

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

LPA No.1393 of 2017 (O&M)

Reserved on : 15.03.2022

Pronounced on: 22.03.2022

State of Haryana & others

... Appellants

Versus

Tejbir Singh Kundu

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present:- Mr.Hitesh Pandit, Addl.A.G., Haryana, for the appellants.

Mr.Sunil K.Nehra, Advocate, for the respondent.

G.S. Sandhawalia, J.

The present Letters Patent Appeal, filed by the appellants-State, is directed against the impugned judgment passed by the Learned Single Judge in CWP-10473-2015 on 11.05.2017 wherein the writ petition filed by the writ petitioner-respondent herein was allowed. In effect, the Learned Single Judge came to the conclusion that the order of discharge dated 18.03.2013 (Annexure P-1) of the respondent-Constable under Rule 12.21 of the Punjab Police Rules, 1934 which was the subject matter of consideration in the writ petition was passed on the basis of involvement of the respondent in a criminal case and on account of his habitual absentee and was not justified. It was accordingly, held that there was no enquiry ordered and the writ petitioner was not heard in the matter and therefore the said order was set aside, while placing reliance upon **Shamsher Singh & another Vs. State of Punjab 1974 (2) SLR 701** and **Anoop Jaiswal Vs. Government of India 1984 (1) SLR 426**. It was noticed that the writ petitioner had been acquitted in the criminal case and therefore the appellants herein were at liberty to initiate

disciplinary proceedings against him. The financial benefits were also granted while allowing the writ petition.

We are of the considered opinion that it was not brought to the notice of the Learned Single Judge that the law had been crystallized on this aspect not only by a Full Bench of this Court which had been duly upheld by the Apex Court and which was particularly pertaining to the provisions of Rule 12.21. Therefore reliance upon the judgments of the Apex Court which the Learned Single Judge had referred to would not be applicable and the order is not sustainable, for the reasons given hereunder.

A perusal of the paperbook would go on to show that the respondent was appointed on 05.04.2012 as a Constable. FIR No.101 dated 10.02.2013 was registered at PS Civil Lines, Karnal against some unknown persons on account of one Shish Pal having suffered bullet injuries upon his person and who eventually expired on 14.02.2013. It is pertinent to mention that the deceased was the father-in-law of the writ petitioner-Constable who was arrested on 17.02.2013 for the said murder along with another co-accused. At that point of time, the writ petitioner was already absenting from his duty from 11.02.2013. Apparently at the time of his arrest, the Superintendent of Police, Karnal had sent information to the Commandant of the First Battalion HAP Ambala City where he had been posted since while passing the order of discharge on 18.03.2013 (Annexure P-1), the said order was also communicated to the Superintendent of Police, Karnal, responding to the information which had been received on 13.03.2013, apparently after the arrest of the writ

petitioner.

It is on this account counsel for the respondent has vehemently submitted that it was not an innocuous order of discharge but a stigmatic order without holding any enquiry. Therefore the same was not sustainable and had rightly been set aside by the Learned Single Judge by relying upon the judgments passed by the Apex Court. Reliance had also been placed by the Learned Single Judge upon the order passed in CWP-10316-2015 titled *Ishe Khan Vs. State of Haryana & others*, decided on 16.03.2017, which order had been upheld by the Division Bench in LPA-1917-2017 on 17.01.2019. Accordingly, reliance has also been placed upon the judgments passed by this Bench in LPA-122-2021 titled *State of Haryana & others Vs. Aslam Khan* decided on 10.11.2021 wherein also the order of discharge which had been set aside by the Learned Single Judge was upheld. It has further been submitted that the writ petitioner was acquitted on 27.08.2014 (Annexure P-2) giving him the benefit of doubt and therefore, once the basis of discharge order did not subsist, the Learned Single Judge was correct in setting it aside. Rule 12.21 reads as under:

“Rule 12.21: Discharge of inefficient- A Constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under this rule.”

The said rule was subject matter of consideration before the Full Bench in **Sher Singh Vs. State of Haryana 1994 (1) PLR 456**. The question which was posed on account of the reference order was whether under the above-said rule, the discharge within 3 years of enrolment on

account of any specific allegation which may even amount to misconduct against the Constable would be permissible. In the said case, the Constable was on leave and on account of medical problem he had not joined duty after his period of leave. He was discharged under the said rule and the plea taken was that his dismissal was on account of the alleged misconduct of not attending duties. While taking into consideration the judgment passed by the Apex Court in **Parshotam Lal Dhingra Vs. Union of India AIR 1958 SC 36** and **Jagdish Mitter Vs. Union of India AIR 1964 SC 449** and while discussing Shamsher Singh (supra) also, it was held that a Constable was under surveillance for 3 years watch. He had no right to the post and his services were terminable at any point of time and he could secure his position in service only if he convinced the Superintendent of Police that he is likely to prove an efficient police officer. It was also held that the Superintendent of Police has to form an opinion that the Constable was not likely to become an efficient police officer and this opinion can be based on the basis of periodical reports or any other data, information which was available to him. The distinction between a person on probation and procedure prescribed under Rule 16.24 was accordingly noticed. Relevant portions of the judgment read under:

“22. Another fact which deserves to be mentioned is that every police officer wields wide and varied powers. A man in uniform is the embodiment and symbol of Government's authority. It is through him that the Government acts to assert its power and can deny a citizen even his right to life and liberty. It is thus of utmost importance that he possesses the qualities enumerated in Rule 19.1 in ample measure.

