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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00735/2014 &
M.A.No.060/01134/2014

Date of Decision : 13.8.2015
Reserved on : 10.08.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER
HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER**

Jitendra Kumar (Ex. Constable No.6135/CP), s/o Sh. Rampal Singh, resident of Village Tajpur Sambhalka, Post Office Shamli, District Shamli (Muzafar Nagar), Uttar Pradesh.

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Applicant

Versus

1. Union of India through Secretary, Ministry of Home Department, New Delhi.
2. Inspector General of Chandigarh Police, Chandigarh Police Headquarter, Additional Deluxe Building, Sector 9, Union Territory, Chandigarh.
3. Superintendent of Police, Oprs-cum-Commandant IRB, Chandigarh Police Headquarter, Additional Deluxe Building, Sector 9, Union Territory, Chandigarh.
4. Deputy Superintendent of Police, IRB, Chandigarh Police, Headquarter, Additional Deluxe Building, Sector 9, Union Territory, Chandigarh.
5. Constable Amit Kumar No.6297/CP, resident of Village and Post Office Makrouli Khurd, District Rohtak (Haryana) now posted as Constable in Chandigarh Police, Chandigarh Police Headquarter, Additional Deluxe Building, Sector 9, Union Territory, Chandigarh.
6. Constable Manoj Kumar No.6199/CP, resident of Village and Post Office Jauli, Tehsil Gohana, District Sonapat, (Haryana) now posted as Constable in Chandigarh Police, Chandigarh Police Headquarter, Additional Deluxe Building, Sector 9, Union Territory, Chandigarh.

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Respondents

Present: Mr. A.K. Saini, counsel for the applicant
Mr. A.L. Nanda, counsel for respondents



ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8 (i) quashing of the impugned order dated 05.12.2011 (Annexure P-1) passed by Sh. R.S. Ghumman, IPS, Superintendent of Police, Oprs.-cum-Commandant, IRB, Union Territory, Chandigarh.

(ii) Issue an appropriate order or direction to the respondents to reinstate of the service of the applicant as Constable w.e.f. 05.12.2011 then the service of the applicant was illegally discharged.

(iii) Issue an appropriate order or direction to the respondents that to release all other constitutional relief and benefit as well as full back wages from the date of discharge w.e.f. 05.12.2011 to realization the service of the applicant as regular post as Constable in the Chandigarh Police.

Or

(iv) Issue an appropriate order or direction to respondent no.2 to consider of the Review Application dated 28.06.2014 (Annexure A-21) of the applicant within any stipulated period of time.

Or

(v) Issue an appropriate order or direction to respondents no.1 to 4 to consider the claim of the applicant at least at par with the others two private respondents no.5 & 6.

(vi) Cost and expenses of the present application may be granted in favour of the applicant and against the respondents.

2. M.A.No.060/01134/2014 has been filed under Section 19 (3) of the Administrative Tribunals Act, 1985 read with Section 5 of the Limitation Act, 1963 for condonation of delay of 625 days in filing of the O.A. In the grounds taken in the MA, it has been stated as follows:-

- a) First, during the regular service of the applicant as Constable in Chandigarh Police, the mother of the applicant Smt. Harbiri was slipped in their house at village Tajpur Sambhalka, Post Office Shamli, District Shamli (Muzafar Nagar), Uttar Pradesh and she was

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fractured on the joint of hip & thigh and she is continued on bed from the beginning w.e.f. 17.06.2011 to till today and she is also unable to stand independently and go to wash room etc, not only this, she also used to latrine and urine on bed. The applicant is unmarried and poor person hence, nothing was available on home for her care and supervision properly. Copies of medical documents of operation dated 17.06.2011 and recent medical prescription report dated 04.07.2014 of the applicant's mother are annexed as Annexure A-6 Colly.

- b) Secondly, the applicant belongs with a very poor family and belongs to U.P. and there was / is no any other permanent source of income except to the applicant salary and they are hand to mouth persons. As the applicant was discharged from the service on 05.12.2011, their family was comes on the end of starvation condition and upon of it applicant's mother is also on continue medical expenses, due to the circumstances, the applicant was not in this financial condition to engage any counsel to challenge the impugned order dated 05.12.2011 as per law before this Tribunal.
- c) Thirdly, the applicant is residing in Tajpur Sambhalka, which is situated in District Shamli (Muzafar Nagar), Uttar Pradesh which is more than 310 km so far from the Chandigarh and it is not possible to the applicant in the aforesaid circumstances to come repeatedly in Chandigarh and approached to the respondent Department.
- d) Fourthly, the applicant is a simple villager person and he doesn't know the technicalities to the law and court cases, meanwhile the applicant has filed the number of representations before the higher officers of the Chandigarh Police about his grievance on 19.06.2012, 06.08.2012, 19.10.2012 and 14.01.2013 but all the representations of the applicant has been rejected on the intangible ground by stating that there is no provision of appeal under Punjab Police Rules, 1934 against the impugned order. Finally, 28.06.2014, the applicant filed a Review Application under Rule 16.28 of the Punjab Police Rules, 1934 before the Inspector General of Police, Chandigarh after getting also the service record of his service from the respondent Department, which is still pending for consideration before the IGP, Chandigarh Police. "

