petitioner cannot be accepted at this belated stage, as he has not offered any explanation to the prolonged delay. The submission of the learned counsel cannot be accepted at this stage particularly in view of the judgments of this Court cited to herein earlier.

As the respondents have not been in a position to show that the disease alleged to have been acquired by the petitioner was not attributable to the army service, and the petitioner has proved that he was hale and healthy at the time he joined army service and remained as such during the such service when he was periodically checked up, his prayer in the petition, being genuine, legal and valid is required to be accepted. Under the circumstances, this petition is allowed by giving direction to the respondents to admit, sanction and pay disability pension to the petitioner at the rate of 50 per cent disability with effect from 25th March, 1966 at the rates admissible from time to time. The prayer of the petitioned for the grant of interest at the rate of 18 per cent annum is declined under the peculiar circumstances of this case. No costs.

R.N.R.

Before : Hon'ble J. L. Gupta, A. L. Bahri & N. K. Kapoor, JJ.

SHER SINGH, EX-CONSTABLE,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 5569 *of* 1992

February 2, 1994

Punjab Police Rules, 1934—*Rls.* 12.21, 16.24, 19.1. 19.3 *and* 19.5—*Constitution of India,* 1950—*Art.* 311—*Discharge of Constable from service under rule* 12.21 *within* 3 *years—Satisfaction of Superintendent of Police that Constable is not likely to prove an efficient police officer is final—There is no bar in rule* 12.21 *from discharging Constable if opinion is formed on assessment and relevant material—Even in the face of specific allegation of misconduct, constable can be discharged—However, only when punishment is sought to be imposed on a Constable, that provisions of rule* 16.24 *and Article* 311 *are attracted and a regular enquiry must follow—It is open to the Superintendent of police to resort to either of these modes—Precedents—Binding nature of—Law laid down by Benches of the Supreme Court has to be followed by High Court in preference to later but smaller benches.*

Held, that the opinion as required under rule 12.21 has to be formed by the Superintendent of Police. The reports submitted by the Sub Inspector or the Inspector represent their assessment regarding the work and conduct of the Constable. These are not necessarily binding on the Superintendent of Police.

(Para 20)

Held, that on a consideration of rules 19.1, 19.2, 19.3 and 19.5, it appears clearly that for a period of three years, a constable is under suveillance. He is being watched. He is kept under close supervision. He has no right to the post. His service are terminable at any time during this period of three years. He can secure his position in the Service only if he convinces the Superintendent of Police that he is likely to prove an efficient police officer.

(Para 21)

Held, that the rules contain the necessary guide-lines for the Superintendent of Police on the basis of which he has to form an opinion regarding a constable. If on a consideration of the relevant material, the Superintendent of Police finds that a particular constable is not active, disciplined, self-reliant, punctual, sober, courteous or strainght-forward or that he does not possess a knowledge of the technical details of the work required of him, he can reasonably form an opinion that he is not likely to prove an efficient police officer. It is, thus, of utmost importance that he possesses the qualities enumerated in Rule 19.1 in ample measure.

(Para 22)

Held, that the opinion formed under rule 12.21 not only on the basis of the periodical reports recorded on the performance of a constable, but also on any other data or information which may be available to the Superintendent of Police. This, is of course, subject to the condition that the Superintendent of Police cannot act arbitrarily. The opinion should not be whimsical. The opinion, though subjective, has to be formed on some objective data. So long as this requirement is fulfilled, the action would normally be within the ambit of Rule 12.21.

(Para 23)

Held, that it cannot be said that merely because an allegation has been made against the employee that the procedure as laid down under Rule 16.24 for the purposes of holding regular departmental enquiry and the provisions of Art. 311 of the Constitution have to be followed. When an employee is working on temporary basis or is on probation, he has no right to the post. His services can be terminated at any time. Even in a case where the work and conduct of the employee have remained satisfactory for a certian duration of time but suddenly a complaint is received against him, the employer has the two fold choice. The employer can either proceed to terminate the services of the employee in accordance with the terms of appointment and the rules governing the service or if the employer feels

that the allegations are serious and the employee does not deserve to be merely discharged from service and should be punished so that he is unable to join any other service, it can proceed in accordance with the Rules to take penal action. In the latter case, if the employer decides to impose a major penalty the procedure prescribed in Chapter 16 and more particularly Rule 16.24 and the requirements of Art. 311 of the Constitution of India have to be complied with. However, if the employer decides not to punish the employee and to merely take action in accordance with the terms of appointment, the procedure as laid down under Rule 16.24 or Art. 311 of the Constitution of India is not required to be followed.

(Para 24)

Held, that the rule does not enjoin upon the authority to wait for a constable to commit '*consistent lapses or misbehaviour*'. A Single act of indiscipline can lead the competent authority to conclude that the constable is unlikely to prove an efficient police officer and to discharge him from service. In this situation, it does not appear to be possible to accept the view taken by the Division Bench in the case of *Dinesh Kumar* v. *State of Haryana* 1992 (1) S.L.R. 582. It is, consequently over-ruled.

