

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

Date of Reserve: 04.05.2023

Date of Decision: 17.05.2023

CWP No.11243 of 2002 (O&M)

Pawan Kumar

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Suresh Ahlawat, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. The petitioner has assailed the order of discharge dated 05.09.1994 passed by the Superintendent of Police, Commando Haryana, Panchkula under Rule 12.21 of the Punjab Police Rules, 1934, letter dated 17.09.2001 issued by the Financial Commissioner & Secretary to Government of Haryana, Home Department to the Director General of Police, Panchkula vide which the record of the case was consigned and letter memo dated 24.04.2002 issued by the Commissioner and Secretary, Government of Haryana, Department of Home Affairs dismissing the representation of the petitioner against the order

of discharge.

[2]. The petitioner was appointed as Constable in Commando Police Force, Haryana on 15.04.1992. While in service, the petitioner was implicated in a criminal case under Section 18 of the NDPS Act in FIR No.387 dated 16.07.1994. The petitioner was acquitted in the said FIR vide judgment of acquittal dated 03.08.1999. During pendency of the trial, the petitioner was discharged under Rule 12.21 of the Punjab Police Rules after noticing the behaviour of the petitioner with his colleagues and NGOs, disinterest towards performance of his duty and his absence from the duty on number of occasions. Besides the aforesaid, reference of involvement in NDPS case was also noticed and the competent authority discharged the petitioner during probation on the ground that he is not likely to prove a good police officer. The petitioner remained unsuccessful in his representation before the higher authorities and ultimately filed the present writ petition.

[3]. The legal position based on interpretation of Rule 12.21 of the Punjab Police Rules, 1934 is no more *res integra*. It is a settled position of law, practice and procedure that when there is difference of opinion expressed by different Larger Benches, then the view expressed by the Constitutional Bench(s) would

prevail. The issues arise for consideration in the present case are that whether a Constable can be discharged from service under Rule 12.21 of the Punjab Police Rules at any time within three years of his enrollment on the ground that he is not likely to become an efficient police officer inspite of the fact that there are specific allegations which may even amount to misconduct against him.

[4]. The employee on probation or temporary government servant has no right to hold the post. The discharge/termination of such an employee does not visit him with any evil consequence. It is true that the form of the order is not conclusive and it is open for the Court to determine the true nature of the order i.e. whether the action taken against the employee is punitive in nature or not. The Constitutional Bench of the Hon'ble Apex Court has held in **Parshottam Lal Dhingra vs. Union of India, AIR 1958 SC 36** that mere use of expressions like 'terminate' or 'discharge' is not conclusive and inspite of the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action taken against an employee is punitive in nature. The Court further held that in determining the true nature of the order, the Court should apply two tests namely (i) whether the temporary government servant had a right to the post or the rank or (ii)

whether he has been visited with evil consequence and if either of the tests is satisfied, it must be held that the order of termination/discharge of a probationer/temporary employee is by way of punishment. It must be borne in mind that the temporary government servant/probationer has no right to hold the post and termination/discharge of such employee/government servant does not visit him with any evil consequence.

[5]. The consequences as held in the aforesaid **Parshottam Lal Dhingra's** case (supra) do not include the termination of services of probationer/temporary government employee in accordance with terms and conditions of service. The view expressed in the consequences as held in the aforesaid **Parshottam Lal Dhingra's** case (supra) was reiterated and affirmed by other Constitutional Bench decisions in **Jagdish Mitter vs. Union of India, AIR 1964 Supreme Court 449**; **A.G. Benjamin vs. Union of India, 1967(1) LLJ 718** and **State of U.P. vs. Kaushal Kishore Shukla, 1991(1) SCC 691**. Some of the propositions which can be extracted from the observations of different Courts are summarized as under:-

- (i) If the employee is employed on purely temporary basis and his services are terminated on account of his unsuitability or some alleged misconduct

by innocuous order which carries no stigma or penal consequence, then provisions of Article 311(2) of the Constitution of India are not attracted unless it shows that the competent authority actually intended to punish such employee.

(ii) The employer is entitled to conduct preliminary enquiry to determine the truth or falsehood in the allegations and also regarding suitability of the employee. Such an enquiry cannot by itself imply that the employer intended to punish the employee.

(iii) In a case where the allegations amounting to misconduct are made against a probationer/temporary government servant, then the employer has to two options. The employer can either choose to terminate the services of the employee in accordance with the terms of the appointment and the rules governing the services or it can proceed to take preventive action. If the employer chooses to invoke its right under the contract of service and pass a simpliciter order of discharge, then the provisions of Article 311 of the Constitution of India or the rules prescribing the procedure for imposition of penalty are not attracted. However, if the employer feels that the employee deserves to be punished and proceeds to take punitive action, then the prescribed procedure of the procedure of Article 311 of the Constitution of India have to be followed.

[6]. Simpliciter order of discharge in terms of Rule 12.21 of

the Punjab Police Rules, 1934 is not punitive in case punitive action is not contemplated against the employee. In other words, the order of discharge even if based on misconduct then by itself it will not be punitive unless the employer contemplates to proceed to take punitive action against the employee. In case of simpliciter discharge no regular procedure for holding the departmental enquiry is suggested. The view expressed in the aforesaid precedents have been followed by the Full Bench of this Court in **Sher Singh vs. State of Haryana, 1994(2) SLR 100**. In the aforesaid case, the Full Bench of this Court held that a Constable can be discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 at any time within three years of his enrollment inspite of the fact that there is a specific allegations which may even amount to misconduct against him. 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 the provisions of Rule 16.24 and Article 311 of the Constitution of India shall be attracted only when the punishing authority decides to punish the constable. The constable was under surveillance for three 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 and this opinion can be based on the basis of periodical reports and other data, information which was available to the Superintendent of Police. The information though subjective in nature has to be formed on some objective data. So long as this requirement is fulfilled, the action normally would be within the ambit of Rule 12.21 of the Punjab Police Rules, 1934.

[7]. In **State of Punjab & others vs. Sukhwinder Singh (2005) 5 SCC 569**, a Three Judges Bench of the Hon'ble Apex Court has approved the Full Bench of this Court in **Sher Singh's** case (supra). Para Nos.7 and 19 of the judgment are reproduced 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, selfreliant, 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.”

[8]. Similarly in **State of Punjab and others vs. Rajesh Kumar (2006) 12 SCC 418**, the view expressed in **Sukhwinder Singh's** case (supra) was followed and the appeals of the State were allowed thereby deprecating the holding of the departmental enquiry for the allegations of unauthorized absence. It was observed that once the suitability of the constable was being assessed to be his three years period of probation then the requirement of departmental enquiry is not necessary as the employer was not intending to punish the employee on account of misconduct except a simpliciter order of discharge has been passed which is not stigmatic in nature. Similarly in case of **State of Punjab & others vs. Constable Avtar Singh (dead) through LRs, (2008) 7 SCC 405**, the same view was taken by the Hon'ble Apex Court while holding that the controversy was no longer *res integra*. The Division Bench of this Court in **LPA No.1393 of 2017** titled '**State of Haryana & others vs. Tejbir Singh Kundu**' decided on 22.03.2022 has also reiterated the same view after discussing number of precedents.

[9]. The order of discharge under Rule 12.21 of the Punjab

Police Rules, 1934 is simpliciter order of discharge which is not stigmatic in nature. The respondent-Department has not contemplated to punish the petitioner on the basis of his misconduct, therefore, the order of discharge cannot be construed to be penal in nature.

[10]. For the reasons recorded hereinabove, I find no ground to interfere in this writ petition. The same is dismissed accordingly.

May 17, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No