

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

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CWP-6758-2018 (O&M)

Decided on : 07.12.2022

Sandeep Kumar, Ex. Constable No.5149/CP

....Petitioner

Versus

Central Administrative Tribunal, Chandigarh Bench, Chandigarh and
others

.... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Dr. Suresh Kumar Redhu, Advocate
for the petitioner.

Ms. Aditi Sharma, Advocate for
Mr. C.S. Bakshi, Advocate for respondent Nos.2 to 5.

G.S. Sandhawalia, J.(Oral)

Challenge in the present writ petition filed under Article 226 of the Constitution of India is to the order of the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as 'the Tribunal') dated 09.05.2016 (Annexure P-2) wherein the OA No.060/00383/2016 was dismissed in limine on the ground that there was no material on record to depict that the discharge order dated 07.06.2012 (Annexure A-4) was on account of the lodging of the FIR against the applicant.

It was noticed by the Tribunal that it was passed after more than 3 months from the registration of the FIR which was dated 02.03.2012. Therefore, it was held that the order has no proximity of time with the lodging of the FIR and there was no link of the discharge order with the FIR in question and there was no material on record to link the discharge order with the registration of the FIR.

Challenge has also been raised to the order dated 28.08.2017 (Annexure P-6) wherein review application was dismissed alongwith an application for restoration of the review application on the ground that the order dated 09.05.2016 did not suffer from any infirmity.

Counsel for the petitioner has brought to our notice that the order of discharge was in terms of Rule 12.21 of the Punjab Police Rules, 1934 mentioning that his services were dispensed with on the ground that he is not likely to prove an efficient police official. The reason for the discharge was on account of his involvement in a criminal matter i.e. in FIR No.69 dated 02.03.2012 under Sections 376-G and 506 IPC registered at Police Station Sadar, Rohtak, in which he had been arrested on 04.03.2012. It is submitted that it was on this account since a news item had appeared that he had been arrested, then the discharge order had been recommended and ordered. It is further submitted that review petition had also been filed and in it had been averred that information had been applied on 26.09.2016 after the dismissal of the OA and the information regarding the noting portion had been taken. It was also averred that similarly situated Constable namely Sandeep Kumar No.6636/P had been reinstated by the Inspector General of Police, U.T. Chandigarh while setting aside the order of discharge dated 06.09.2012.

A perusal of the paper-book would go on to show that the petitioner was offered appointment to the post of Constable vide letter dated 22.04.2011 (Annexure A-1) against 1200 vacancies, which had been advertised and he had been selected against the same. He had been appointed on 01.05.2011. He had proceeded on 2 days casual leave vide DDR No.20 and had to report on 02.03.2012. He reported late by 2 hours

said date vide DDR No.223. An FIR No.69 dated 02.03.2012 was lodged against him under Sections 376-G and 506 IPC at Police Station Sadar, Rohtak, in which one Joginder was also implicated. Apparently, the news appeared in *Dainik Bhaskar* regarding the said aspect and due to which the following proceedings were conducted by the police department:-

“PUC placed below is a special report of SHO PS-17 forwarded by ASP/Central regarding registration of criminal case FIR No.69 dated 02.03.2012 U/s 376(G), 506 IPC PS Sadar Rohtak, Haryana against Constable Sandeep Kumar No 5149/CP and his arrest in the said case. It has been added that he has also been sent for judicial custody and running absent. It has been request to take strict departmental action against him.

In this connection, it may be stated that Constable Sandeep Kumar, No.5149/CP is an appointee of 01.05.2011 and is still under probation period. On 28.02.2012, he proceeded on 02 days casual leave vide DDR No 20 and was due to report for duty back on 02.03.2012 before 12 Noon, but he reported back after absenting himself 2 hours and 30 minutes. He also gave in-writing that due to traffic congestion at Panipat, he could not reach on duty in-time i.e. before 12 Noon. He was again proceeded 03 days casual leave on 02.03.2012 vide DDR No:23 and during his said leave, on 03.03.2012, in the daily news paper Dainik Bhaskar appeared that a rape case has been registered against constable Sandeep Kumar of Chandigarh Police. After reading this news in the news paper, Constable Sandeep Kumar was contacted but his mobile phone was switched-off. SHO/PS Sector-17 after contacting SHOPS Sadar Rohtak on phone intimated that a case FIR No 69 dated 02.03.2012 u/s 376, 506 IPC has been registered against Constable Sandeep Kumar, No 5149/CP by Police Station, Sadar Rohtak and during investigation he has also been arrested on 04.03 2012 On 05.03.2012, he was produced in the court from where he further sent for judiciarremand The aforesaid conduct of the Constable Sandeep Kumar, No.5149/CP (being newly recruited and is still under probation) leading to his involvement & arrest in the questioned criminal case, neither desirable nor acceptable he being a member of disciplined force.