(Para 31)

Held, that the reports under Rule 19.5 have to be recorded and submitted by the Sub Inspector or the Inspector under whom the constable is working. The assessment recorded by these officers is not binding on the Superintendent of Police. Furthermore, even in a case where the periodic reports are good, some material can come to the notice of the authority which may show that the concerned constable is not likely to become a good police officer. There may be a complaint against a constable which may show that his integrity is doubtful or that he is not disciplined. If on the basis of such a material, the Superintendent of Police forms an opinion that the constable is unlikely to become an efficient police officer, there is nothing which debars him from passing an order of discharge under Rule 12.21.

(Para 36)

In summing up, held, that a Constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment in spite of the fact that there is a specific allegations which may even amount to misconduct against him ;

(2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material ; and

(3) The provisions of Rule 16.24 and Article 311 shall be attracted only when the punishing authority decides to punish the constable.

(Para 36)

Held, that even if it is assumed, that the three cases referred to above, represent a departure from the old and traditional view expressed by the Larger Benches, we follow as we are bound to, the view expressed and the law as laid down by the Constitution Benches. (Para 30)

1. Dinesh Kumar *v.* State of Haryana, 1992 (1) S.L.R. 582. (Over-ruled)

2. Rajinder Kaur *v.* Punjab State and another, 1986 (2) S.L.R. 78.

3. Hardeep Singh *v.* State of Haryana, 1987 (4) S.L.R. 576.

4. Sukhbir Singh Etc. *v.* State of Haryana and others, (C.A. Nos. 93—95 of 1989) (Distinguished)

JUDGMENT

Jawahar Lal Gupta, J.

(1) Can a constable be discharged from service under Rule 12.21 of the Punjab Police Rules, 1934 at any time within three years of his enrolment in spite of the fact that there is a specific allegations which may even amount to misconduct against him ?

(2) This is the primary question that arises for consideration in this bunch of 12 writ petitions which have been placed before this Bench in pursuance to the orders of references passed by two different benches. Civil Writ Petition No. 19637 of 1991 was referred to a larger Bench by V. K. Bali, J.,—*vide* order dated July 20, 1993. Thereafter a Division Bench of which two of us were members passed an order in C.W.P. No. 5569 of 1992 for placing the matter before a larger Bench. As a result, these petitions have been listed for hearing before this Full Bench.

(3) The factual matrix of these cases lies within a very narrow compass. It is averred that the petitioner in C.W.P. No. 5569 of 1992 was alleged to have refused to acknowledge an order of his posting by signing it and had even failed to carry out the directions asking him to work as Orderly in the office of Deputy Inspector General of Police, Hissar. In the other 11 cases, the petitioners were alleged to have remained absent from duty for different durations of time. Learned counsel for the parties have primarily referred to the factual position in C.W.P. No. 5569 of 1992. It may be briefly noticed.

(4) The petitioner was selected for recruitment as a constable on December 8, 1988. On August 29, 1991 he was treated for infected scabies at the Goernment Hospital Hissar. On September 7, 1991, he proceeded on five days' leave to lookafter his ailing father in village Bhattu Kalan. While on leave, the petitioner had itch, rash and cracks on his hands. He was treated at the Civil Health Centre, Bhattu Kalan. He was even advised rest for three days. In spite of this, he reported for duty on September 13, 1991. On the same day, he was directed to work as office Orderly with the Deputy Inspector General of Police, Hissar. Apprehending that there may be an objection to his working in the office of Deputy Inspector General of Police on account of the infection on his hands he requested that somebody else may be posted there. Consequently he did not join duty in accordance with the directions given to him. He worked at different places till September 19, 1991 when he was informed that he had been discharged from service under Rule 12.21. A copy of the order of discharge has been produced as Annexure P.5 with the writ petition. The petitioner vers that he has been dismissed from service on account of the alleged misconduct of not acknowledging the order by signing it and not joining duty. He submits that the order is vitiated as the procedure prescribed under Rule 16.24 and Art. 311 of the Constitution of India have not been followed. He has prayed that the impugned order be set aside and that he be reinstated in service with all consequential benefits.

(5) In the written statement filed on behalf of the respondents through Mr. P. V. Rathee. I.P.S. Superintendent of Police, Hissar, it has been *inter alia* averred that when the petitioner reported for duty after availing of the leave, he was asked to work as Orderly in the office of Deputy Inspector General of Police. He had refused to sign the entry which had been made in the Daily Diary Register regarding his posting in the office of the Deputy Inspector General and to obey these orders. It has been further averred that the competent authority had passed the impugned order after considering the entire service record of the petitioner and after it had formed an opinion that he "was not likely to prove an efficient police officer.....". According to the respondents, the petitioner has been merely discharged under Rule 12.21 and not dismissed from service. It is averred that the provisions of Article 311 of the Constitution of India or Rule 16.24 are not applicable to the facts of the case. On these premises, the respondents claim that the order is perfectly legal and deserves to be sustained.

