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(9) The argument of the learned counsel that Rule 3.26 (d) of the Rules does not apply to the case of the petitioner being Class-IV (Category 'D') employee deserves to be accepted as has been held in the preceding para. However, it does not come to the rescue of the petitioner because Note-1 appended to Rule 5.32-A of the Rules thoroughly apply to the case of the petitioner. The aforementioned principle in Note-1 does not confine the exercise of the power to a particular class of employees. Therefore, we have no hesitation to reject the argument raised.

(10) For all the reasons stated above, this petition fails and the same is dismissed.

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**R.N.R.**

*Before Ashutosh Mohunta & R.S. Madan, JJ.*

SATPAL KHAN,—*Petitioner*

*versus*

STATE OF HARYANA AND OTHERS ... *Respondents*

*C.W.P. NO. 7746 OF 2006*

15th January, 2007

*Constitution of India, 1950—Arts. 14, 16 & 226—Instructions dated 18th February, 2002 issued by State of Haryana—Petitioner belonging to Muslim community charge sheeted for not taking permission to keep beard as required by instructions dated 18th February, 2002—Dismissal from service—Selection of petitioner as Constable with supporting beard and continued to work for a period of two years—No objection from any authority for keeping of beard and petitioner found to be disciplined member of the force—On learning about instructions petitioner applying for permission which remained undecided—Violation of fundamental right of petitioner to keep beard being a member of the Muslim community—Petition allowed, respondents directed to reinstate petitioner with all consequential benefits.*

*Held*, that the petitioner has joined the service having full beard as a Constable in the Haryana Police and continued to work

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for a period of two years. No authority/superior had ever objected to the keeping of beard during this service period. He was found to be disciplined member of the force. The Identity Cards in which the photographs of the petitioner have been duly attested by the DGP, Haryana further corroborated the factum of the petitioner keeping beard at the time of his selection and when he was undergoing training in the Police Training College, Madhuban.

(Para 19)

On learning about the instructions, the petitioner applied for permission to keep beard on religious ground being a member of the force belonging to the Muslim community, which remained undecided. Therefore, it cannot be said that the petitioner did not apply for permission to keep beard in the rest of his service career. In the case of a Sikh candidate no permission is required because his religion permits to him to keep the beard. In the case of a Muslim the instructions of the Government of India are very clear to allow to keep the beard. The authorities could not throw away the petitioner out of service on the ground of caste, colour and religion as it is one of the fundamental right of the petitioner under Articles 14/16 of the Constitution of India. The instructions issued by the Government cannot take away the fundamental rights of a citizen of the country as enshrined in the Constitution of India.

(Para 20)

Arun Palli, Advocate, *for the petitioner.*

Anmol Rattan Sidhu, Additional Advocate General, Haryana.

## JUDGMENT

**R.S. MADAN, J.**

(1) This order will dispose of CWP No. 7746 of 2006 by which the petitioner has impugned the quashing of order dated 28th April, 2005 (Annexure P-13) passed by respondent No. 4 by which the petitioner's service has been dismissed in a totally illegal and arbitrary manner without any application of mind as well as order dated 29th August, 2005 (Annexure P-15) passed by respondent No. 3 in appeal filed by the petitioner and order dated 20th February, 2006 (Annexure

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P-16) by which the mercy petition filed by the petitioner before respondent No. 1 has been rejected.

(2) Brief facts of the case are that petitioner-Satpal Khan was selected as a Constable in Haryana Police and he was sent for training at Madhuban, Karnal on 17th June, 2002, where he was supporting beard and there was no objection from any corner qua the keeping of beard by the petitioner by any authority. The petitioner was issued two photo identity cards duly signed by the D.G.P. Haryana wherein his full grown beard has been shown without any objection. One identity card was given to the petitioner at the time of his training i.e. when the petitioner was in the Police Training College, Madhuban, Karnal and in the photograph pasted on that card, the petitioner has been shown with full beard. It is the case of petitioner that right from the date of his initial appointment and submission of form for a selection of the Constable in Haryana Police he was supporting beard and there was no objection raised by any officer of Haryana Police at any stage *qua* the keeping of the beard by the petitioner. All facts were to the knowledge of the respondents that the petitioner is supporting full grown beard right from the first day of his selection as Constable, which is clear from the photocopies of identity cards (Annexure P-1).

