

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CM-12620-CWP-2023 &
CM-3464-CWP-2023 in/and
CWP-37947-2018
Date of Decision: 5th January, 2024

Karamjit Kaur

..... Petitioner

Versus

Union Territory, Chandigarh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Divya Sharma, Advocate
for the petitioner.

Mr. Lokesh Chander Aggarwal, Standing Counsel
for respondent-U.T., Chandigarh.

HARSH BUNGER J.

CM-12620-CWP-2023:

Prayer in the present application is for placing on record the Corrigendum dated 19.02.2021 of Standing order-01/2021 (Annexure R-4) of the Chandigarh Administration Home Guards Department and Proceedings/Recommendations of Committee dated 21.03.2022 (Annexure R-5).

For the reasons mentioned in the application, the Corrigendum dated 19.02.2021 of Standing order-01/2021 (Annexure R-4) of the Chandigarh Administration Home Guards Department and Proceedings/Recommendations of Committee dated 21.03.2022 (Annexure R-5) are taken on record, subject to all just exceptions.

Application is accordingly disposed of.

CWP-37947-2018 (O&M):

1. Petitioner (Karamjit Kaur) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking quashing of impugned order dated 13.07.2018 (Annexure P-3) passed by the District Commandant Home Guard, Union Territory, Chandigarh, whereby the name of petitioner has been struck off from the Rolls of Chandigarh Home Guards Organization due to her long absence from duties without any leave/intimation.

2. Briefly, the petitioner is stated to have enrolled as Home Guard Volunteer in 1996. It is claimed by the petitioner that she had served to the best of her ability and sincerity and there was no complaint against her. She further claimed that while she was attached with the Police Station, Sector-36 C, Chandigarh, her son was implicated in a false criminal case, being FIR No.116 dated 23.07.2013, registered under Sections 406 and 498-A of the Indian Penal Code, at Police Station City Kharar. It is the case of petitioner that during pendency of the aforesaid criminal case, a compromise was arrived at between the parties wherein the complainant was none other than the daughter-in-law (Rajbir Kaur) of petitioner. Petitioner states that as per the said compromise, Rajbir Kaur agreed to withdraw the said case (FIR No.116 dated 23.07.2013) and under the said belief, the petitioner did not attend the further proceedings before the Court below and resultantly, warrants were issued against her at an address of Kharar whereas she was living at Daddu Majra. It is stated that since she did not get anticipatory bail in the aforesaid case, accordingly she surrendered and faced trial and vide judgment dated 20.10.2018 (Annexure P-1), petitioner was

acquitted of the charges framed against her.

3. Petitioner states that when she was released on bail on 30.04.2018, she reported for duty, however, she was asked to wait for a few days and since nothing was heard from the Department, accordingly she submitted a representation dated 22.05.2018 (Annexure P-2). Petitioner submits that she had been approaching the Department for permitting her to join the duties and she had also supplied copy of the judgment wherein she was acquitted, however, she was told that her name has been struck off from the roles of Chandigarh Home Guards Organization. Petitioner states that she applied for a copy of the order dated 13.07.2018 (Annexure P-3), whereby her name was struck off from the Roles of Chandigarh Home Guards Organization, under the Right to Information Act. The said order dated 13.07.2018 (Annexure P-3) reads as under:-

“The name of L/HGV Karamjit Kaur No.821, is hereby struck off from the rolls of Chandigarh Home Guards Organization due to her long absence from duties without any leave/intimation.

This issues with the approval of worthy Commandant General Home Guards, U.T., Chandigarh.

Rajeev Kumar Ambasta, DANIPS

District Commandant Home Guard

Union Territory, Chandigarh.

*No.2112-17/DCHG/F-43/E-1/2018 dated Chandigarh the:
13/07/18”*

In the aforementioned circumstances, petitioner has filed the instant writ petition before this Court.

4. Learned counsel for the petitioner submits that the impugned order dated 13.07.2018 (Annexure P-3) has been passed by the authorities without affording any opportunity of hearing to the petitioner. It is submitted

that the said order is totally non-speaking and bereft of any reasoning. Learned counsel states that the absence of petitioner was not willful. He refers to Rule 27 of the Punjab Home Guards Rules, 1963 (hereinafter referred to as 'the 1963 Rules'), which reads as under:-

“27. Dismissal- (1) any member may, for misconduct or for absence from duty without sufficient cause, be dismissed from service:

Provided that no order of dismissal shall be passed unless reasons of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

(2) The authority competent to pass an order of dismissal in the case of a Gazetted Officer shall be the Government and in the case of a Non-Gazetted Officer and other members, the Commandant General or the Gram Raksha Dal Chief, as the case may be.