However, if on account of one reason or the other, the Superintendent of Police, who is the head of the force in the district forms an opinion that a constable is not likely to become an efficient police officer, he has been given the power to discharge him from service. This opinion can be formed not only on the basis of the periodical reports recorded on the performance of a constable, but also on any other data or information which may be available to the Superintendent of Police. This is, of course, subject to the condition that the Superintendent of Police cannot act arbitrarily. The opinion should not be whimsical. The opinion, though subjective, has to be formed on some objective date. So long as this requirement is fulfilled, the action would normally be within the ambit of Rule 12.21.

23. In this context, it is reasonable to assume that no employer terminates the services of an employee, who is good and efficient. It is only when an employee is found to be wanting that an order of termination is passed. If a Superintendent of Police gets reports/complaints that a constable is not straightforward or that his integrity is suspect or that he is not courteous or that he has failed to acquire any of the qualities noticed above, he can pass an order under Rule 12.21. It cannot be said that merely because an allegation has been made against the employee that the procedure as laid down under Rule 16.24 for the purposes of holding regular departmental enquiry and the provisions of [Article 311](#) of the Constitution have to be followed. When an employee is working on temporary basis or is on probation, he has no right to the post. His services can be terminated at any time. Even in a case where the work and conduct of the employee have remained satisfactory for a certain duration of time, but suddenly a complaint is received against him, the employer has the two-fold choice. The employer can either proceed to terminate the services of the employee in accordance with the terms of appointment and the rules governing the service or if the employer feels that the allegations are serious and the

employee does not deserve to be merely discharged from service and should be punished so that he is unable to join any other service, it can proceed in accordance with the Rules to take penal action. In the latter case, if the employer decides to impose a major penalty, the procedure prescribed in Chapter 16 and more particularly Rule 16.24 and the requirements of [Article 311](#) of the Constitution of India have to be complied with. However, if the employer decides not to punish the employee and to merely take action in accordance with the terms of appointment, the procedure as laid down under Rule 16.24 or [Article 311](#) of the Constitution of India is not required to be followed.”

The view taken by the Division Bench in **Dinesh Kumar Vs. State of Haryana, 1992 (2) SCT 178**, to the contrary was overruled and resultantly, the reference was answered as under:

“39. In view of the above it is held that -

- (1) A constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment in spite of the fact that there is a specific allegation which may even amount to misconduct against him;
- (2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer, not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material; and
- (3) The provisions of Rule 16.24 and [Article 311](#) shall be attracted only when the punishing authority decides to punish the constable. ”

In **State of Punjab & others Vs. Balbir Singh, 2004 (4) RSJ 436**, the Apex Court allowed the appeal of the State which had set aside the discharge order by holding that though preliminary enquiry had been done, it was only done with a view to determine the suitability of the

Constable within the meaning of Punjab Police Rule 12.21 since there were allegations that he had misbehaved with a lady Constable and consumed liquor in office. Therefore, it was held that there was sufficient material that the standards of discipline expected from a police personnel were not upto the mark which had led to the order of discharge and the judgment contrary in **Rajinder Kaur Vs. State of Punjab, (1986) 4 SCC 141**, was distinguished.

In State of Punjab & others Vs. Sukhwinder Singh (2005)

5 SCC 569, a Three Judges Bench of the Apex Court set aside the judgment and decrees passed by the Civil Court wherein the order of discharge had been set aside on the ground that the same was null and void. The Constable in that case had not made any application for grant of leave and had been discharged on account of misconduct without holding a formal enquiry. The view of the Full Bench was approved and it was held that this Court was not correct in upholding the order of the Civil Courts that the order of discharge was passed upon misconduct and therefore was punitive in nature and should have been proceeded by regular departmental enquiry. Rather the view taken by the Two Judges bench in Rajinder Kaur (supra) pertaining to the same issue wherein the benefit had been granted to the Constable, was overruled. Relevant portion of the judgment reads as under:

