

(1994) 11 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13803 of 1992

Brahma Nand Ex. Constable

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Police Rules, 1934 — Rule 12.21

Citation : (1995) 109 PLR 422

Hon'ble Judges : S.S. Grewal, J;M.L. Koul, J

Bench : Division Bench

Advocate : I.S. Balhara, for the Appellant; P.S. Kadian, DAG, for the Respondent

Judgement

S.S. Grewal, J.—Brahma Nand, an ex-Police constable, deployed as Standing Guard duty at Haryana Bhawan, Delhi, was discharged from services by the Commandant, 2nd Battalion, Haryana Police, Madhuban, vide impugned order Annexure P-1 conveyed to the petitioner vide endorsement No. 7499-7505 dated 16.6.1992 under Rule 12.21 of the Punjab Police Rules, on the ground that the petitioner had wilfully absented from duty from 26.12.1991 to 27.12.1991, 27.1.1992 to 28.1.1992, 12.2.1992 to 27.2.1992, 5.3.1992 to 6.3.1992, 19.3.1992 to 20.3.1992 and 12.4.1992 to 13.4.1992 and holding that in view of the aforesaid acts the petitioner was not likely to become a good police officer.

2. The learned counsel for the parties were heard.

3. The impugned order has mainly been challenged by the learned counsel for the petitioner on the ground that no show cause notice was issued to the petitioner before discharging him from service and that the impugned order of discharge amounts to order of dismissal and the same is a stigmatic order and could not be passed without holding a regular enquiry. On the other hand, the learned State Counsel submitted that in view of willful absence of the petitioner from duty referred to above, the competent authority rightly decided that the petitioner was not likely to become a good police officer and that he was rightly

discharged under Rule 12.21 of the Punjab Police Rules as applicable to State of Haryana.

4. In the instant case, admittedly, no show cause notice was given to the present petitioner before passing the impugned order whereby he is stated to have been discharged. We are of the view that it was obligatory for the respondents to give adequate opportunity to the petitioner to show cause concerning his alleged wilful absence from duty. This action of the respondents is against the principles of natural justice. After considering the reply to the show cause notice the competent authority in our view could pass an appropriate order. The impugned order in our view would attach a stigma to the character of the petitioner and as such it would have been far better if the competent authority had conducted regular enquiry before passing the order of discharge which in our view amounts to order of dismissal.

5. For the foregoing reasons, we hereby accept this writ petition and set aside the order of discharge and direct that the petitioner shall be deemed to be in service and shall be entitled to all consequential benefits concerning his service from the date of the impugned order Annexure P-1. However, it would be open to the respondents to conduct regular enquiry against the petitioner before passing any order of discharge or dismissal against the petitioner. The parties are left to bear their own costs. Copy of order be given Dasti.