(3) During the period the petitioner had served in Haryana Police, he was awarded Commendation Certificate for displaying good work with honesty, fiedility and industry and was given a cash reward of Rs. 50,—*vide* Annexure P-2.

(4) On 13th December, 2003 the petitioner was informed that even under the law/instructions, the Muslims can keep the beard but after taking the permission of the higher authorities upon which the petitioner immediately submitted an application to the higher authorities at Hoshiarpur to seek permission to keep his beard,—*vide* Annexure P-3.

(5) On 18th February, 2002, the Government of Haryana has issued the instructions which were circulated on 1st March, 2002 on the subject of keeping the beard, by adopting the instruction of Government of India dated 27th June, 2001. As per the instructions dated 27th June, 2001, a member of force belonging to the Muslim community may be permitted to keep beard on the religious ground

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provided a permission by the Commandant of force is granted in this regard to him. The only requirement is that beard shall be kept duly trimmed, neat and tidy as mentioned in the instructions (Annexure P-4). To its utter dismay it was on 15th September, 2004 (Annexure P-5) respondent No. 4 ordered a regular enquiry against the petitioner for disobeying the orders of the officers at STC/BSF Kharka, Hoshiarpur qua not shaving of his beard.

(6) The petitioner was charge-sheeted in a regular enquiry conducted by the enquiry officer and it was observed that since the petitioner did not seek any permission of the higher authorities to keep beard and he refused to shave his beard amounting to misconduct and carelessness. The enquiry officer held the enquiry and accepted all the facts that the petitioner was supporting the beard from the day he entered into service and there was no objection. It was further held that an employee can only keep beard after taking prior permission from his superiors but as no permission has been sought by the petitioner, therefore, he could not have kept the beard and held the petitioner guilty of charge. It is further the case of the petitioner that Enquiry Officer did not take into consideration the relevant facts that once the petitioner was supporting beard at the time of his entry into service and there was no objection, raised by any quarter, it shall be deemed that permission was granted.

(7) In pursuance of the said enquiry, respondent No. 4 issued a show cause notice to the petitioner as to why he should not be dismissed from service keeping in view the fact that the Enquiry Officer has held him guilty as is evident from Annexure P-10 (Enquiry Report). The petitioner immediately replied and again reiterated all the facts,—vide Annexure P-11 that he was supporting beard at the time of his initial appointment and that no objection was raised by any quarters. The petitioner was supplied the enquiry report and the petitioner gave his comments against the said enquiry report by the letter dated 17th February, 2005 (Annexure P-12).

(8) After noticing all the facts and considering the reply respondent No. 4 passed an order of dismissal on 28th April, 2005 (Annexure P-13) only on the ground that the petitioner never sought any permission to keep his beard from his superiors according to the instructions.

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(9) Aggrieved by the impugned order the petitioner submitted a detailed representation which was dismissed on 29th August, 2005 (Annexure P-15). Mercy petition of the petitioner before the Government was also rejected on 20th February, 2006 (Annexure P-16) and the same was conveyed through the letter dated 1st March, 2006.

(10) On this background, the petitioner sought the indulgence of this Court to issue a writ of certiorari quashing the order dated 28th April, 2005 (Annexure P-13),—*vide* which the service of the petitioner was dismissed in an illegal and arbitrary manner as well as the order dated 29th August, 2005 (Annexure P-15) passed by respondent No. 3 in appeal and the final order passed by the Government on the mercy petition dated 20th February, 2006 (Annexure P-16).