(6) We have heard learned counsel for the parties. Mr. P. S. Patwalia who has mainly argued the case on behalf of the petitioners

has contended that the impugned order is punitive as it has been passed on the ground of alleged disobedience of the directions given to him. Learned counsel has submitted that the power under Rule 12.21 can be invoked only to weed out inefficient persons, but not to remove those who had been accused of 'misconduct'. According to the learned counsel in a case where some specific allegation has been made, it is incumbent on the employer to hold a regular enquiry in accordance with the prescribed procedure. This having not been done, the counsel submits that the action is illegal and cannot be sustained.

(7) On the other hand, Mr. H. L. Sibal, Advocate General, Haryana has contended that for three years after his enrolment a constable has no right to the post and his services can be terminated at any time if the competent authority forms an opinion that he is not likely to prove an efficient police officer without resorting to the provisions of Rule 16.24. or Article 311 of the Constitution of India.

(8) The vexed question of distinction between 'discharge' and 'dismissal' has confronted Courts for a long time. On behalf of the employee, it has been normally contended that "it does not matter to a fish whether it is fried or roasted." Every order of termination results in removal from service and such an action must conform to the basic principles of natural justice and the rules prescribing the procedure for taking punitive action. On the other hand the employer basically relies on its right under the contract of employment or the rules governing the service to maintain that when the employee has no right to the post he can be sacked without ceremoney. The judicial pronouncements have invariably accepted this contention. A few of these, especially those delivered by the Constitution Benches of the Supreme Court may be noticed.

(9) In *Parshotam Lal Dhingra* v. *U.O.I.* (1), their Lordships were placed to *inter alia* hold as under :—

> "(25) It follows from the above discussion that both at the date of the commencement of the 1935 Act and of our

(1) A.I.R. 1958 S.C. 36.

Constitution the words "dismissed", "removed" and "reduced in rank" as used in the service rules, were well understood as signifying or denoting three major punishments which could be inflicted on Government servants. The protection given by the rules to the Government servants against dismissal removal or reduction in rank which could not be enforced by action was incorporated in sub-sections (1) and (2) of Section 240 to give them a statutory protection by indicating a procedure which had to be followed before the punishments of dismissal removal of reduction in rank could be imposed on them and which could be enforced in law. These protections have now been incorporated in Article 311 of our Constitution. The effect of Section 240 of the 1935 Act reproduced in Articles 310 and 311, as explained by this Court in *S. A. Venkataraman* v. *Union of India*, 1954 SCR 1150 : (AIR 1954 SC 375) (Y) has been to impose a letter on the right of the Government to inflict the several punishment therein mentioned. Thus under Article 311(1) the punishments of dismissal, or removal cannot be inflicted by an authority subordinate to that by which the servants was appointed and under Article 311(2) the punishments of dismissal removal and reduction in rank cannot be meted out to the Government servant without giving him a reasonable opportunity to defend himself. The principle embodied in Article 310(1) that the Government servants hold office during the pleasure of the President or Governor, as the case may be, is qualified by the provisions of Article 311 which give protection to the Government servants. The net result is that it is only in those cases where the Government intends to inflict those three forms of punishments that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. *It follows therefore that if the termination of service is sought to be brought about otherwise than by way of punishment, then the Government servant whose service is so terminated cannot claim the protection of Article 311(2) and the decisions cited before us and referred to above, in so far as they lay down that principle, must be held to be rightly decided.*"

(Emphasis supplied).

Thereafter in *Jagdish Mitter* v. *U.O.I.* (2), it was observed as under :—

> "On the authority of the decision of this Court in the case of Parshotam Lal Dhingra, 1958 SCR 828 : (AIR 1958 SC 36) it must be held that the termination of services of the temporary servant which *in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule cannot, in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct.*"
>
> (Emphasis supplied).

In *Champaklal Chiman Lal Shah* v. *U.O.I.* (3), in paragraph 11, their Lordships were pleased to observe as under :—

> "It is well known that government does not terminate the services of a public servant be he even a temporary servant, without reason; nor is it usual for government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly, a government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, *the government may find it necessary to terminate the services of temporary servant if it is not satisfied with his conduct or his suitability for the job* and for his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant may

(2) A.I.R. 1964 S.C. 449.
(3) A.I.R. 1964 S.C. 1854.

arise on complaint against him. *In such cases two courses are open to Government. It may decide to dispense with the services of the servant or revert him to substantive post without any action being taken to punish him for his bad work and/or conduct. Or the government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Article* 311(2)..."

(Emphasis supplied).