“7. A Full Bench of Punjab and Haryana High Court in Sher Singh v. State of Haryana and others 1994 (1) PLR 456, has examined the content and scope of Rules 12.21, 19.3 and 19.5 of the Rules in considerable detail. It has been held in that case that the effect of the Rules is that for a period of three years a constable is under surveillance. He is being watched

and is kept in close supervision. He has no right to the post and his services are terminable at any time during this period of three years. He can secure his position in the service only if he convinces the Superintendent of Police that he is likely to prove an efficient police officer. The Full Bench has further held that the Rules contained the necessary guidelines for the Superintendent of Police, on the basis of which, he has to form an opinion regarding a constable. If on a consideration of the relevant material, the Superintendent of Police finds that a particular constable is not active, disciplined, self-reliant, punctual, sober, courteous or straight-forward or that he does not possess the knowledge or the technical details of the work required of him, he can reasonably form an opinion that he is not likely to prove an efficient police officer. In such a situation the Superintendent of Police can invoke his power under Rule 12.21 and can discharge the constable from the force. We are in agreement with the view taken by the Full Bench of the High Court. In fact, this view is in consonance with the decision of this Court rendered in [The Superintendent of Police, Ludhiana and another vs. Dwarka Das](#) 1979 (1) SLR 299, where it was observed that if Rules 12.21(3) and 12.21 are read together, it will appear that the maximum period of probation in the case of a police officer of the rank of constable is three years, for the Superintendent of Police concerned has the power to discharge him within that period. It was also held that the power of discharge cannot be exercised under Rule 12.21 after the expiry of the period of three years and consequentially if it is proposed to deal with an inefficient police officer after the expiry of that period, it is necessary to do so in accordance with Chapter XVI of the Rules, which makes provisions for the imposition of various punishments including dismissal from the police force. No simple order of discharge under Rule 12.21 can be passed after the expiry of the period of three years for that will attract [Article 311](#) of the Constitution.

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19. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong."

Similarly, in **State of Punjab & others Vs. Rajesh Kumar,**

(2006) 12 SCC 418, the view was followed as taken in Sukhwinder Singh (supra) and the appeals of the State were allowed whereby the discharge order had been passed. It was held that the Courts below were not correct by holding that a departmental enquiry was to be done on account of his unauthorized absence once the suitability of the Constable was being assessed during his 3 years period of probation.

Similarly in **State of Punjab & others Vs. Constable Avtar Singh (dead) through Lrs**, (2008) 7 SCC 405, the same view was taken by the Apex Court while holding that the controversy was no longer res-integra and not following the view of another Two Judges Bench of the Apex Court, while allowing the appeal of the State. Relevant portions of the judgment read as under:

“13. We have heard learned counsel for the parties. We are in total agreement with the submission of the learned counsel for the State of Punjab that the controversy involved in this case is no longer res integra. Learned counsel appearing for the respondent had drawn our attention to a two-Judge Bench decision of this Court in Prithipal Singh v. State of Punjab 2001 (1) SCT 459 : (2002) 10 SCC 133. The Court held that once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. Even where an order of discharge looks innocuous, but on a close scrutiny, by looking behind the curtain if any material exists of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves no room for doubt that any consequential order, even of discharge, would be construed as stigmatic. The decision in Sukhwinder Singh (supra) was given by a three-Judge Bench and in view of that decision in 2005, there is no scope for this Court to take a different view. We are squarely bound by the said decision.

14. Consequently, the appeal filed by the State of Punjab is allowed, but in the facts and circumstances of this case, we direct the parties to bear their own costs.

Appeal allowed.”

As noticed, apart from the lodging of the FIR in which the writ petitioner though has been acquitted but the fact remains that he was taken in custody on 10.02.2013 on the ground that he murdered his father-in-law. It was only at the time of acquittal 1 ½ years later, he was set free. Even if Mr.Nehra's argument is kept in mind, though it is a case of the State that it was only on account of his absence but the fact remains that the Learned Single Judge had found that the reason of discharge was on account of his involvement in the case since it had been brought to the notice of the Commandant of the First Battalion.

In such circumstances, the finding that the police officer had been involved in a serious offence of murder and the fact that he was also absent, has led to his discharge. The Learned Single Judge was thus not justified in coming to the conclusion that an enquiry had to be conducted once the said incident had occurred within one year of service since the date of joining of the writ petitioner was 05.04.2012 and he was arrested on 17.02.2013.

The settled position of law was not brought to the notice of the Learned Single Judge which pertained to the relevant rules and therefore, is directly applicable in preference to the judgments which have been relied upon. Therefore, the order of the Learned Single Judge cannot be sustained.

Reliance which has been placed upon Ishe Khan (supra) by

Mr.Nehra would be of no value in as much as since it was a case of discharge on account of misconduct and the fact that the police Constable was involved in a case of acquaintance having eloped with the minor girl. The name of the Constable crept in as a facilitator, which fact also weighed when the appeal of the State was dismissed by the Co-ordinate Bench. Similarly, the order passed by this Bench in Aslam Khan (supra) also pertained to the same incident wherein the petitioner was the one who had the run-away marriage and it was held that once the benefit had been given to Ishe Khan earlier, it would not be justified to take a different view since he had not even faced the prosecution though Ishe Khan had to undertake the same. Resultantly, the order had been upheld though not granting the monetary benefits for not agitating the issue for a period of almost 3 years.

Resultantly, keeping in view the above cumulative discussion, the present appeal is allowed and the order dated 11.05.2017, passed in CWP-10473-2015 by the Learned Single Judge is set aside and the writ petition filed by the writ petitioner (respondent herein) is dismissed.

(G.S. SANDHAWALIA)
JUDGE

March 22nd, 2022
Sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No