
(1989) 05 P&H CK 0103
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1562 of 1985

Pal Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-05-1989

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Punjab Home Guards Rules, 1963 — Rule 18

Citation : (1991) 2 LLJ 531

Hon'ble Judges : A.L. Bahri, J

Bench : Single Bench

Advocate : A.K. Kanwar and S.D. Aggarwal, for the Appellant; Gopichand and Charu Tuli for A.G., for the Respondent

Final Decision : Allowed

Judgement

A.L. Bahri, J.—Pal Singh was appointed as Corporal Instructor in the Punjab Home Guards on September 19, 1980 vide order Annexure P-2. He was appointed on temporary basis. If he wanted to resign he could do so on giving notice of one month or one month's pay in lieu of notice. The Government could also remove on giving one month's notice along with allowances and one month's pay. However, in the case of bad conduct, an opportunity of hearing was to be given before removing him from the service. Annexure P-2 further states that the Punjab Home Guards Act, 1947, Punjab Home Guards Act, 1963, Punjab Civil Services Rules and Government Employees Conduct Rules, 1966, and Punjab Civil Services (Punishment and Appeal) Rules, 1970 would also be applicable. Vide order dated April 9, 1983, Annexure P-1, passed by the Commandant General, Punjab Home Guards. Pal Singh was discharged from service under Rule 18 of the Punjab Home Guards Rules, 1963 with immediate effect. Several representations against the said order were moved before the authorities copies of which are Annexure P-3 to P-6; however, no action thereon was taken. Pal Singh has challenged order Annexure P-1 discharging him from service in this writ petition under Articles 226 and 227 of the Constitution of

India.

2. In the written statement the stand taken on behalf of the respondent is that a theft of arms and ammunition in the Home Guards Kot at Ferozepur took place during the night of April 6/7, 1983. A preliminary enquiry was conducted and Pal Singh petitioner was held responsible for gross negligence in the discharge of his official duties and also for his undesirable role and absence from duty. For this serious misconduct the petitioner was discharged under Rule 18 of the Punjab Home Guards Rules, 1963.

3. Rule 18 of the Punjab Home Guards Rules, 1963 reads as under:-

"Any member may be discharged at any time by the authority which had appointed him when his services are no longer required."

4. After hearing counsel for the parties, I find that basis for passing the impugned order was the enquiry held against him ex parte wherein he was found to be absent from duty and responsible for the theft of arms and ammunition which took place on the night of April 6/7, 1983. As mentioned in the written statement, it was for this serious misconduct that the petitioner was discharged. In *Anoop Jaiswal v. Government of India and Anr.* 1984-1-LLJ-337 it was observed as under:-(p. 342.)

"The form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2). Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

The ratio of the aforesaid decision was followed subsequently also by the Supreme Court in *Jarnail Singh and Anr. v. State of Punjab* 1986-2-LLJ-268, and *Hardeep Singh v. State of Haryana* 1988 (1) SLR 207.

5. Shri Gopi Chand, Advocate appearing on behalf of the respondent, has argued that since the order itself did not show that it was passed on account of any misconduct it should be treated as simple order of discharge under Rule 18 of the Home Guards Rules referred to above. Since no stigma is attached to the order itself, the same cannot be set aside by searching any stigma from the files of the case. In such circumstances the order of discharge can only be challenged on the grounds of malafide. In support of his contention reliance has been placed upon the decisions in *S.P. Vasudeva Vs. State of Haryana and Others*, , *State of*

Uttar Pradesh Vs. Bhoop Singh Verma, , and J.B. Sharma v. State of Madhya Pradesh and Anr. 1988 (1) SLR 602.

6. The question of malafide is to be determined on the facts and circumstances of each case. As has been mentioned in the written statement, the impugned order has been passed on account of serious misconduct on the part of the petitioner. This opinion was formed after holding an enquiry regarding the theft and not merely on the receipt of any complaint regarding misconduct of the petitioner. From the averments made in the written statement no manner of doubt is left that the enquiry report was not the motive for passing the order but the findings recorded therein were the basis for removing the petitioner from service. In such circumstances though the order on the fact of it appears to be simple order of discharge, but has been passed by way of punishment. That being the position, the provisions of Article 311(2) of the Constitution would be attracted along with the provisions of Punjab Civil Services (Punishment and Appeal) Rules, 1970; without giving notice and framing charge-sheet and holding enquiry as required under the Rules referred to above the petitioner could not be removed from service.

7. The order of discharge from service is also against the terms and conditions of the appointment order Annexure P-2. As briefly noticed if the services of the petitioner were to be terminated on account of bad conduct an opportunity of hearing was required to be given to the petitioner. Admittedly, no such thing was done. Furthermore, the Government was required to give one month's notice or to pay one month's salary in lieu of notice before removing the petitioner from service. This was again not done. The impugned order cannot, therefore, be sustained in law.

8. For the reasons recorded above, this petition is allowed with costs. Counsel fee Rs. 500/-. Order Annexure P-1 dated April 19, 1983 removing Pal Singh petitioner from service is quashed. The respondent is directed to reinstate him with continuity of service and full back wages.