

(2011) 03 P&H CK 0721

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15351 of 1991

Constable Jagdish Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 311
Punjab Police Rules, 1934 — Rule 12(21)

Citation : (2011) 162 PLR 590

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mehinder Singh Sullar, J.—Succinctly, the facts, culminating in the commencement, relevant for disposal of instant writ petition and emanating from the record, are that the Petitioner was selected and appointed as a Constable in Haryana Police in the month of July, 1989. He was duly medically examined by the Chief Medical Officer, Jind and was found fit to perform his duty. Thereafter, having verified his antecedents and completed the other formalities, the Petitioner was enrolled as a Constable on 1.10.1989 in Haryana Police. After successfully completing the training of Recruit Basic Course (for brevity "RTC") at Madhuban on 1.7.1990, he was transferred to 4th Battalion Haryana Armed Police (for short "HAP"). The Petitioner was stated to have performed his duties with diligence, efficiently and to the utmost satisfaction of his superior officers. There was no complaint against him whatsoever either during the training period or thereafter.

2. The Petitioner claimed that in pursuance of some general anonymous complaint, the Director General of Police, Haryana (Respondent No. 2) issued a letter dated 20.8.1990 (Annexure P1) to all SPS and Commandants to the effect that it has come to his notice that about 12 constables had managed to get recruitments and undergone training, who were physically disabled and directed

them to take action against them under Rule 12.21 of the Punjab Police Rules (hereinafter to be referred as "PPR"). The same letter was reiterated by the Deputy Inspector General, Haryana (Respondent No. 3), by virtue of order dated 30.8.1990 (Annexure P2), containing the list of names of such 12 constables in Annexure P2/A. The Commandant 4th Battalion HAP, Madhuban (Respondent No. 4) wrote a letter dated 15.11.1990 (Annexure P3) to concerned CMO for re-medical examination by medical team/Board of Doctors of such constables, including the Petitioner. Consequently, the Petitioner and similarly situated constables Krishan Kumar and Kuldeep Singh were re-medically examined by the Board of Doctors. They were found physically fit to handle the fire arms and law and order situation in police department, by means of certificate dated 21.11.1990 (Annexure P4). Although the Petitioner was found physically fit to handle the fire arms, law and order situation, but still he was stated to have been illegally discharged from service with immediate effect in an unlawful manner by the Respondents in the garb of Rule 12.21 of PPR, by way of single line impugned order dated 25.9.1991 (Annexure P5).

3. The Petitioner did not feel satisfied and preferred the instant writ petition, challenging the impugned termination order (Annexure P5), invoking the provisions of Articles 226 and 227 of the Constitution of India, inter-alia pleading that the impugned discharge order does not fall within the ambit of Rule 12.21 of the PPR, inasmuch as, it was not passed independently but in pursuance of the directions of Respondent Nos. 2 and 3. There was no complaint against the work and conduct of the Petitioner, nor any notice was ever issued to him in this regard.

4. The Petitioner claimed that once he was found physically fit to handle the fire arms and law and order situation by the Board of Doctors, then there was no occasion for the Respondents to discharge him on the ground of alleged physical fitness.

5. Sequelly, the Petitioner has also pressed into service the plea of discrimination, inasmuch as the number of such constables namely Subhash Chand No. 273, Sonapat, Joginder Singh No. 1687, Hisar 3rd Battalion HAP, Satya Narain No. 1647 of 3rd Battalion HAP and Mahi Pal No. 268 of 5th Battalion HAP, who were found similarly physically fit and were continuing in service. According to the Petitioner that as no order was passed under Rule 12.21 of PPR, therefore, the impugned termination was said to be illegal, punitive in nature, violative of Articles 16 and 311 of the Constitution of India and against the principles of natural justice. On the basis of aforesaid allegations, the Petitioner sought the quashment of impugned termination order (Annexure P5), in the manner depicted hereinabove.

6. The Respondents contested the claim of the Petitioner and filed their joint written statement, inter-alia pleading certain preliminary objections of, maintainability of the writ petition, cause of action and locus standi of the Petitioner. The case set up by the Respondents, in brief in so far as relevant, was

that the work and conduct of the Petitioner was not satisfactory, he willfully absented himself and awarded four days' drill punishment and since he was not proved to be an efficient police officer, so, he was rightly discharged under Rule 12.21 of the PPR. However, the selection, medical examination of the Petitioner by the CMO and secondly by the Board of Doctors, have not been denied. It was also admitted that Board of Doctors found him fit to handle the fire arms and law and order situation. It will not be out of place to mention here that the Respondents have stoutly denied the remaining allegations contained in the writ petition and prayed for its dismissal;

7. Controverting the allegations of written statement and reiterating the pleadings contained in the writ petition, Petitioner filed the replication. That is how, I am seized of the matter.