In view of the position explained above, his case is required to be considered under PPR 12.21 and as such, file is submitted for suitable orders as may deem fit, in the instant case please.

In this regard, it may be stated that as per orders of W/SSP message was flashed/given to the MHC/Police Station Sector-17 to direct Const. Sandeep Kumar, No.5149/CP to appear before W/SSP in OR, on 18.05.2012 but this office has been apprised that the said Constable is still running absent from 03 days Casual leave, since 06.03.2012. A copy of DDR may kindly be perused at Flag-'G'.

It is recalled that Const. Sandeep Kumar, No.5149/CP was arrested in criminal case FIR No.69 dated 02.03.2012 u/s 376, 506 IPC Police Station, Sadar Rohtak, on 04.03.2012, as already mentioned in Para No.1 at pre-page and was produced before the court by the concerned Police Station staff, on 05.03.2012 from where he was further sent for judicial remand. As per report Flagged-'G' Const. Sandeep Kumar, No.5149/CP is running still absent from 06.03.2012.

In view of above, file is submitted to W/SSP for passing appropriate order for Para No.3 ante noting pre-page, please.”

Resultantly, the impugned order was passed. However, the victim including the other eye witness never supported the rape case and eventually by short order dated 17.11.2012 (Annexure A-3) the Additional Sessions Judge, Rohtak extended the benefit of doubt and acquitted the accused of the charges framed against him and they were released from custody.

On the next day on 18.11.2012 (Annexure A-5) a representation was filed regarding the fact of the acquittal and that he should be reinstated with all consequential benefits as he belongs to Scheduled Caste Category and the discharge order should be withdrawn. He had also made reference of Ex.Constable Surinder Singh, who was arrested in a Prevention of Corruption Act Case and had been reinstated in the department. Averments were also made in the representation that he

had come to know that on account of his involvement in the criminal case he had been discharged.

The same was rejected by the Inspector General of Police, U.T. Chandigarh on 27.06.2013 (Annexure A-6) by holding that he was discharged under Rule 12.21 of the Punjab Police Rules, 1934 and it was within 3 years of service and he was on probation. The revision was dismissed on 25.02.2013 (Annexure A-8) by the Home Secretary on the ground that the appeal is not maintainable as per the rule itself and, therefore, the writ petitioner approached the Tribunal, which as noticed held that there was no direct link with the discharge and the lodging of the FIR.

This finding has been recorded on account of the fact that the Tribunal did not call for the record due to which this fact could not be confirmed and which now stands confirmed from the noting portion which is reproduced above. There is no dispute regarding the proposition that the discharge can be ordered within the period of probation, on account of inefficiency of the personnel which is similar to the terms of a probationer. However, the order was passed on the ground of misconduct and, therefore, the thin-line between the inefficiency and misconduct got blurred and led to the order of discharge being passed by the competent authority. The same was apparently on the ground of involvement of the petitioner-employee in the FIR No.69, in which he now stands acquitted on account of the victim turned hostile including her family members.

In such circumstances, we are of the considered opinion that the order would not be sustainable, in view of the law laid down by the Apex Court in **Smt. Rajinder Kaur Vs. Punjab State and another, 1986**

under Article 311 (2) of the Constitution of India and services of the Lady Constable were dispensed with. Rule 12.21 had been pressed by the State before the Apex Court, which in turn came to the conclusion that the impugned order of discharge though couched in innocuous terms, is merely a camouflage for an order of dismissal from service on the ground of misconduct and without serving the appellant any charge-sheet, it would be in total contravention of the provisions of Article 311 (2) of the Constitution of India. Resultantly, the order was set aside. The Constable also earned all her emoluments on account of the appeal being allowed. The allegations were of misconduct to the extent that she had spent two nights with a male constable. An investigation had also been caused and the same was the background of the dismissal order. Relevant portion of the said judgment reads as under:-

