

221.

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

CWP-17596-2017

Date of Decision: 03.08.2022

JAI BHAGWAN

.... Petitioner

Versus

STATE OF HARYANA AND ORS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sandeep Kumar Yadav, Advocate,
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana.

JAISHREE THAKUR.J (Oral)

The petitioner herein has approached this Court under Article 226/227 of the Constitution of India seeking to challenge the action of the respondent State in discharging him as a Constable who was appointed under the ESM BC-B category by invoking Rule 12.18(3)(e) of the Punjab Police Rules, 1934 (for short, 1934 Rules), as applicable to the State of Haryana.

In brief, the facts as set out, are that the petitioner, who was earlier working in the Indian Army since 21.08.2000 obtained premature retirement and, thereafter applied under advertisement No.8 of 2015 for appointment of Male Ex-Serviceman Constable (General Duty). The petitioner was selected under the said quota and joined on 24.11.2016. He thereafter got his medical examination done and was sent for training. However, on a verification report being furnished to the department by S.P.

Mohindergarh, it was informed that the petitioner had been involved in an FIR No.93, dated 25.07.2008, under Sections 304, 34 IPC, Police Station GRP, Rewari, but was acquitted by the trial Court on 13.05.2009. Based on the said verification report, the petitioner herein was discharged under the aforesaid Rule. His discharge was challenged by the petitioner in appeal before the Director General of Police, Haryana, who dismissed the appeal without taking note of any of the contentions raised thereunder.

Learned counsel appearing on behalf of the petitioner herein would contend that the petitioner being meritorious was selected on his own merit and was discharged by invoking Rule 12.18(3)(e) of 1934 Rules, which is not applicable to his case. It is submitted that the petitioner though nominated as an accused under the aforesaid FIR was acquitted by the trial Court while taking into consideration that the prosecution had failed to bring any evidence against the petitioner and, therefore, once he stands acquitted, the action of the respondents in discharging him would wholly be unjustified. It is further submitted that Rule 12.18(3)(e) of 1934 Rules will not be applicable in his case since he has not been acquitted on any of the technical grounds that any of the material prosecution witnesses had either been killed or have died or remained untraced or turned hostile or won over, but only on account of lack of evidence as produced by the prosecution itself. It is further submitted that the reading of the said Rule does not even mention an offence under Section 304 IPC and, therefore, in the totality of the said Rule, the same could not have been invoked against him.

On the other hand, learned State counsel would argue that the petitioner herein though acquitted prior to his submitting application form,

but he failed to mention the details of the FIR and, therefore, there is non-disclosure, which is sufficient reason to deny him appointment. It is also argued that merely because Section 304 IPC does not find mention in Rule 12.18(3)(e) of 1934 Rules, it cannot be said that the said Rule would not be applicable since the offence under Section 304 IPC would entail a punishment between 10 years to life and, therefore, would be covered under the definition of a “heinous crime”. The Rule only gives an example and is not exhaustive. Learned counsel for the State would thus support the orders so passed by contending that there was total non-disclosure by the petitioner herein in his verification-cum-attestation form regarding any criminal proceedings he had been involved in or his arrest thereunder.

I have heard learned counsel for the petitioner as well as learned State counsel and with their assistance, gone through the pleadings of the case as well as the Rule, relied upon.

The facts herein are not in dispute. It is admitted that the petitioner was nominated as an accused under FIR No.93, dated 25.07.2008, under Sections 304, 34 IPC, but stood acquitted by giving him a benefit of doubt. A reading of said judgment which is annexed as Annexure P-10 would reflect that the prosecution had failed to bring sufficient evidence on the record to connect the petitioner herein with the crime accused of. The Rule, as quoted in the letter of discharge, would clearly not be applicable since in the instant case neither the star/material prosecution witness have been killed or have died or remained untraced or turned hostile or won over. If that had been the situation, the State would have been justified in invoking the said Rule while discharging the petitioner herein. Consequently, finding

that the said Rule, as invoked against the petitioner, is not applicable, this Court has no hesitation in setting aside the impugned order, leaving it open to the State to pass fresh orders if so desired.

The instant petition is allowed. The impugned order dated 02.03.2017, Annexure P-7, passed by respondent No.4 is hereby set aside leaving it open to the respondent-State to pass fresh orders in accordance with law within a period of one month from the receipt of copy of this order.

As far as the argument raised that the Director General of Police has not passed a speaking order, this Court finds that there is no provision under the said Rules to file an appeal against an order of discharge and, therefore, no opinion has been given on any order passed by the DGP.

(JAISHREE THAKUR)
JUDGE

03.08.2022

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