In *A. G. Benjamir* v. *Union of India* (4), it was observed as under :—

"It is true that the tenure held by a temporary Government servant is of a precarious character. His services can be terminated by one month's notice without assigning any reason either under the terms of the contract which expressly provide for such termination or under the relevant statutory rules governing temporary appointments. Such a temporary servant can also be dismissed in a punitive way. In *other words, the appropriate authority possesses two powers to terminate the services of a temporary public servant. It can either discharge him purporting to exercise its power under the terms of contract or the relevant rule, and in that case, the provisions of Article* 311 *will not be applicable. The authority can also act under its power to dismiss a temporary servant and make an order of dismissal in which case the provisions of Article* 311 *will be applicable.*"

(Emphasis supplied).

Their Lordships further observed as under :—

"Even in a case where a formal departmental inquiry is initiated against a temporary Government servant it is we think, open to the authority to drop further proceedings in the departmental enquiry *and to make an order of discharge simpliciter against the temporary Government servant.* We do not accept the contention of counsel

(4) 1967 (1) L.L.J. 718.

for the appellant that once the formal departmental proceedings have been initiated it is not open to the authority concerned to drop them and to take the alternative course of dicharging the temporary Government servant in terms of the contract of services or the relevant statutory rule. It is possible that the authority takes the view that the stigma of the order of dismissal should be avoided in the individual case.....".

(Emphasis supplied).

(10) Finally, on a review of the various judgments, their Lordships of the Supreme Court (this was not a Constitution Bench) in *State of U.P.* v. *Kaushal Kishore Shukla* (5), have summarised the position of law in the following words :—

"Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his *unsuitability misconduct or inefficiency it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant.* If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In *Parshotam Lal Dhingra* v. *Union of India,* a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions the

(5) 1991 (1) S.C.C. 691.

court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests namely : (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment. *It must be borne in mind that a temporary government servant has no right to hold the post and termination of such a government servant does not visit him with any evil consequences.* The evil consequences as held in Parshotam Lal Dhingra case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra case has been reiterated and affirmed by the Constitution Bench decisions of this Court in *State of Orissa* v. *Ram Narayan Dass, R. C. Lacy* v. *State of Bihar, Champaklal Chimanlal Shah* v. *Union of India, Jagdish Mitter* v. *Union of India, A. G. Benjamin* v. *Union of India, Shamsher Singh v. State of Punjab*. These decisions have been discussed and followed by a three Judge Bench in State of *Punjab* v. *Sukh Raj Bahadur.*"

(Emphasis supplied).

Some of the propositions which can be culled out from these decisions are :—

(i) If a person has been employed on purely temporary basis and his services are terminated on account of his unsuitability or some alleged misconduct by a simple and innocuous order which carries no stigma or penal consequences, the provisions of Article 311 (2) are not attracted unless it is shown by some evidence that the authority actually intended to punish the employee.

(ii) The employer is entitled to conduct a preliminary enquiry to determine the truth or falsehood of the complaint as also the suitability of the employee. Such an enquiry cannot by itself imply that the employer intended to punish the employee.

(iii) In a case where allegations amounting to misconduct are made against a temporary employee the employer has a two-fold choice. It can either choose to terminate the services of the employees in accordance with the terms of appointment and the rules governing the service or it can proceed to take punitive action. If it chooses to invoke its right under the contract of service and passes a simple order of termination/discharge, the provisions of Article 311 or the rules prescribing the procedure for imposition of a penalty are not attracted. However, if the employer feels that the employee deserves to be punished and proceeds to take punitive action, the prescribed procedure and the provisions of Article 311 of the Constitution of India have to be followed."

(11) It is in the background of this position of law that the contentions raised by the counsel for the parties have to be examined.

(12) It is the admitted position that identical orders have been passed in all the cases. For facility of reference, the order impugned in CWP No. 5569 of 1992 may be noticed. It is in the following terms :—

"Constable Sher Singh No. 1655/HSR is not likely to become an efficient Police Officer. He is therefore discharged from force with effect from 16th September, 1991 under PPR 2.21.

Issue orders in O.B.

Sd/- Superintendent of Police,
Hissar.

No. 19247—50, dated 16th September, 1991."

(13) On behalf of the petitioners it has been contended that the order has been passed by way of penalty and is not within the provision of Rule 12.21. Is it so ? In order to answer this question, a few provisions of the Rules to which reference has been made by the learned counsel for the parties may be noticed. The first of these provisions of contained in Rule 12.21. It reads as under :—

"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."

Reference has also been made to the provisions contained in Chapter 19. These too may be briefly noticed.

Rule 19.1 emphasises the importance of training. Rule 19.2 *inter alia* provides that the recruits shall not be passed into the ranks until they have undergone six months 'training and instruction. Rules 19.3 and 19.5 which have been referred to by the learned counsel in particular provide as under :—

"19.3 (1) At the completion of the training laid down, recruits shall be examined on parade by a gazetted officer or reserve inspector in each of the subjects taught in the course mentioned in rule 19.2 (2) (a) and marks awarded.