“13. On a conspectus of all these decisions mentioned hereinbefore, the irresistible conclusion follows that the impugned order of discharge though couched in innocuous terms, is merely a camouflage for an order of dismissal from service on the ground of misconduct. This order has been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnesses examined, that is, in other words the order has been made in total contravention of the provisions of [Article 311\(2\)](#) of the constitution. The impugned order is, therefore, liable to be quashed and set aside. A writ of certiorari be issued on the respondents to quash and set aside the impugned order dated 9.9.1980 of her dismissal from service. A writ in the nature of mandamus and appropriate directions be issued to allow the appellant to be reinstated in the post from which she has been discharged. The appeal is thus allowed with costs. The authorities concerned

will pay all her emoluments to which she is entitled to in accordance with the extant rules as early as possible in any case not later than eight weeks from the date of this judgment.

Appeal allowed.”

Similarly in **Civil Appeal Nos.93 & 95 of 1989 ‘Sukhbir Singh Vs. State of Haryana and others’** decided on 19.04.1990, three Constables were discharged on 06.08.1985 under Rule 12.21 and the reasoning as such for setting aside the order by the Apex Court was that it was only a camouflage for an incident which had taken place on 03.08.1985. It was held that it was an action of misconduct and had nothing to do with the efficiency of the appellants. Relevant portion of the said order reads as under:-

“The appellants contend that the orders of discharge passed against them are penal in nature since the said orders came to be passed pursuant to a complaint made against them by one Ramesh whose house they had searched on 3rd August, 1985. Their case is that since they had received information that a girl of ill- repute was brought to his house, they searched the house to verify the correctness of the information but on finding nothing incriminating took no action against Ramesh. It, however appears that on 4th August 1985 Ramesh complained about the search to the superior officer of the appellants and immediately thereafter the impugned orders of discharge came to be passed. In paragraph 3 of the counter-affidavit filed on behalf of the State Government, it is contended that on an overall assessment of the work and conduct of the appellants, the Superintendent of Police concluded that they were unlikely to prove efficient police officers. However, in the latter part of the paragraph reference is made to the incident of 3rd August, 1985 and it is stated that a complaint was lodged against the appellants under Section 452 read with 34, I.P.C, on 9th August, 1985, that is, subsequent to the discharge orders. It is mentioned that on 3rd August, 1985 at about 10:30 A.M., the appellants had visited the house of the complainant and had informed the inmates

that they desired to search the house as they had information that a girl of ill-repute had been brought to the house. It may here be mentioned that the prosecution emanating from the first information report of 9th August, 1985 ended in an order of discharge since the evidence led by the prosecution did not in any manner reveal the commission of the alleged offence by the appellants. It is, therefore, clear from the above facts that the real reason for the discharge of the appellants was the incident of 3rd August, 1985. The vague statement that the Superintendent of Police, Bhiwani had taken into consideration the overall work and conduct of the appellants in coming to the conclusion that they were unlikely to prove efficient police officers is only a camouflage and the real reason for discharge is the incident of 3rd August, 1985. If the real cause for their discharge is the incident of 3rd August, 1985. It is clearly action for misconduct and has nothing to do with the efficiency of the appellants. No material is placed on record to justify the conclusion that the appellants were likely to inefficient police officers. Instances of work and conduct justifying such an inference must be before the officer exercising power under the extracted Rule 12.21 of the Punjab Police Rules. Formation of the opinion required for exercise of power under rule 12.21 must be based on definite material or else it would be wholly arbitrary and capricious. The only instance which seems to have weighed with the Superintendent of Police to invoke rule 12.21 must be based on definite material or else it would be wholly arbitrary and capricious. The only instance which seems to have weighted with the Superintendent of Police to invoke rule 12.21 appears to be the incident of 3rd August 1985. For that the proper course was to hold a departmental inquiry for misconduct. Efficiency and misconduct are two different things. We are, therefore, of the opinion that the Superintendent of Police, Bhiwani, was not justified in invoking rule 12.21 of the Punjab Police Rules, 1934.

For the above reasons the impugned orders of discharge date 6th August, 1985 passed against the three appellants cannot be sustained. They deserve to be quashed.

We quash them and direct that the appellants will be reinstated in service with full back wages forthwith. They will also be entitled to continued service and all consequential benefits as if the orders of discharge had not been passed against them. The appellants will also be entitled to the costs of these appeals throughout. The appeals are allowed accordingly.”