And hence it is claimed that delay in filing the OA was not intentional and deliberate but had occurred due to reasons beyond the control of the applicant

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because he is a simple villager and he is not aware of the technicalities about the relief.

3. It has been stated in the OA that the applicant was appointed as regular Constable in the IRB, Chandigarh Police Department on 20.12.2009 (AN) Annexure A-2). His work and conduct was satisfactory from the initial date of appointment till the date of his discharge i.e. 05.11.2011. It is stated that the applicant was given 03 days leave w.e.f. 19.11.2011 to 21.11.2011 (Annexure P-5) and he went to visit his mother at Village Tajpur Sambhalka, Post Office Shamli, U.P. as his mother was on bed rest w.e.f. 17.06.2011 due to surgery as follow up to her hip fracture. Copies of the medical prescription reports and other documents have been annexed as Annexure P-6 (Colly). When the applicant arrived at his village, he was suffering from fever, he was admitted in Govt. Community Health Centre, Shamli and was advised complete bed rest as per medical prescription dated 21.11.2011 (Annexure A-7). Hence he could not resume his duty on or before 26.11.2011, but he informed the concerned Munishi telephonically and was assured that he could join on recovery. On 28.11.2011, the applicant was advised further bed rest and had to continue as such till 16.12.2011, when he was declared fit to resume the duties w.e.f. 17.12.2011 and Medical Certificate and Fitness Certificates were issued in this regard (Annexure A-9 & A-10). However, when the applicant approached the authorities to resume duty on 17.12.2011 he was informed that his services had been terminated under Rule 12.21 of the Punjab Police Rules, 1934 by the Superintendent of Police w.e.f. 05.12.2011 (Annexure A-1).

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4. In the grounds for relief, it has been stated as follows:-

- i) Overstaying of reward leave of 15 days was not willful and intentional but it happened due to serious illness of the applicant. Besides mere overstaying of reward leave was not per se misconduct and did not constitute abandonment of the job.
- ii) Overstaying of leave is to be dealt with under Rule 8.47 of the Punjab Civil Services Rules, Vol.-I, Part-I, as there is no provision in Punjab Police Rules, 1934 regarding overstay of leave.
- iii) The impugned / discharged order dated 05.12.2011 is stigmatic and punitive one being mentioned in the discharged order that "as he is not likely to prove an efficient Police Officer". This order is punitive in character and can be passed only after complying with the provisions of the rules relating to imposition of penalty and holding a regular enquiry.
- iv) The applicant earlier submitted his representation about his grievances before the Director General of Police, Inspector General of Police and Dy. Inspector General of Police, U.T. Chandigarh on 15.06.2012, 17.08.2012, 19.10.2012 and 04.07.2013 but his representation has been refused by the Police Department in limine on the ground that there is no provision in PPR, to file an appeal against the orders issued under PPR 12.21. On the other hand, the IGP Chandigarh Police has re-instated the other two Ex. Constables i.e. respondents no.5 & 6 on 14.06.2012 vide his order no.21138, UT/E-II, who had also been discharged under Rule 12.21 of Punjab Police Rules on the same date i.e. 05.12.2011 and on the same grounds.
- v) The case of the applicant is squarely covered by the judgment of Hon'ble Supreme Court of India in the case of "Ex. Constable Sukhwinder Singh VS. State of Punjab & Ors." reported 1995 (3) RSJ 654, wherein the Constable was overstaying of leave for some days due to his ill health thereafter he submitted the medical certificate but the Department has discharged him from the services under Rule 12.21 of Punjab Police Rules, 1934. In this case, the Hon'ble Supreme Court has decided that "the respondent was not justified in discharging the appellant from service. Under these circumstances, the order of discharge is set aside and the respondents are directed to take back the appellant forthwith into service will all consequential benefits except the payment of back wages." "

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5. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. It has been stated that when the absence of the applicant was reported by the Officer Incharge, show cause notice was issued to the applicant vide memo dated 12.07.2011 for joining duty (Annexure R-1 & R-2). The applicant still did not join duty and only reported on 20.08.2011. He still did not mend his ways and again remained absent from duty w.e.f. 21.11.2011, although he had only been granted 03 days leave w.e.f. 19.11.2011 to 21.11.2011. Keeping in view the act and conduct of the applicant and negligent behaviour of the applicant towards duty, Superintendent of Police-cum-Commandant, IRB, Union Territory, Chandigarh discharged the applicant with immediate effect in pursuance of Rule 12.21 of Punjab Police Rules, 1934 vide orders dated 05.12.2011 (Annexure A-1). The relevant provisions of Punjab Police Rules are reproduced as under:-

"12.21 Discharge of Inefficients- 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 enrolment. There shall be no appeal against an order of discharge under this rule".