(2) An officer shall be appointed by the Superintendent of Police to examine recruits in each subject taught in the headquarters lines school."

(14) The list of recruits examined according to this rule, together with the marks awarded, shall be forwarded to the Superintendent of Police who shall decide in the case of the first examination whether the men shall be passed discharged under rule 12.21 or given further training. As regards the second examination he shall ordinarily discharge a recruit under rule 12.21 grant him a certificate of education of the 1st or 2nd class to be inserted in his character roll or remand him for a further period of instruction.

(15) A certificate of education of the 1st class shall mean that the recruit is sufficiently educated to enable him to learn the duties of an assistant clerk of a police station. A certificate of education of the 2nd class shall mean that the recruit is able (1) to read and writ simple Urdu sentences; (2) to tell the time on a clock; (3) to read Roman figures and numerals and to do very simple sums of addition subtraction and division. In cases in which recruits are illitrate or nearly so Superintendents of Police may pass them into the ranks without a certificate of education when they are above the average standard in other respects.

"19.5 (1) The fact that a recruit has been passed into the ranks under rule 19.3 shall not be taken to mean that he is a fully trained constable. A constable under three

years' service is at any time liable to discharge under rule 12.21. During the whole of this period he shall be kept under close supervision and reported on at intervals of six months in Form 19.5 (1) by the Sub-Inspector or Inspector or under whom he is working through his gazetted officer to the Superintendent of Police.

(16) The orderly head-constable shall maintain a list of constable under three years service. He shall submit the name of each man a month before he is due for confirmation to the Superintendent together with his personal file which shall contain the form 19.5 (1) referred to in this rule.

(17) Gazetted officers are expected to make themselves acquainted, as far as possible, with the characters and careers of all constables under three years' service and shall be responsible that the names of men unlikely to make efficient police officers are brought to the notice of the Superintendent.

(18) (2) On being transferred from the line after completion of his training in the first reserve, a constable under three years' service shall be instructed in the practical duties of a constable by the Inspector or Sub-Inspector under whom he is serving. He shall be sent out on beat, patrol, traffic and other duties with a selected senior constable who shall be made to feel his responsibility for the instructions of the youngerman."

(19) On a perusal of these rules, it appears that a selected candidate has to undergo the prescribed training. An examination is held at the end of the training. In case, he fails to pass the examination, he can be discharged in view of the provisions of Rule 19.3(2) under Rule 12.21. However, if he passes the examination, he gets into the ranks. Still in view of the provisions of Rule 19.5 he is liable to be discharged at any time within three years under Rule 12.21. During the period of three years, he is kept under close supervision and six monthly reports on his performance have to be submitted by the Sub-Inspector or the Inspector under whom he is working to the Superintendent of Police. In case, it is found that he is likely to prove an efficient police officer, he can be confirmed. Otherwise, the Superintendent of Police has the power to discharge him "at any time within three years" of enrolment." The opinion as required under Rule 12.21 has to be formed by the Superintendent of Police. The reports submitted by the

Sub-Inspector or the Inspector represent their assessment regarding the work and conduct of the constable. These are not necessarily binding on the Superintendent of Police.

(20) On a consideration of the rules, it appears clearly that for a period of three years, a constable is under surveillance. He is being watched. He is kept under close supervision. He has no right to the post. His service are terminable at any time during this period of three years. He can secure his position in the Service only if he convinces the Superintendent of Police that he is likely to prove an efficient police officer.

Mr. Patwalia, however, contends that the power under Rule 12.21 can be invoked only to weed out a constable who is not efficient. He submits that the rule does not authorise the Superintendent of Police to remove a person, who is alleged to have disobeyed an order or remained absent from duty.

(21) Necessarily the question that arises is as to when can a person be said to be not efficient ? Ordinarily, according to the dictionary a person is said to be efficient when he can perform a task "in the best possible manner". Efficiency in its ordinary sense means "suitability for a task or purpose." In fact, even the rules contain a clear indication regarding the qualities which a constable must possess. While emphasising the importance of training, Rule 19.1 specifically provides that "the object of such Training shall be to inculcate in police officers habits of physical health, activity, discipline, self reliance observation, punctuality, sobriety, courtesy and straight forwardness of dealing in the execution of their work as also a knowledge of the technical details of the work required of them." These are the qualities which an efficient police officer must possess. One who lacks any of these qualities cannot be said to be efficient. The rules contain the necessary guidelines for the Superintendent of Police on the basis of which he has to form an opinion regarding a constable. If on a consideration of the relevant material, the Superintendent of Police finds that a particular constable is not active, disciplined, self-reliant, punctual, sober, courteous or strainght forward or that he does not possess a knowledge of the technical details of the work required of him, he can reasonably form an opinion that he is not likely to prove an efficient police officer. In such a situation, the Superintendent of Police can invoke his power under Rule 12.21 which only embodies a facet of the doctrine of pleasure as contained in Article 310 of the Constitution of India. He can discharge the constable from the force.