8. Having heard the learned Counsel for the parties, having gone through the record and relevant law with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant writ petition deserves to be accepted in this context.

9. At the very outset, the writ petition came up for hearing before a Division Bench of this Court on 7.10.1991 and the following order was passed:

Contents that the Petitioner was found medically fit for the post of Constable in the Police Department. But strangely enough, his services are being terminated under Rule 12.21 of the Punjab Police Rules as applicable to Haryana on wrong assumption that he is not otherwise fit for the services of a police Constable. Notice of motion for 13th of November, 1991. Operation of the order Annexure P5 is stayed.

10. The stay of operation of impugned order (Annexure P5) was confirmed while admitting the writ petition on 21.2.1992. That means, the Petitioner is still in service. This fact has also been acknowledged by the learned Counsel for the Respondents.

11. As is evident from the record, that in the wake of interview and physical test, the Petitioner was selected and appointed as a Constable with Haryana Police in the month of July, 1989. Having successfully completed the training, he was posted in 4th Battalion HAP. He was stated to have performed his duties with diligence, efficiently and to the utmost satisfaction of his superior officers. There was no complaint against him whatsoever either during the training period or thereafter.

12. The Petitioner maintained that in pursuance of some general anonymous complaint, Respondent No. 2 issued letter dated 20.8.1990 (Annexure P1) to all SPs and Commandants to the effect that it has come to his notice that about 12 constables had managed to get recruitments and undergone training, who were physically disabled and directed them to take action against them under Rule 12.21 of the PPR. The same letter was reiterated by Respondent No. 3, vide

order dated 30.8.1990 (Annexure P2), containing the list of names of such 12 constables in Annexure P2/A. The Respondent No. 4 wrote a letter dated 15.11.1990 (Annexure P3) to concerned CMO for re-medical examination by the medical team/Board of Doctors of such constables, including the Petitioner. Consequently, the Petitioner and similarly situated constables Krishan Kumar and Kuldeep Singh were re-medically examined by the Board of Doctors and they were found physically fit to handle fire arms and law and order situation in police department, by means of medical fitness certificate dated 21.11.1990 (Annexure P4).

13. Meaning thereby, the perusal of documents (Annexures P1 to P4) would reveal that Rule 12.21 of the PPR was invoked on the ground of physical unfitness of the Petitioner and not otherwise. Once the Petitioner was found physically fit to handle the fire arms and law and order situation by the CMO at the first instance and then by the Board of Doctors, by virtue of letter (Annexure P4), then, to me, he cannot be thrown out of service in such a casual manner by the Respondents.

14. Ex facie, the argument of learned Counsel for the Respondents that since the work and conduct of the Petitioner was not found satisfactory and he remained absent during the training period, so, he was discharged on that count, is not only devoid of merit but misplaced as well in this context.

15. What is not disputed here is that neither any show cause notice was issued to the Petitioner to confront him with the situation that his work and conduct was not satisfactory nor any opportunity of being heard was provided to him in this respect. On the contrary, the Petitioner has claimed that in fact he proceeded on leave after getting same sanctioned from Respondent No. 4, on account of illness of his wife. He applied for further extension, owing to illness of his wife, but the same was declined and for that, he was awarded and completed four days' drill punishment and this absence period was treated as casual leave, by way of order (Annexure R1). That means, the Petitioner has already suffered four days' drill punishment and his absence period was treated as four day's casual leave. In that eventuality, to my mind, he cannot possibly be discharged on that count. Moreover, no cogent material is forth coming on record to prove that any show cause notice was issued to the Petitioner to confront him with the situation that his work and conduct was not satisfactory nor any opportunity of being heard was provided to him in this regard.

16. Above-all, Article 311(2) imposed a constitution obligation upon the punishing authority to issue show cause notice for the purpose of informing an employee, the charges against him, to confront him and to make him aware of the material, which is likely to be used against him to terminate his services.