(3) An appeal against an order of dismissal passed by the Raksha Dal Chief shall lie to the Government.

(4) Commandant-General or the Gram The order of the Government passed under sub-rule (2) or sub rule (3) shall be final and shall not be called in question in any proceeding whatsoever.”

It is submitted that any discharge on account of absence from duty without sufficient cause would fall within the ambit of Rule 27 of 1963 Rules, which are applicable to Chandigarh Home Guards.

5. Learned counsel for the petitioner submits that before discharging the petitioner from service, no opportunity of hearing had been afforded to her. It is also submitted that petitioner has been discharged from service vide impugned order passed by the Commandant General of Home Guards, who is not a competent authority to pass the impugned order in

terms of Rule 18 of the Punjab Home Guards Rules, 1963, which reads as under:-

“18.Discharge of members:- Any member may be discharged at any time by the authority which had appointed him when his services are no longer required.”

It is also submitted by learned counsel for the the petitioner that before passing of the impugned order, the authorities have not considered the fact that petitioner had rendered 22 years of tireless service with the Chandigarh Police.

With the aforesaid submissions, learned counsel for the petitioner prays for setting aside of the impugned order dated 13.07.2018 (Annexure P-3) passed by the District Commandant Home Guard, Union Territory, Chandigarh with a further prayer to direct the respondents to reinstate the petitioner in service in the Chandigarh Home Guards along with all the consequential benefits.

6. The aforesaid prayer of the petitioner has been opposed by respondents by submitting a short reply by way of affidavit of Sh. Sanjay Baniwal, Commandant General, Home Guards-cum-Deputy General of Police, U.T., Chandigarh. It is the case of respondents that services of the petitioner are governed by the compendium of Instructions issued by the Directorate General, Civil Defence, Ministry of Home Affairs, Government of India, New Delhi and it is submitted that petitioner absented from service for continuously 206 days without any intimation. It is stated that a report dated 29.05.2018 was submitted to the District Commandant informing the absence of petitioner from service w.e.f. 11.11.2017, whereupon the report was initially considered by the District Commandant, Home Guards, then by the Assistant Commandant, Home Guards, thereafter by the Additional

Commandant, Home Guards and finally the District Commandant General, Home Guards, after going through the service record, passed order dated 13.07.2018 (Annexure P-3) in exercise of his powers vested under Rule 14.4 of the Compendium of Instructions. It is submitted that there is nothing on record to show that any competent authority had granted leave to the petitioner and accordingly, the petitioner was held guilty of misconduct. It is further submitted that authorities have acted within their jurisdiction and there is no illegality in the impugned order dated 13.07.2018 (Annexure P-3). It is also stated that petitioner remained behind bars for more than 24 hours, which clearly shows that she was guilty of misconduct and she breached the discipline during the service as a Home Guard Volunteer and does not deserve any leniency, accordingly, prayer has been made for dismissal of the instant writ petition.

7. Respondents have placed on record Corrigendum dated 19.02.2021 of Standing order-01/2021 (Annexure R-4) of the Chandigarh Administration Home Guards Department and Proceedings/Recommendations of Committee dated 21.03.2022 (Annexure R-5) vide application bearing CM No.12620-CWP of 2023.

A perusal of the said Corrigendum dated 19.02.2021 would indicate that the Committee had been constituted to redress the grievances of Ex-Home Guard Volunteers, who have been discharged from Rolls of Home Guards Organization on various grounds, such as disciplinary grounds, criminal cases, long absence or medical grounds. The Committee was to examine all the cases received by it and to recommend the names, if any, to the Commandant General, Home Guards for consideration for re-enrollment in volunteer service. As per Annexure R-5, i.e. the proceedings of the

Committee, case of petitioner has been dealt with in the following manner:-

EX-L/HGV KARAMJIT KAUR NO.821 W/O SH. BALJIT SINGH R/O
VILLAGE BALSANDA P.O. HALLIAN KALAN TEHSIL CHAMKAUR
SAHIB, DISTT. KHARAR

1	Date of Enrolment	23.07.1996
2	Date of Birth	03.10.1968
3	Age as on 01.03.2021	52 years 05 months
4	Date of discharge	13.07.2018
5	Reason of discharge	Long absence from her duties w.e.f. 11.11.2017 to 4.6.2018 (206 days) without leave and she was involved in case FIR No.116 dated 23.07.2013 under Section 406, 498-A IPC, PS-City Kharar
6	Request of the applicant	She had submitted vide her representation dated 22.05.2019 that she may be reinstated as volunteer in HG Organization.