(22) Another fact which deserves to be mentioned is that every police officer wields wide and varied powers. A man in uniform is the embodiment and symbol of Government's authority. It is through him that the Government acts to assert its power and can deny a citizen even his right to life and liberty. It is thus of utmost importance that he possesses the qualities enumerated in Rule 19.1 in ample measure. However, if on account of one reason or the other, the Superintendent of Police, who is the head of the force in the district forms an opinion that a constable is not likely to become an efficient police officer, he has been given the power to discharge him from service. This opinion can be formed not only on the basis of the periodical reports recorded on the performance of a constable, but also on any other data on information which may be available to the Superintendent of Police. This is, of course, subject to the condition that the Superintendent of Police cannot act arbitrarily. The opinion should not be whimsical. The opinion, though subjective, has to be formed on some objective data. So long as this requirement is fulfilled, the action would normally be within the ambit of Rule 12.21.

(23) In this context, it is reasonable to assume that no employer terminates the services of an employee, who is good and efficient. It is only when an employee is found to be wanting that an order of termination is passed. If a Superintendent of Police gets reports/ complaints that a constable is not straightforward or that his integrity is suspect or that he is not couteous or that he has failed to acquire any of the qualities noticed above he can pass an order under Rule 12.21. It cannot be said that merely because an allegation has been made against the employee that the procedure as laid down under Rule 16.24 for the purposes of holding regular departmental enquiry and the provisions of Article 311 of the Constitution have to be followed. When an employee is working on temporary basis or is on probation, he has no right to the post. His services can be terminated at any time. Even in a case where the work and conduct of the employee have remained satisfactory for a certain duration of time but suddenly a complaint it received against him, the employer has the two fold choice. The employer can either proceed to terminate the services of the employee in accordance with the terms of appointment and the rules governing the service or if the employer feels that the allegations are serious and the employee does not deserve to be merely discharged from service and should be punished so that he is unable to join any other service, it can proceed in accordance with the Rules to take

penal action. In the latter case, if the employer decides to impose a major penalty, the procedure prescribed in Chapter 16 and more particularly Rule 16.24 and the requirements of Article 311 of the Constitution of India have to be complied with. However, if the employer decides not to punish the employee and to merely take action in accordance with the terms of appointment, the procedure as laid down under Rule 16.24 or Article 311 of the Constitution of India is not required to be followed.

What is the position in these cases ?

(24) The petitioners had admittedly not completed three years' of service. No charge-sheet was issued to anyone of them. No action showing an intention to punish was ever initiated. The impugned orders are simple and innocuous. These cast no stigma. Any one who reads these orders, cannot conclude that there was anything wrong with the work or conduct of any of the petitioners. The orders carry no penal consequences. The averments made by the petitioners that the orders have been passed by way of penalty have been specifically denied. There is nothing on record on the basis of which it can be concluded that the orders have been passed by way of penalty or that the petitioners have been actually punished. The inevitable conclusion is that the orders are not a camouflage for an intention to punish. The mere *ipse dixit* of the petitioners that they have been punished is not enough to hold that they have not been discharged but have been actually punished for the assumed misconduct committed by them. The fact that the petitioner in CWP No. 5569 of 1992 had not acknowledged the receipt of an order or that he had disobeyed it does not necessarily lead to the conclusion that the respondents have punished him. Similarly, the fact that the petitioners had remained absent from duty cannot lead to the only conclusion that they have been punished. These facts could have as well lead the Superintendent of Police to the conclusion that they are not disciplined or punctual and were thus not likely to become efficient police officers. In the absence of evidence, it cannot be held that the orders have been passed as a measure of penalty.

(25) Learned counsel for the petitioners have placed particularly strong reliance on the decisions of the Supreme Court in *Rajinder Kaur* v. *Punjab State* (6), and *Hardeep Singh* v. *State of Haryana* (7), to contend that in a simliar situation the action was held to be

(6) 1986 (3) S.L.R. 78.
(7) 1987 (4) S.L.R. 576.

penal. A reference to the decision in *Rajinder Kaur's* case (supra) shows that their Lordships after considering the entire case had recorded the following finding :—

> "Thus it is clear from these averments that the impugned order of discharge though stated to be made in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934, *is really made on the basis of the misconduct as found on enquiry into the allegation behind her back by the Deputy Superintendent of Police, Garhshankar.* It is not disputed that the enquiry was made without serving her charge-sheet and without giving her and opportunity to explain the charges and the allegations levelled against her. The enquiry was conducted behind her back and on the basis of the result of the investigation she was discharged from service. Therefore in these circumstances, it does not lie in the mouth of the respondents to submit before this Court that the order is an innocuous one and it is an order made simply in accordance with the conditions of her services under Rule 12.21 of the said Rules. On the other hand, in the background of these facts and circumstances it is crystal clear that the impugned order of discharge from service of the appellant was made on the ground of her misconduct and it is penal in nature as it casts a stigma on the service career of the appellant."
>
> (Emphasis supplied)

(26) Further more a perusal of paragraph 13 of the judgment shows that their Lordships found that "the impugned order of discharge though couched in innocuous terms is merely a camouflage for an order of dismissal from service on the ground of misconduct."