17. Sequelly, a reasonable opportunity is required to be afforded to explain any circumstances appearing against him and to prove his innocence before termination of his service, which is totally lacking in the instant case. Thus, the

impugned termination order is violative of natural justice and rule of audi altram partem rule. It is now well settled rule of law that the principles of natural justice have come to be recognized as being a part of guarantee provided and their non-observance by the State action would amount to violations of Articles 14 and 16 of the Constitution of India. Therefore, it is held that the Respondents have illegally discharged the Petitioner on non-existent grounds and without any cogent material. Subsequently, they appear to have created a false ground to discharge him on account of stay of operation of impugned discharge order by this Court and for the first time during the pendency of the writ petition.

18. Likewise, the impugned order (Annexure P5) reads as under:

Constable Jagdish Singh No. 4/793 is unlikely to prove an efficient Police Officer.

As such he is hereby discharged from the service with immediate effect under Punjab Police Rule 12.21.

19. In this manner, the impugned discharge order is non-speaking, non-reasoned order and is the result of lack of application of mind in this behalf. The Respondents ought to have discussed the material on record and were legally required to record valid reasons for arriving at a right conclusion. Such punishing authority, exercising the powers under the PPR, ought to have passed a speaking order, which should be informed by reasons. The order must be fair, clear, and reasonable and in the interest of fair play. All these essential ingredients of speaking order are totally lacking in the present case.

20. Exhibiting the importance of passing speaking and reasoned order, the Hon'ble Apex Court in case Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others, has held (para 8) as under:

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation.

Therefore, the impugned discharge order (Annexure P5) cannot legally be maintained in this context.

21. This matter can be viewed from a different angle. It is not a matter of dispute that similarly situated constable Satya Narain, whose name finds mentioned at serial No. 4, while the name of Petitioner figured at serial No. 10 of the list (Annexure P2/A) of such constables, was also discharged by passing the similar order dated 15.10.1991. He filed CWP No. 15995 of 1991 titled as "Satya Narayan Constable No. 714 v. State of Haryana and Anr.," challenging the discharge order. The writ petition was allowed, discharge order therein was set

aside and Satya Narain was reinstated in service forthwith along with all arrears of salary and allowances, by a Division Bench of this Court, by means of order dated 20.1.3992, the operative part of which is as under: -

Resultantly, we allow this petition, quash the impugned order dated 15th October, 1991 Annexure P/1 and reinstate the Petitioner forthwith. As a consequence thereof, the Petitioner shall also be entitled to all the arrears of salary and allowances to which he would have been entitled, had the impugned order of discharge from service not been passed.

Thus, to my mind, the present writ Petitioner is also entitled to the same treatment on the basis of principle of "stare decisis" and Articles 14 and 16 of the Constitution of India.

22. An identical question came to be decided by the Hon"ble Supreme Court in case Saurashtra Cement and Chemical Industries and Anr. etc. v. Union of India and Ors. AIR 2001 S.C. 8. Having considered the various aspects of the matter, it was observed that "the doctrine of "stare decisis" has no statutory sanction but it is a rule of convenience, expediency, prudence and above all the public policy. It is to be observed in its observance rather than in its breach to serve the people and sub-serve the ends of justice. Taking recourse to the doctrine would be an imperative necessity, so as to avoid uncertainty and confusion, since the basic feature of law is its certainty and in the event of any departure therefrom the society would be in utter confusion and the resultant effect of which would be legal anarchy and judicial indiscipline - a situation which always ought to be avoided."

23. Similarly, in case Government of Andhra Pradesh and Ors. v. A.P. Jaiswal and Ors. AIR 2001 S.C. 499, it was ruled by Hon"ble Apex Court that "consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of "stare decisis" etc. These rules and principles are based on public policy and if these are not followed by the Courts then there will be chaos in the administration of justice." The ratio of law laid down in the aforesaid judgments "mutatis mutandis" is attracted to the facts of the present case and is the complete answer to the problem in hand.

24. Not only that, as reproduced (para 5) hereinabove, the Petitioner has pressed into service the plea of discrimination contained in ground No. (iv) of the writ petition. The Respondents have not specifically denied the retention of similarly situated constables in service as mentioned in ground No. (iv). Meaning thereby, the Respondents have adopted a pick and choose policy/method and discriminated the Petitioner in this respect. Thus, the action of the Respondents is not only violative of Articles 14 and 16 of the Constitution of India, but discriminatory and against the principles of natural justice as well.

25. Therefore, thus seen from any angle, the impugned discharge order cannot legally be sustained in the eyes of law in any manner.

26. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

27. In the light of the aforesaid reasons, the instant writ petition is accepted. Consequently, the impugned order (Annexure P5) is hereby quashed in the obtaining circumstances of the case.