In the present case, the above noting portion which has been reproduced would clearly show that the discharge order was passed on account of the lodging of the FIR, in which he had subsequently been acquitted. In the review petition also filed before the Tribunal, the plea had been taken that a similarly situated person had been reinstated by the Inspector General of Police while exercising his jurisdiction. The example of Constable Sandeep Kumar No.6636/CP, whereby he had been discharged on 06.09.2012 on account of the fact that there was a matrimonial dispute, in which he had been arrested and remained in judicial custody and eventually was acquitted on 29.11.2012 was given. On account of the acquittal, the Inspector General of Police on 29.04.2014 allowed the representation and held that the said Constable was entitled to the benefit of reinstatement, however, subject to the fact that he would not get any arrears on account of salary and allowances for the intervening period. Relevant portion of the said order reads as under:-

“8. The applicant was appointed as Constable on 25.10.2010 and was within three years of service and on probation. The Senior Superintendent of Police (Ops)- cum-Commandant IRB, Chandigarh, by invoking powers vested in him under above Rule 12.21 of Punjab Police Rules discharged the applicant from service after forming an opinion that he is not likely to prove an efficient police officer. The two cases of police personnel cited by the applicant in support of his contention are entirely different. In those cases, both the police personnel were dismissed from service on the basis of regular

departmental proceedings held against them. Similarly, judgment of the Hon'ble Apex court, quoted by the applicant, is also not relevant to the facts of the present case. I find that the opinion formed by the SSP Opns & Comdt.IRB at that particular time (when the discharge orders were passed) was quite appropriate and as per the law. However, later developments of the matter certainly need consideration particularly the fact that the applicant has been acquitted by the trial court observing clearly that not even an iota of evidence has come against the accused (applicant). The trial court even dispensed with the recording of his statement under section 313 of the Cr.PC. As such, considering these developments, I, hereby, set aside the orders of discharge dated 06-09-2012. The applicant will not be entitled to get any arrears on account of salary and allowances for the intervening period from the date of discharge to the date of actual joining. However, the same will be counted for the purpose of pay fixation/seniority etc.”

In such circumstances, we are of the considered opinion that the Inspector General of Police while dismissing the representation on 27.06.2013 (Annexure A-6) never took this factor into mind and acted diligently and, therefore, provisions of Article 14 of the Constitution of India would also come into play, as it happens to be the same Inspector General of Police who had passed the order of rejection in the case of petitioner on 27.06.2013 and he was the same officer who had reinstated the Constable Sandeep Kumar. Resultantly, on two accounts we feel that the petitioner is entitled for reinstatement.

However, keeping in view the fact that the discharge was on account of a personal dispute and was not on account of his duties that he was involved in the said case, the department cannot be held liable to pay any backwages for the period he remained out of duty. For the said proposition we can safely rely upon the judgments passed in **Ranchhodji**

Chaturji Thakore vs. Superintendent Engineer, Gujarat Electricity

Board, Himmatnagar (Gujarat), (1996) 11 SCC 603 and Union of India and others Vs. Jaipal Singh, (2004) 1 SCC 121. Relevant portion of the judgment passed in **Jaipal (supra)** reads as under:-

“4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of

the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.

5. The respondent will be entitled to back wages from the date of acquittal and except for the purpose of denying the respondent actual payment of back wages, that period also will be counted as period of service, without any break. The re-instatement, if not already done, in terms of the order of the High Court will be done within thirty days from today.

The appeal is allowed and disposed of on the above terms.

Even otherwise, Mr. Redhu on telephonic instructions from his client has confirmed the said factum that he will not claim any backwages.

Accordingly, the present writ petition is allowed. The order of discharge dated 07.06.2012 (Annexure A-4) and order dated 27.06.2013 (Annexure A-6), 25.02.2013 (Annexure A-8) passed by the authorities and the order of the Tribunal dated 09.05.2016 (Annexure P-2) and the dismissal of the review petition dated 28.08.2017 (Annexure P-6) are set aside. The writ petitioner be reinstated within a period of 2 months from the receipt of certified copy of this order. He would be entitled to get all notional benefits including seniority.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

07.12.2022
Naveen

Whether speaking/reasoned :
Whether Reportable :

Yes/No
Yes/No