

A

STATE OF HARYANA AND ANR.

v.

JAGDISH CHANDER

JANUARY 13, 1995

B

[K. RAMASWAMY AND S. C. SEN, JJ.]

Service Law : Punjab Police Rules

C

Rule 12.21—Constable—Discharge from service within 3 years of enrolment—Grounds on which order of discharge proposed to be passed—Not communicated—Opportunity not afforded—Held, discharge vitiated by manifest error of law.

D

The respondent was appointed as a Constable on October 30, 1985. As he was absent from duty from April 20, 1992 to May 15, 1992, he was discharged from service under rule 12.21 of Punjab Police Rules. Respondent challenged it before the High Court, which allowed the writ petition, set aside the order and directed the appellant to reinstate the respondent with continuity of service and consequential benefits. Hence this appeal by the State. In the other two appeals also, the facts were similar.

E

Allowing the main appeal, this Court

F

HELD : 1. It is clear from the order of discharge that it is not an order of discharge simplicitor. On the other hand, the S.P. Considered the record and found the respondent to be habitual absentee, negligent in his duty and indisciplined. The findings of habitual absence and indiscipline necessarily cast stigma on his career and they would be an impediment for any of future employment elsewhere. Under those circumstances, the principles of natural justice do require that he should be given an opportunity to explain the grounds on which the S.P. proposes to pass an order of discharge and then to consider the explanation submitted by the police officer. Then the S.P. is competent to pass appropriate orders according to the rules. Since this part of the procedure had not been adopted, the order of discharge is vitiated by manifest error of law. However, the High Court was not justified in straightaway setting aside the order and directing reinstatement with consequential benefits. [254-F-H, 255-A]

H

2. The order of the High Court is set aside. It would be open to the appellant, if so advised, to give an opportunity to show cause, to the respondents; consider their objections and pass appropriate orders within a period of two months. A

Karunakar v. E.C.I.L. Hyderabad, [1993] 4 SCC 727, followed. B

As regards the connected case, this is allowed C.A. No. 1089/95 but dismissed C.A. No. 1090/95 as the discharge order in this case was innocuous but based on record.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1088 and 1089 of 1995. C

From the Judgment and Order dated 14.1.93 & 4.11.92 of the Punjab & Haryana Court in C.W.P. No. 12183 & 9175 of 1992.

V.R. Reddy Additional Solicitor General, Ms. Ayesh Khatri for Ms. Indu Malhotra for the State. D

K.R. Nagaraja for the Appellant.

Mahabir Singh for the Respondent.

The following Order of the Court was delivered : E

Leave granted.

For the disposal of the point in controversy the facts in C.A. No.1088/95 @ SLP (C) No. 9649/93 lie in a short compass are as under: F

The respondent, Jagdish Chander, was appointed as a constable on October 30, 1985. Since he was absent from duty from April 20, 1992 to May 15, 1992, by proceedings dated 1.1.1992, he was discharged from service as a constable, exercising the power under rule 12.21 of the Punjab Police Rules, (for short, 'the Rules'). The respondent impugned its validity in CWP No. 12183/92. The High Court by its order dated. 14.1.1993 allowed the writ petition, set aside the order and directed the appellant to reinstate the respondent with continuity of the service and consequential benefits. Thus, this appeal by special leave. G

Rule 12.21 read thus : H

A "A constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrollment. There shall be no appeal against an order of discharge under this rule."

B A reading of this rule would indicate that the Superintendent of Police, before expiry of three years from the date of enrollment of the police officer into the service, has been obviously given power to observe the conduct and discharge of service by the police officer to find him whether he was efficient in the discharge of duties and maintains the discipline and conduct expected of him as a disciplined police officer.

C During that period if the S.P. finds that he is unlikely to prove an efficient police officer, exercising the power under the rule, he may discharge simplicitor the police officer from service. For recording the finding that the officer is unlikely to prove an efficient police officer, there must be anterior record and the Superintendent of Police must objectively consider that record and record the conclusion in that behalf. But if he records a

D finding, after considering the record, which would be a stigma on the carrier of the discharged police officer, it is settled law that the principles of natural justice require that an opportunity be given to him before recording finding adverse to the officer's conduct which disentitles the officer for any future employment or would be blot on his carrier. The order of discharge reads thus :

E "Const. Jagdish Chander No. 3/460 is hereby discharged under PP 12.21 with immediate effect i.e. 1.6.92 A.N. as he is unlikely to prove an efficient police officer because he is habitual absentee negligent to his duty and indisciplined."

F It would thus be clear from the order of discharge that it is not an order of discharge simplicitor. On the other hand, the S.P. considered the record and found him to be habitual absentee, negligent to his duty and indisciplined. The findings of habitual absence and indisciplined necessarily cast stigma on his carrier and they would be an impediment for any of

G future employment elsewhere. Under those circumstances, the principles of natural justice do require that he should be given an opportunity to explain the grounds on which the S.P. proposes to pass an order of discharge and then to consider the explanation submitted by the police officer. Then the S.P. is competent to pass appropriate orders according

H to the rules. Since this part of the procedure had not been adopted, the

order of discharge is vitiated by manifest error of law.

A

However, the High Court was not justified in Straightaway setting aside the order and directing reinstatement with consequential benefits. In view of the Judgment of this Court by a Constitution Bench in *Karunakar v. E.C.I.L., Hyderabad*, the appropriate course for the State would be to direct an inquiry if they intend to hold and to give an opportunity to the officer concerned to defend himself and then pass appropriate orders. On the basis of this result of the enquiry necessary reliefs need to be moulded.

B

In this view, the order of the High Court is set aside. It would be open to the appellant, if so advise, to give an opportunity to show cause to the respondents; consider their objections and pass appropriate orders within a period of two months from the date of the receipt of the order.

C

The appeal No. 1088/95 (@ SLP No. 9649/93) is accordingly allowed but, in the circumstances, without costs.

In Civil Appeal No. 1089/95 (@ SLP (C) No. 14881/93,) pursuant to the directions issued by the Tribunal since the respondent- Nathu Ram has already been taken into service and he is continuing, he would continue in service till appropriate orders are passed. The appeal is allowed.

D

C.A. No. 1090/95 @ SLP (C) No. 17909/93

E

Leave granted.

In view of the above law, the appeal is dismissed since the discharge innocuous but based on record. No costs.

G.N.

Main appeal allowed.