NOTE:

The name of aforesaid ex-lady volunteer was involved in FIR No.116 dated 23.07.2013 under Section 406,498-A IPC, PS-City Kharar and she remained absent from duties from 11.11.2017 to 04.06.2018 and was subsequently discharged from the rolls of HG Organization by the Competent Authority vide order no.2009-13 dated 21.09.2015. The applicant has also preferred CWP 37947 OF 2018 titled as Karamjit Kaur Versus U.T. Chandigarh & Others in the Hon'ble Punjab and Haryana High Court at Chandigarh regarding her reinstatement with all consequential benefits. The department has been filed the reply in the Hon'ble Punjab and Haryana High Court that:

"As per the attendance record, petitioner remained absent from her services for 206 continuous days without any leave or intimation. The petitioner in her writ petition has not attached any document that any competent authority has granted her leave. So, in the absence of the same, it is quite clear that the petitioner is guilty of misconduct and was not serious towards her official service/duties. From the pleading of the petitioner it is further quite clear that the petitioner was declared proclaimed offender by the Competent Court of law and she remained behind bars for more than 24 hours. This fact was also not informed by the petitioner to the Competent Authority which clearly shows that the petitioner is guilty of misconduct and breached the discipline during the service as a Home Guards Volunteer as such she does not deserved to leniency in the eyes of law. The petitioner has not mentioned any cogent reason for her absence from duties in the present writ petition also, so the in the interest of justice may kindly be dismissed with heavy cost"

The case is listed for hearing on 25.01.2022.

Review by Committee:

The aforesaid Ex-L/HGV Karamjit Kaur No.821 has appeared before the committee on 06.08.2021 and 06.10.2021. The Committee heard her version and examined his case carefully and found that as per judgment dated 20.10.2018, passed by Ld. Court of Aman Sharma, Sub Divisional Judicial Magistrate Kharar in CNR No.PBSAA1-000281-2014 titled as State Versus Karanjit Kaur w/o Baljit Singh and Others in FIR No.116 dated 23.07.2013 Under Section 406, 498-A IPC PS-City Kharar, the accused has been acquitted of the charges framed against her by giving her benefit of doubt.

Recommendation:

The acquittal of the applicant from the charges in the case is not an honorable acquittal (is only based on giving her benefit of doubts). However, absent record of Ex-L/HGV Karanjit Kaur No.821 is still left unexplained. She could not produce her medical papers

within stipulated time given by the Committee. In the absence of the same, it is amply clear that applicant is guilty of misconduct and not serious towards her official duties. Therefore, Committee recommends that Ex-L/HGV Karamjit Kaur No.821 is not fit for re-enrolment as volunteer in Chandigarh Home Guards Organization.”

Learned counsel for the respondents while referring to the above extracted proceedings of the Committee (Annexure R-5) submits that an opportunity of hearing has already been afforded to the petitioner, and accordingly, she cannot have any grievance at this stage. Accordingly, the prayer for dismissal of the instant writ petition has been made.

8. In rebuttal, learned counsel for the petitioner has submitted that no order of dismissal can be passed without giving reasonable opportunity of showing cause against the action proposed to be taken against the concerned employee. It is submitted that since no opportunity of showing cause has been granted to the petitioner, accordingly, the impugned order is unsustainable in the eyes of law, being contrary to the principles of natural justice. Learned counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Supreme Court in **“Davinder Singh Vs. State of Punjab”, 2010 (13) SCC 88** and a decision of this Court in **“Didar Singh Vs. Union Territory of Chandigarh and others”, 2020 (3) PLR 31.**

As regards the proceedings of the Committee (Annexure R-5), learned counsel for the petitioner submits that the said proceedings have been carried out during the pendency of the instant writ petition and rather the said proceedings substantiates the case of petitioner that no hearing was afforded to the Home Guard Volunteers, who had been discharged from service and in an attempt to remedy the said void in orders of discharge passed in case of various volunteers, the aforesaid Committee was constituted. Learned counsel for the petitioner submits that the proceedings

of the Committee (Annexure R-5) is just as eye wash and in any case, the same would be a post decisional hearing and there is no justification to throw them out of employment and then give them an opportunity of hearing, when the requirement is that they should have been given the opportunity of showing cause in terms of Rule 27 of the 1963 Rules.

