

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-19014-2014 (O&M)
Date of decision: 10.02.2021

Sunil Kumar

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Girish Agnihotri

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

GIRISH AGNIHOTRI, J. (Oral)

The matter has been taken up through video-conferencing on account of restrictions due to outbreak of pandemic COVID-19.

Petitioner-Sunil Kumar/Ex. Constable, has filed the present petition *inter alia* with a prayer for issuance of a writ in the nature of certiorari for quashing of the order dated 15.11.2012 (Annexure P-2) passed by the Commandant 1st Battalion Haryana Armed Police, Ambala while discharging the present petitioner under Rule 12.21 of Punjab Police Rules, 1934 in lieu of one FIR No.589 dated 13.11.2012 under Sections 452, 354 & 506 of IPC and quashing of the order dated 11.07.2014 (Annexure P-3) vide which the Director General of Police, Haryana passed the order that the representation/appeal is not maintainable as the discharge was made under Punjab Police Rule 12.21 and issuance of a writ in the nature of mandamus

directing the respondents not to implement the above said orders during pendency of the writ petition. Further prayers have also been made which are mentioned in prayer clause of the present writ petition.

Records of the case show that on 12.09.2014, while issuing notice of motion, this Court had passed the following order:-

“Challenge in the instant writ petition is to the order dated 15.11.2012 (Annexure P-2), in terms of which, the petitioner who was serving as a Recruit Constable, was discharged from service by invoking Rule 12.21 of the Punjab Police Rules.

Learned counsel would, inter alia, contend that even though the discharge order is innocuous on the face of it but in actual terms it is punitive in nature inasmuch as the same was passed on account of registration of FIR No. 589 dated 13.11.2012, under Sections 452, 354, 506 IPC at Police Station Ambala City i.e. just two days prior to the passing of the impugned order of discharge. It is contended that the petitioner faced trial in pursuance to the registration of the afore-noticed FIR and stands acquitted. It is also the categorical assertion made by the counsel that based on the allegations contained in the FIR, no departmental proceedings had been initiated against the petitioner and he had not been afforded any opportunity of hearing.

Notice of motion, returnable for 08.01.2015.”

Thereafter, vide order dated 18.01.2017, this Court directed the State to produce the original file relating to the order of discharge dated 15.11.2012. The said order is reproduced herein under:-

“In the instant writ petition, the petitioner has questioned the validity of the order of discharge dated

15.11.2012 (Annexure P-2). He has been discharged under Rule 12.21 of the Punjab Police Rules and reason assigned for discharging him is that he is found “unlikely to prove an efficient Police Officer”. It is not a speaking order. Therefore, in order to find the reasons for order of discharge, it is necessary to peruse the notings of the office of the Commandant, 1st Battalion HAP. Therefore, the State counsel is directed to produce the original file relating to the order of discharge dated 15.11.2012 (Annexure P-2) on the next date of hearing.

List this matter on 21.4.2017.”

Today, on the resumed hearing of the case, learned counsel for the petitioner *inter alia* makes reference to the pleadings in the petition and submits that the petitioner was recruited on the post of Constable in 1st Battalion, HAP, Ambala City, on 10.04.2012. After completing the basic course in Recruit Training Centre, Ambala City, on 10.11.2012, he was sent to District Police Line, Ambala for Field Training.

On 13.11.2012, an FIR No.589 was registered at Police Station Ambala City. Thereafter on 15.11.2012 (Annexure P-2), order of discharge qua the petitioner, was issued under Punjab Police Rule 12.21. It is further pleaded case of the petitioner that vide judgment/order dated 04.06.2013 (Annexure P-1), passed by the Chief Judicial Magistrate, Ambala, the petitioner was acquitted of the charges in the aforementioned FIR. In Para 5 of the petition, it has been pleaded that the petitioner based on acquittal, precedent/example of Constable-Amit (who was also exonerated), filed appeal against the order dated 15.11.2012. In the said paragraph of the petition, it has been further pleaded that the other Constables

had also filed appeal and were taken back in service. Vide order dated 11.07.2014 (Annexure P-3), the petitioner was conveyed that his request for reinstatement has been filed because the discharge order under Punjab Police Rule 12.21 is not appealable. In order to support the plea, the petitioner has also appended the order discharging Constable-Amit Kumar dated 19.06.2013 as Annexure P-4.

Reply on behalf of the respondents have been filed. In pursuance to the directions of this Court as reproduced above, Annexure A-1 has been placed on record. A perusal of the same would show that on the noting file, the Competent Authority had only taken into consideration the fact that the FIR dated 13.11.2012, had been registered against the petitioner and accordingly the Competent Authority passed the order of discharge.

Learned counsel for the respondent also relies on the judgment dated 21.02.2017, passed by the Hon'ble Division Bench, in ***LPA-1671-2015 titled as Raju vs. State of Haryana***. A perusal of the said judgment would show that in the case before the Hon'ble Division Bench, the Competent Authority had formed its opinion, not with reference to the singular Act of alleged criminal case, but also on account of his willful absence from duty.