This Rule clearly specifies that the power vested in the Superintendent of Police is absolute and can be exercised at any time within 03 years from the date of appointment of Constable provided that the concerned authority has some material before it on the basis of which an opinion can be formed about suitability. The order of discharge simplicitor passed under Rule 12.21 of the Rules cannot be treated as punitive simple because while exercising power under the Rule, competent authority takes into consideration the work and conduct of the employee and against the order of discharge, there will no appeal.

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It is further stated that Full bench of the Hon'ble Punjab and Haryana High Court has observed the scope of Rule 12.21 and has held in its judgment in the case of "Sher Singh Vs. State of Haryana & Ors.", reported 1994 (1) PLR which also finds mention in the judgment dated 14.07.2005 of the Hon'ble Supreme Court of India in the case of "State of Punjab & Ors. Vs. Sukhwinder Singh" reported AIR 2005 SCC 2960 that for a period of three years, a Constable is under surveillance and he is being watched and is kept in close supervision and further has no right to the post and his services are terminable at any time during this period of three years. If the Superintendent of Police finds that a particular Constable is not active, disciplined, self reliant, punctual and sober, courteous or straight forward or does not possess the knowledge or the technical details of the work required of him, under that circumstances Superintendent of Police can invoke the power under Rule 12.21 and discharge the Constable from service.

6. It is further stated that the applicant submitted representations dated 15.06.2012 and thereafter 17.08.2012 for reinstatement in service and these were duly replied vide letter dated 10.09.2012 (Annexure R-3). At the time when he was absent from duty in June and July, 2011 and later in November, 2011, he did not submit any medical certificates regarding his mother's illness or his own and these documents submitted now appears to have been prepared as an after thought. The applicant had also approached the IG, Police Chandigarh by way of filing review application and the same had been rejected by the competent authority.

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7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant mainly pressed that the delay in filing the OA be condoned for the reasons stated in the MA filed in this regard. He also cited i) Ex-Constable Sukhwinder Singh Vs. State of Punjab & Ors., reported 1995 (3) RSJ 654 ii) Malkiat Singh Vs. State of Punjab & Ors., in Civil Appeal No.3506 of 1996, decided on 29.01.1996 and iii) Rajender Singh Vs. The State of Haryana & Anr., in CWP No.9415 of 1987, decided on 14.02.1989 to press that absence from duty could not result in the extreme penalty of termination of service.

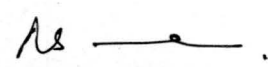
8. Learned counsel for the respondents also referred to Sukhwinder Singh (supra) wherein the judgment of the Full bench of Punjab and Haryana in Sher Singh Vs. State of Haryana & Ors." had been referred to. He stated that keeping in view the judgment in this case under Rule 12.21 of the Punjab Police Rules, 1934, the Constable's work and conduct was under surveillance and if the same was not satisfactory his services could be terminated on the ground that he was not likely to prove an efficient Police Officer. In the present case, the applicant had been discharged from service within 03 years of his joining as Constable, since he had on two occasions been unauthorizedly absent from duty for long periods of time.

9. We have carefully considered the pleadings of the parties and the arguments advanced by the learned counsel. The grounds cited in the MA for condonation of delay are not satisfactory as the applicant was discharged from

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service as far back as December, 2011 but this OA has been filed in August, 2014. It is also undisputed that the applicant was absent without leave for the period from 20.06.2011 to 20.08.2011 and thereafter overstayed his reward leave from 21.11.2011 to 17.12.2011. The applicant did not even respond to the show cause notice dated 12.07.2011 directing him to join duty and only gave his explanation regarding the unauthorized absence when he reported back on 20.08.2011. Similar was the position later when he overstayed his leave from 21.11.2011 onwards. It can only be concluded that the applicant was irresponsible and not sincere to his job. The conclusion of the SSP Chandigarh that "the applicant is not likely to prove an efficient Police Officer" seems to be quite justified.

10. Hence, there is no reason to interfere with the impugned order dated 05.12.2011. The OA and MA No.060/01134/2014 are therefore rejected. No costs.


(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER


(SANJEEV KAUSHIK)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 13.8.2015

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