(27) In *Hardeep Singh's case* (supra), their Lordships recorded the following finding :—

> "In the instant case, it is clear and evident from the averments made in paragraph 3, sub-para (i) to (iii) and paragraph (v) of the counter-affidavit that the impugned order of removal/dismissal from service *was in substance and in effect in order made by way of punishment after considering the service conduct of petitioner.* There is no doubt the impugned order casts a stigma on the service career of the petitioner and the order being made by way

of punishment, the petitioner is entitled to the protection afforded by the provisions of Article 311(2) of the Constitution as well as by the provisions of Rule 16.24 (IX) (b) of the Punjab Police Rules, 1934. The petitioner has not been served with any charges of misconduct in discharging of his duties as a police constable nor has he ever been asked to show cause against the said charges. The order of removal from service was made because of his union activities namely participating in the call for expressing the protest of the association for improvement in service conditions by abstaining from taking meals in the Mess on 15th August, 1982 although the petitioner like other members of the association performed his duties on that day and did not abstain from duty. It cannot be said in the facts and circumstances of the case that the impugned order is an order simpliciter of removal from service of probationer in accordance with the terms and conditions of the service. The impugned order undoubtedly, tentamounts to dismissal from service by reason of misconduct of the petitioner in discharge of the official duties as police constable. This matter is fully covered by the decision dated October 17, 1984 of the Constitution Bench in *Ajit Singh and Others* v. *State of Haryana and others* (W.P. No. 9345-9498/1983) and we are bound to follow the same."

(Emphasis supplied).

(28) It is thus clear that in both these cases, the Court found that the orders had been passed by way of punishment. Similar was the position in the case of *Sukhbir Singh etc.* v. *State of Haryana and Others* (8), an unreported decision of their Lordships of the Supreme Court. Their Lordships have observed as under :—

"It is mentioned that on 3rd August, 1985 at about 10.30 A.M., the appellants had visited the house of the complainant and had informed the inmates that they desired to search the house as they had information that a girl of ill-repute had been brought to the house. It may be mentioned that the prosecution emanating from the first information report of 9th August, 1985 ended in an order of discharge since the evidence led by the prosecution did not in any

(8) C.A. Nos. 93—95 of 1989.

manner reveal the commission of the alleged offence by the appellants. It is, therefore, clear from the above facts that the real reason for the discharge of the appellants was the incident of 3rd August, 1985. The vague statement that the Superintendent of Police, Bhiwani had taken into consideration the overall work and conduct of the appellants in coming to the conclusion that they were unlikely to prove efficient police officers is only a camoflauge *and the real reason for discharge is the incident of 3rd August,* 1985. *If the real cause for their discharge is the incident of 3rd August,* 1985, *it is clearly action for misconduct and has nothing to do with the efficiency of the appellants.*"

(Emphasis supplied).

(29) Such is not the position in the cases before us. There is nothing on record to indicate that the 'authority' wanted to punish the petitioners. Further more, even if it is assumed, as suggested by the counsel for the petitioners, that the three cases referred to above, represent a departure from the old and traditional view expressed by the larger benches, we follow as we are bound to, the view expressed and the law as laid down by the Constitution Benches.

Reference has also been made to the decision of a Division Bench of this Court in *Dinesh Kumar* v. *State of Haryana* (9). In this case, constable Dinesh Kumar was attending the Haryana Police Meet at Madhuban, where he participated in a Hockey Match. A complaint was filed against him "that he was found absent from the Stadium Guard Duty from 5.00 P.M. to 8.00 P.M. and was found whistling and misbehaving with the passers-by while the games were on. Accordingly, on the very next day on 19th December, 1990, the Commandant 5th Battalion, Haryana Armed Police, Madhuban, discharged him from service under Rule 12.21....." Their Lordships while setting aside the order observed as under :—

"After hearing the learned counsel for the parties, we find that no doubt under Rule 12.21 of the Punjab Police Rules, "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,"

(9) 1992 (1) S.L.R. 582.

but the order of discharge cannot be based on some minor or trivial stray incident, as the language of the rule is clearly indicative of the intention of the rule makers; that the Constable has to be found unlikely to prove an efficient police officer, which can only be on the basis of opinion formed by the authorities by consistent lapses or misbehaviour on the part of the Constable which should be incompatible with his efficiency. These tests are completely missing in the present case and we are satisfied that the impugned order is wholly arbitrary inasmuch as mere absence from duty for a few hours, although even that allegation is disputed by the petitioner, is not sufficient to be the basis of the order of discharge."