In view of the facts noticed above and for the reasons as noticed hereinunder, this Court accepts the submissions made by learned counsel for the petitioner and accordingly allows the prayer of the petitioner in the present writ petition.

The reliance placed by learned counsel for the respondent on the

judgment dated 21.02.2017, passed by the Division Bench of this Court, is misplaced because as has been noticed in the judgment, the Competent Authority in that case, had actually formed its opinion, not with reference to a singular Act, but on account of his willful absence also. From the orders passed by this Court, as reproduced above, with specific reference to order dated 18.01.2017, would show that this Court had directed the authorities to produce the original file so as to ascertain the reasons for order of discharge. A perusal of the noting portion placed on record by the State as Annexure A-1, would show that in the present case it was a singular Act with reference to which the Competent Authority had formed its opinion to discharge the petitioner. The petitioner having been acquitted vide judgment dated 04.06.2013 thus cannot be denied the prayers made in the present writ petition on account of the plea of respondent counsel as noticed above.

Learned counsel for the petitioner has relied upon the judgment dated 19.12.1991, passed in ***CWP-17397-1991*** titled ***as Krishan Pal vs. State of Haryana and another*** reported as ***1993(3)RSJ 756***.

In the said judgment, it has been noticed that the petitioner therein was discharged on 02.04.1986. An FIR was registered against him on 31.03.1986. On 10.05.1992 the petitioner along with others was acquitted. The Division Bench accordingly had held that since the order of discharge was passed on account of registration of criminal case, it was not a simple order of discharge, passed under Rule 12.21 of Punjab Police Rules. Accordingly, the order of discharge was quashed and the petitioner was

ordered to be reinstated with full back wages and continuity of service. This Court accordingly would record that the facts of the present case are also covered by the judgment dated 19.12.1991.

Learned counsel for the petitioner has further placed reliance on judgment dated 16.03.2017, passed by this Court in **CWP-10316-2015** titled as ***Ishe Khan vs. State of Haryana and others***. The facts as noticed in the said judgment inter alia were that an FIR was registered against the petitioner on 17.08.2013. On 20.08.2013 and 27.08.2013, the Competent Authority proceeded to pass an order of discharge against the petitioner therein.

Accordingly, para 6 of the judgment dated 16.03.2017 is reproduced hereunder:-

“.....6. Crux of the issue involved in the present case is whether order of discharge passed on allegations that the petitioner is involved in criminal proceedings vide FIR dated 17.8.2013 would be in consonance with the Rule 12.21 of the Punjab Police Rules, 1934 or not. The above Rule empowered the competent authority to found whether a Constable is unlikely to prove an efficiency Police Officer or not before discharging the post of Constable. Admittedly, the respondents while passing the order of discharge they have taken note of the FIR and allegations. In other words, based on the alleged misconduct, the petitioner has been discharged from service. Therefore, in the absence of holding an inquiry, the petitioner cannot be discharged from service. Supreme Court in the case of Anoop Jaiswal Vs. Government of India, 1984(1) SLR

426 SC held that the service of the appellant therein had been terminated during the period of probation on the materials on record it was held that the order of termination really amended to punishment because the real foundation of the action against the appellant therein was act of misconduct. In present case also respondents are not disputing that order of discharge passed on account of petitioner's involvement in a criminal proceedings. Therefore, it is crystal clear that orders of discharge passed on account of alleged criminal misconduct. Supreme Court held that if the order of discharge do not disclose the reason Court can lift the veil and found the reason for discharge. Perusal of the record and the opinion formed by the Department read with reply statement, it is evident that the petitioner has been discharged from service based on the allegations that he is involved in FIR dated 17.8.2013. Therefore, the order of discharge is liable to be set aside. Accordingly, order dated 27.8.2013 vide Annexure P-1 is set aside. The petitioner be taken back to duty and regulate the intervening period of duty for all purposes. Reserving liberty to the respondents to initiate necessary proceedings and complete within a period of six months before holding that the petitioner is unlikely to prove an efficient Police Officer.”

After perusal of the above, this Court finds that in the present case also, the order of discharge has been passed on account of the petitioner involvement in the criminal proceedings. Thus, the ratio of the above said judgment fully applies in the present case also. Accordingly, this Court is of the considered view that the order of discharge is liable to be set aside.

In view of the above, the order dated 15.11.2012 (Annexure P-2)

is set aside. The respondents are directed to take back the petitioner on duty.

The petitioner is also held entitled to continuity of service, however, back wages shall be restricted from the date of representation dated 13.02.2014 till the date of reinstatement.

With the above observations, the present writ petition is disposed of.

(GIRISH AGNIHOTRI)
JUDGE

10.02.2021
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Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No