(11) Upon notice, reply on behalf of respondent Nos. 1 to 4 has been filed and all the facts were admitted but it was pleaded therein that since the petitioner had not sought the requisite permission of his superior as per the instructions dated 27th June, 2001 issued by the Government of India and adopted by the Government of Haryana on 18th February, 2002 (Annexure P-4). The petitioner has no *locus standi* to challenge his termination, thus, prayer in the claim petition filed by the petitioner be rejected.

(12) We have heard Mr. Arun Palli, Advocate appearing for the petitioner and Dr. Anmol Rattan Sidhu, Additional Advocate General, Haryana and perused the documents.

(13) At the very outset the learned counsel for the petitioner submitted that the punishment awarded to the petitioner is not in commensurate with the conduct of the petitioner, if any, because the petitioner was selected as a constable with supporting beard. He further referred to the Identity Cards (Annexure P-1) where the petitioner is shown with supporting beard and the said photographs have been duly attested by the D.G.P., Haryana without there being any objection. The petitioner served the Department of Police for a period of two years. It was for the first time when he was sent for weapon training at B.S.F. Kharka, Hoshiarpur, he was directed to trim his beard as he had not sought permission from his superior. Immediately, thereafter, the petitioner applied for permission to keep beard on the religious ground. In support of his arguments learned

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counsel referred to the instructions issued by the Government of Haryana Annexure P-4. Relevant portion of the instructions is reproduced hereunder :—

“Copy of letter No. 14/4/2001-3H(C) dated 18th February, 2002 from the Financial Commissioner, Secretary to Government, Haryana, Home Department and Addressed to the Director General of Police, Haryana Subject : Keeping of beard by the personnel of the para military forces instruction regarding.

Reference your letter No. 1889/GA-1, dated 5th February, 2002 on the subject noted above.

2. The requisite copy is sent herewith for necessary action.

OFFICE OF THE DIRECTOR GENERAL OF POLICE,  
HARYANA POLICE

Endst. No. 3361—3402/GA-1, dated Panchkula the 1st March, 2002.

A copy alongwith its enclosure is forwarded to the All Heads of the Police Offices in Haryana for information and ensure compliance.

(Y.P. SINGAL)

D.I.G./Admn.

For Director General of Police, Haryana.

Endst. No. 3403/GA-1, dated Panchkula the 1st March, 2002.

A copy alongwith its enclosures is forwarded to the Financial Commissioner and Secretary to Government (Hr.) Home Department w.r.t. his memo No. 14-4-2001-3H(C), dated 18th February, 2002 for information.

(Y.P. SINGAL)

D.I.G./Admn.

For Director General of Police, Haryana.

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**INSTRUCTION ON KEEPING BEARD BY THE PERSONNEL  
OF THE PARA-MILITARY FORCES**

With a view to being about consistency and uniformity in dealing with the question of wearing of beard by the members of the para-military forces under the control of the Ministry of Home Affairs, the following instructions are issued :

- (A) General policy regarding growth (not legible)
- (i) Non-Sikh Personnel—The hair of the head will be kept short. The chin and underlip will be shaved. Whiskers and mustaches, if worn, will be of moderate length and well kept.
  - (ii) Sikh Personnel—Sikh personnel will dress up their hair and beards, "Thathas" will be not used over beard when in uniform.
  - (iii) Women Personnel—in the case of women serving in the para-military forces, hair will be neatly kept, make-up if used will be inconspicuous and in soft tones.

(B) Request for wearing beards.

A supervisory officer not below the rank of Commandant or equivalent may permit a member of the Force under his control to keep beard under the following conditions :—

- (i) A member of the Force belonging to the Muslim community may be permitted to keep beard on religious grounds. Once permission is given, the member concerned will have to wear it consistently for the rest of his service period unless permitted upon written request to remove it. The beard shall be kept duly trimmed (not legible) files of the individuals. Photographs of such person with or without beard as permitted will also be kept in the relevant service roll/personnel files and may also be used on the identity card."

