for the respondents. First being the judgment passed by the Central Administrative Tribunal in *Gauri Shankar's* case (supra), that is a case where the Central Administrative Tribunal was considering its own jurisdiction, which is so provided under Section 14 Chapter III of the Administrative Tribunal Act, 1985. It is in that context that the observation had come of the said Court, wherein it has held that the Central Administrative Tribunal did not have the power to entertain the application preferred by the petitioner, who was a part of the Home Guards Volunteer Organization as the Central Government had not notified and

enlarged the scope of the Tribunal under Section 14 to entertain such petition by including the employees of the Home Guards Volunteer. The said judgment, therefore, would not in any manner affect the jurisdiction of this Court to exercise its power under Article 226 of the Constitution of India, which does not have such like fatter as are so provided under the Central Administrative Tribunal Act, 1985, where the jurisdiction of such Tribunal is restricted as per Section 14 of the said Act.

18. Counsel for the respondents has placed reliance upon the judgment of this Court in *Jatinder Singh's* case (*supra*) where in a case of the contractual employee, this Court has held that such an employee had no right to hold the position after having been involved in a criminal case, on his subsequent acquittal to reinstatement in service after termination, suffice it to say that such observations had come in the peculiar facts and circumstances of the said case as he was engaged as an attendant with the office of the Controller of Examination in Punjab Technical University, Jalandhar, where the allegation against him were of replacing the attempted sheets of students with the fabricated sheets after putting the stamps of the office, which were stolen from the University premises for consideration of huge amount to be received from the students. The said judgment, therefore, would not be applicable to the case in hand in any manner as it does not relate to an appointment which is made under the Act and the statutory rules framed thereunder as in the present case.

19. In view of the above and keeping in view the fact that the case of the petitioner is covered in his favour by the judgment of the Hon'ble

Supreme Court in *Davinder Singh's* case (supra), which judgment has been relied upon by this Court in *Rakesh Kumar's* case (supra), the present writ petition deserves to be allowed. Therefore, the impugned order dated 21.09.2016 (Annexure P-2) is hereby quashed.

20. Petitioner is directed to be reinstated in service forthwith with continuity in service. The petitioner would be entitled to all consequential benefits except for the actual financial benefits prior to the date of submission of his representation for reinstatement after his acquittal in the FIR which was registered against him.

26th February, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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