9. I have heard learned counsel for the parties and perused the paperbook with their able assistance.

10. From the perusal of impugned order (Annexure P-3) and the short reply filed on behalf of the respondents and also from the proceedings of the Committee (Annexure R-5), it is apparent that the name of petitioner has been struck off from the Rolls of the Chandigarh Home Guards Organization due to her long absence from duties without any leave/intimation and the same has been taken as misconduct. Although, the aspects with regard to the absence of petitioner from duty have been made the basis for terminating the services of petitioner and to avoid the requirement of fulfilment of Rule 27 of the 1963 Rules, which would be attracted as it would amount to misconduct on the part of petitioner, the respondents had proceeded to pass an order of discharge. In my considered view, the impugned order (Annexure P-3) is unsustainable in the light of judgment of the Hon'ble Supreme Court passed in ***Davinder Singh's case (supra)***, where in paragraphs No. 25 to 33, it has been held as follows:-

"(25) It is argued on behalf of the Respondents that the appellants were discharged under Rule 18 of the 1963 rules read with para 14.4 of compendium of instructions on Home Guards. Rule 18 of 1963 reads:

"Discharge of Members :- any member may be discharged at any time by the authority which had

appointed him when his services are no longer required."

*(26) The expression 'Discharge' was interpreted by this Court in the case of **State of Kerala v. Mother Anasthasia, Superior General and Others (1997) 10 SCC 79**, wherein, it is stated, "Discharge would connote for any other reason ejusdem generis due to abolition of the post or course of study or such similar circumstances except for discharge due to misconduct."*

(27) The abovesaid Rule does not contemplate the requirement of conducting an enquiry or giving notice to the concerned person and, therefore, the respondents maintain that the termination order was therefore within the scope and scheme of the Home Guards Act, 1947 and the 1963 Rules made thereunder.

(28) The order terminating the services of the appellants specifically cites indiscipline at the Amritsar Railway Station as the cause for the termination. Therefore, it is not a case where the appointing authority is discharging the services of the appellants on the ground that their services are no longer required but it is a case where their services are sought to be dispensed with on the ground of indiscipline, which would come within the meaning of the expression 'Misconduct'. In such a situation, the respondents cannot terminate the services of the appellants without following the procedure prescribed under Rule 27 of the Rules, the said rules, specifically deals with Discipline. It reads as under :-

"Dismissed :- (1) Any officer may for misconduct or for absence without sufficient cause, be dismissed from service.

Provided that an order of dismissal shall not be passed unless reason of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him."

(29) The language employed in the Rule is clear and unambiguous. The Rule envisages that any officer may be dismissed from service either for misconduct or for unauthorized absence. Proviso appended to the Rules speaks of giving an opportunity of hearing to the delinquent officer or the member appointed under the Act and the Rules. It is an admitted position that no such opportunity of hearing or notice was given to the appellants in the present case as is required under Rule 27. In this view of the matter, the respondents cannot be permitted to contend that the appellants being 'volunteers', their services could be terminated without complying with the procedure prescribed in the Statutory Rules, which speaks of providing an opportunity of hearing to the person who would be affected by the proposed action.

(30) To us, it appears, after going through the Act and the Rules framed thereunder, that the expression 'volunteers' appears to be misnomer. We do not intend to dwell on this issue, since we are told that the writ petitions for the regularization of similarly placed persons are pending before the High Court. The facts and circumstances pleaded by the appellants and the number of years they have spent as 'volunteers' and since they have no other avenue for their alternate employment because of their age factor, we are impelled to look into the reason for the termination of the services of the appellants. The letter discharging their services explicitly states that the reason for discharge is the indiscipline at Amritsar railway station before the appellants were to board the train for Maharashtra on election duty. Therefore, in our view, it is not a case of discharge simplicitor. Under Rule 18 of the 1963 Rules, any member appointed under the rules may be discharged at any time by the authority which had appointed him when his services are no longer required. If it is instance of discharge simplicitor, it would necessarily relate to instances where the post has been abolished or where there is a surplus of employees or other similar circumstances. The respondents

have not raised the existence of any circumstances which required the discharge of any volunteers, neither has it been urged that there exists any condition which would require the appellants specifically to be discharged apart from the allegation of indiscipline. Therefore, in our view, services of the appellants are discharged for acts of alleged misconduct. It casts a stigma on their competence and affects their future career.

(31) In our considered view, even in matters of discharge, the authority concerned cannot act arbitrarily while discharging an employee. However, in the instant case, the appellants are being discharged from service for indiscipline. Therefore, as provided in proviso to rule 27 of the rules, the appellants should have been given a reasonable opportunity of showing cause against the action proposed to be taken against them. Admittedly, no such opportunity was given to them. Therefore, we are of the view that the action of the respondents is contrary to their own statutory rules and in violation of principles of natural justice.