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(14) Thus, according to the learned counsel for the petitioner, the petitioner was not aware of these instructions at the time of his appointment and as soon as this came to his notice, he had applied for the permission to keep the beard as is evident from Annexure P-3. But despite all the facts, he was chargesheeted and the regular enquiry was conducted by the competent authority. He was found guilty for violating the instructions of the Government by not shaving his beard.

(15) On the basis of enquiry report, the petitioner was served with a notice by the competent authority to show cause as to why his services be not dismissed. Thereafter, his services were dismissed. He preferred an appeal before the learned D.G.P. and his appeal was dismissed. His mercy petition was also dismissed by the Government.

(16) On the other hand in support of his arguments reference was made to the judgment rendered by a Division Bench of the Hon'ble Delhi High Court in C.W. No. 3263 of 1999, titled as **Haider Ali versus Union of India and others**, decided on 20th December, 2002, wherein a similar question was considered and their Lordship's observed that the action initiated against the petitioner is bad and quashed the order of dismissal and reinstated the petitioner with all consequential benefits including backwages under Rules.

(17) Aggrieved by the aforesaid judgment the respondent-Union of India filed Special Leave Petition (Civil) No. 12386 of 2003, which was dismissed by the Hon'ble Apex Court, upholding the orders passed by the Hon'ble Delhi High Court.

(18) On the other hand learned counsel for the respondents contended that since no permission was taken by the petitioner therefore, orders of dismissal passed by the competent authority, appellate authority and the Government of Haryana are valid and do not suffer from any infirmity and the same have been passed keeping in view the instructions of the Government of India dated 27th June, 2001 and adopted by the Government of Haryana on 18th February, 2002.

(19) After considering the submissions of the learned counsel for the parties, we are of the view that the petitioner has joined the service having full beard as a Constable in the Haryana Police and



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continued to work for a period of two years. No authority/superior had ever objected to the keeping of beard during his service period. He was found to be disciplined member of the force and was awarded Commendation Certificate and rewarded Rs. 50 for his meritorious service by the D.G.P., Haryana,—*vide* Annexure P-2. The Identity Cards (Annexure P-1) in which the photographs of the petitioner have been duly attested by the D.G.P., Haryana further corroborated the factum of the petitioner keeping beard at the time of his selection and when he was undergoing training in the Police Training College, Madhuban.

(20) On learning about the instructions, the petitioner applied for permission to keep beard on religious ground being a member of the force belonging to the Muslim community,—*vide* Annexure P-3, which remained undecided. Therefore, it cannot be said that the petitioner did not apply for permission to keep beard in the rest of his service career. In the case of a Sikh candidate no permission is required because his religion permits to him to keep the beard. In the case of a Muslim the instructions of the Government of India are very clear to allow to keep the beard. The authorities could not throw away the petitioner out of service on the ground of caste, colour and religion as it is one of the fundamental right of the petitioner under Articles 14/16 of the Constitution of India. The instructions issued by the Government cannot take away the fundamental rights of a citizen of the country as enshrined in the Constitution of India.

(21) We, therefore, feel that the action of the respondents in this case is illegal, unwarranted, uncalled for and amounts to violation of the fundamental rights of the petitioner, to keep beard being a member of the Muslim community. We, therefore, allow the writ petition and quash the order dated 28th April, 2005 (Annexure P-13) passed by respondent No. 4, order dated 29th August, 2005 (Annexure P-15) passed by respondent No. 3 in appeal filed by the petitioner and order dated 20th February, 2006 (Annexure P-16) passed by the Government on the mercy petition of the petitioner.

(22) Respondents are directed to reinstate the petitioner forthwith and grant him all consequential benefits including backwages as per Rules.

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**R.N.R.**