(30) With utmost respect it appears that the view taken by their Lordships of the Division Bench is rather liberal. There appears to be nothing in the Rule which may debar the Superintendent of Police from discharging a constable, who is not only absent from duty, but is even found whistling or misbehaving with the public. Nor can it be said that such an act is minor or trivival. The rule does not enjoin upon the authority to wait for a constable to commit '*consistent lapses or misbehaviour*'. A single act of indiscipline can lead the competent authority to conclude that the constable is unlikely to prove an efficient police officer and to discharge him from service. In this situation, it does not appear to be possible to accept the view taken by the Division Bench. It is, consequently over-ruled.

(31) Reference was also made to the decision of a Single Bench of this Court in *Punjab State* v. *Joginder Singh* (10). This case is of no assistance to the petitioner(s). Herein, it was found as a fact that there was absolutely no material on the record to prove "that the plaintiff was not likely to prove a good police officer for which he can be discharged from service under Rule 12.21 of the Rules." This was a case based on entirely different facts and is of no help to the petitioners.

(32) Reference was also made to the decision of a Single Bench of this Court in *Jagjit Singh* v. *Director General of Police and Another* (11). The learned Judge has observed as under :—

"In the Instant case, on July 1, 1985, as stated in the written statement, the petitioner made obscence remarks to

(10) 1989 (3) S.L.R. 665.
(11) 1990 (6) S.L.R. 700.

Smt. Nirmla Devi. The secret enquiry was held by C.B.I., P.R.T.C., Jahan Khelan and the imputations made against the petitioner were found to be correct and the impugned order of discharge was passed on July 6, 1985. The respondents had not disclosed the material on the Government file on the basis of which the impugned order of discharge was passed. The only conclusion deducible is that the foundation of the order of discharge was the misconduct of the petitioner when he made obscene remarks to Smt. Nirmla Devi on July 1, 1985. The pleas taken in the written statement are suggestive of the fact that the order of discharge has got a direct link with the incident dated July 1, 1985. The short circuit method was adopted to avoid the enquiry envisaged by Rule 16.24 of the Rules. If the petitioner has misconducted himself, as is enfolded in the written statement, the proper course would have been to hold departmental enquiry against him under Rule 16.24 of the Rules and thereafter the resultant action would follow. The purpose of the impugned order of discharge is punitive and it cannot be upheld and is liable to be quashed."

(33) On perusal of these observations it is clear that the impugned order was held to have been founded on misconduct and was thus punitive in character. The learned Judge had also noticed that the respondents had not disclosed the material on the Government file on the basis of which the impugned order of discharge was passed. This seems to be a case on its own facts. It cannot be interpretted to mean that whenever there is an allegation amounting to misconduct no order of discharge can be passed.

(34) It is not necessary to multiply the number of decisions of this point especially in view of the fact that various constitution benches of the Supreme Court have consistently taken the view that when an employee has no right to a post and the competent authority is satisfied that his work is not satisfactory or that his continuance in service is not in public interest on account of his insuitability misconduct or inefficiency, it can either terminate his service in accordance with the terms of appointment or the rules governing the service or it may decide to take punitive action against him.

(35) It was also contended that the Superintendent of Police can determine the suitability or otherwise of a constable only on the

basis of the periodic reports recorded under Rule 19.5 we find no basis for such a contention. As already observed, the reports under Rule 19.5 have to be recorded and submitted by the Sub-Inspector or the Inspector under whom the constable is working. The assessment recorded by these officers is not binding on the Superintendent of Police. Furthermore, even in a case where the periodic reports are good, some material can come to the notice of the authority which may show that the concerned constable is not likely to become a good police officer. There may be a complaint against a constable which may show that his integrity is doubtful or that he is not disciplined. If on the basis of such a material, the Superintendent of Police forms an opinion that the constable is unlikely to become an efficient police officer, there is nothing which debars him from passing an order of discharge under Rule 12.21.

No other point was urged.

In view of the above it is held that :—

(1) A constable can be discharged from Service under Rule 12.21 at any time within three years of his enrolment inspite of the fact that there is a specific allegation which may even amount to misconduct against him;

(2) A Superintendent of Police can form his opinion regarding the likelihood or otherwise of a constable making a good police officer not only on the basis of the periodic reports contemplated under Rule 19.5 but also on the basis of any other relevant material; and

(3) The provisions of Rule 16.24 and Article 311 shall be attracted only when the punishing authority decides to punish the constable.

In these case, there is nothing to show that the petitioners have been punished or that the action is not in conformity with the Rules. Consequently there is no merit in these petitions, which are dismissed. The parties are, however, left to bear their own costs.

R.N.R.

Before : Hon'ble G. R. Majithia and S. K. Jain, JJ.

AMARJIT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Civil Writ Petition No. 3941 of 1993

October 15, 1993

Constitution of India, 1950—Art. 226 and 227—Punjab Civil Services (Punishment and Appeal) Rules, 1970—Rule 4(2)—Employee