(32) Even without going into the question whether the appellants are eligible for the protection under Article [311](#) of the Constitution, in our view, the respondents seem to have acted in an arbitrary manner by terminating the services of the appellants, who have been working as Home Guards for the last 15-17 years. They are all over-aged. They may find it difficult to find alternate employment. Therefore, in the facts and circumstances of this case and in the interest of justice, we deem it proper to set aside the order of termination passed by the respondents dated 02.12.2004 and direct the respondents to reinstate the appellants as Home Guards without back wages.

(33) Before parting with the case, we should also notice the minor issue raised by learned senior counsel for respondents. It is submitted that the appellants without exhausting the appeal remedy provided under rule 27(3) of 1963 rules could not have approached the High Court under Article [226](#) of the

Constitution, inter-alia, requesting the High Court to quash the order passed by respondents dated 02.12.2004. We do not find any merit in their submission, for the reason that this issue was not raised nor argued before the High Court and, therefore, we will not permit this issue to be raised for the first time before us. It is also argued that para 14.4 of compendium of instructions on Home Guards authorizes the Commandant General or the Commandant to discharge a Home Guard at any time, if in his opinion, the services of the Home Guard are no longer required. These instructions are reiteration of Rule 18 of the Rules. We have already dealt with these rules. Therefore, repetition of our reasoning once over again may not be necessary."

11. Further, in the case of **Didar Singh (supra)**, this Court made the following observations:-

"10. It is true that as per the observations of this Court in the above referred judgment, the nature of appointment and the status of a Home guard Volunteer could not be considered permanent, temporary, ad hoc or daily-wage employee but the services rendered by him are governed by the provisions of the statute as the Punjab Home Guards Organization is constituted under the Punjab Home Guards Act, 1947 (hereinafter referred to as '1947 Act'). The 1963 Rules have been framed in exercise of the powers conferred under Section 9 of the 1947 Act. All appointments are made to the Home Guards Volunteers under this 1947 Act and 1963 Rules, which admittedly are applicable to the Chandigarh Home Guards. Merely because, they are volunteers does not mean that they do not have any right whatsoever and the authority while exercising its powers under 1947 Act and 1963 Rules, can act arbitrarily ignoring the provisions of the said Act and Rules. In case an employee approaches the Court with a grievance alleging violation of the provisions of the above Act and the Rules, this Court in exercise of its power under Article 226 of the Constitution of

India as conferred, would not be bereft of the jurisdiction and the authority to exercise its power of judicial review. The Court may, in the given facts and circumstances of the case, refuse or refrain itself to exercise its power to delve into the matter, however, it cannot be said that the volunteers serving the Home Guard Organization have no right as far as their services are concerned and are at the mercy of the officers, who may exercise their discretion at their whims and fancies leaving the helpless volunteers without any remedy... ”

12. Keeping in view the aforesaid judicial pronouncements and in terms of Rule 27 of the 1963 Rules; if an order of dismissal has to be passed, firstly reasons have to be recorded and the member concerned has to be given reasonable opportunity of showing cause against the action proposed to be taken against him. Admittedly, no such show cause notice or personal hearing has been given to the petitioner. It is also evident that the action taken against the petitioner was for the misconduct and for her absence from duty, which would fall under the provisions of Rule 27 of 1963 Rules.

13. As regards the respondents' reliance upon the proceedings of the Committee (Annexure R-5) is concerned, suffice it to say that the said proceedings are in the nature of post-decisional hearing and the same would not be justified in the light of observations made by Hon'ble Supreme Court in **“K.I. Shephard vs. Union of India”, 1987 (4) SCC 431**; wherein the following observations were made:-

“16. We may now point out that the learned single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could

now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose...”

14. In view of the above discussion and keeping in view the fact that the case of petitioner is covered in her favour by the judgment of the Hon'ble Supreme Court in ***Davinder Singh's case (supra)***, which judgment has been relied upon by this Court in ***Didar Singh case (supra)***, the present writ petition deserves to be allowed. Therefore, the impugned order dated 13.07.2018 (Annexure P-3) is hereby quashed.

15. Petitioner is directed to be reinstated in service forthwith with continuity in service. The petitioner would be entitled to all consequential benefits except for the actual financial benefits prior to the date of her acquittal in the FIR which was registered against her.

16. The present writ petition stands disposed of in aforesaid terms.

17. All pending application(s), if any, shall also stand closed.

5th January, 2024
Apurva

(HARSH BUNGER)
JUDGE

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|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |