

(15) In a Judgment reported as **Depot Manager, A.P.S.R.T. Corpn. versus N. Ramulu and another**, (3) the apex court while interpreting Regulation 8(v) Andhra Pradesh State Road Transport Corporation Employees (CCA) Regulations, 1967 and clause (5) thereof, upheld the right of the employer to recover the pecuniary loss caused to him by an employee due to negligence or breach of orders in addition to any other penalty in respect of the same act of negligence or breach of orders. In the said case, the loss caused by the driver due to his rash and negligent driving resulting in the accident was ordered to be recovered from the driver.

(16) In view of the above discussion, we find no ground to quash the order under challenge. The action of the State in recovering a part of the amount awarded from the driver, on account of compensation granted by Motor Accident Claims Tribunal, is thus upheld.

(17) The writ petition is dismissed.

R.N.R.

Before Uma Nath Singh and A.N. Jindal, JJ.

CONST. SURINDER KUMAR,—Appellant

versus

STATE OF HARYANA & OTHERS,—Respondents

LPA No. 37 of 2007 in

C.W.P. No. 5576 of 1992

4th March, 2009

Constitution of India, 1950—Art. 226—Punjab Police Rules, 1934—Rl. 12.8—Absence from duty—Discharge from service of a constable by invoking Rl. 12.21—Charge of habitual absence—Order of discharge stigmatic in nature—Neither any departmental enquiry conducted nor an opportunity of hearing granted to petitioner—Appeal allowed, order of Single Judge set aside while directing authorities to reinstate appellant with full back wages and consequential benefits.

Held, that though the first ground taken is that the appellant was absent from duty in July, 1990, but there is no communication from the police station to the Superintendent of Police concerned and it has been made a ground at later stage for discharge of the appellant from service. Besides, we also notice in the Punjab Police Rules, that there is no specific period of probation prescribed for a police constable and the Rule being placed reliance in this behalf by the police official present in Court, is Rule 12.8 of the Punjab Police Rules, which only deals with Inspectors, Sub- Inspectors and Assistant Sub-Inspectors. We may also like to say that the duties of these officers are more onerous and demanding as they have to conduct investigations apart from maintaining law and order, whereas, as Police Constable has nothing to do with investigation of a criminal case. In view of all the aforesaid and also for the reasons that the impugned order passed by the Superintendent of Police, Jind dated 26th August, 1991 is stigmatic in nature and that no departmental inquiry was conducted wherein the appellant could have been granted an opportunity of hearing, we set aside the impugned judgment passed by the learned Single Judge and quash the order of discharge.

(Paras 7 & 8)

Surinder Kumar, *appellant in person*.

Tej Pal, HC No. 597/Jind, *for respondents*.

UMA NATH SINGH, J.

(1) This LPA arises out of a judgment dated 4th March, 2005, passed by a learned Single Judge of this Court in CWP No. 5576 of 1992, dismissing the writ petition alongwith a group of 11 such cases.

(2) It appears that the appellant was enrolled as Constable in Haryana Police on 11th July, 1989. He successfully concluded his training at Madhuban in April, 1990 and after serving for about 2 months with Haryana Armed Police, Karnal, he was allocated to District Jind and given the Constabulary No. 2/770. In July, 1990, the appellant while posted at Police Station, Narwana was directed to go to police lines,

Jind for some course, but he fell ill on 25th July, 1990 with high temperature and the feeling of nausea. He was examined by one Dr. M.L. Teneja at Sonapat and he also remained admitted as an indoor patient in Pooja Hospital, up to August, 1990, when he was discharged after recovery. The appellant resumed his duty at Police Station, Narwana on 10th August, 1990 and thereafter, he applied for medical leave for the period of absence from duty. On 24th August, 1990, the appellant was sanctioned 7 days leave and then he went to his village. He was to resume his duty on 1st September, 1990, but due to illness of his father, he applied for extension of leave for 2 more days through a telegram. The appellant left his village on 3rd September, 1990 to join his duties at P.S. Narwana, but due to some anti reservation movement in the State, he could not get the vehicle to reach Jind or Narwana, therefore, he got his presence marked at P.S. Sonapat on 3rd September, 1990. As there was a lot of violence and strikes all over Haryana on account of anti Mandal reservation, the appellant could resume his duty only on 7th September, 1990. On August 26, 1991, to his utter shock and surprise, the appellant was informed about the discharge order passed by the Superintendent of Police, Jind under Rule 12.21 of the Punjab Police Rules, on the ground that he was unlikely to prove an efficient police officer.

(3) According to the appellant, even though he had served for about 2½ years and his absence was condoned by granting him leave a year before the order of discharge, he was not given an opportunity of hearing before passing the said order on the ground of habitual absence, which apparently looks to be stigmatic.

(4) In a case with similar circumstances, Hon'ble the Apex Court in its judgment **Major Singh versus State of Punjab (1)** while placing reliance on its earlier judgment, has held in para No. 7 as :—

“....(7). It is now well settled by a catena of decisions of this Court that in order to be treated as an order of discharge simplicitor it, on the face of it should not cast any aspersion or stigma on the person concerned and he must simply be told off the gates on the ground of unsatisfactory work. Rule

12.21 itself fell for consideration of this Court in the case of **State of Haryana and another versus Jagdish Chander**, 1995 (2), SCC 567 : 1995 (2) SCT 427 (SC). This Court clearly observed that the findings of habitual absence and indiscipline necessarily cast a stigma on the career of the delinquent and would be an impediment for any future employment elsewhere. Consequently, such an order could not be sustained under Rule 12.21 of Punjab Police Rules...”

Though there is a reference to this judgment in the order of learned Single Judge, but we could notice an error in distinguishing the judgment without a valid reason.

(5) Also in another judgment of Hon’le the Apex Court, passed in Civil Appeal Nos. 93, 94 and 95 of 1989, it has been held as :

“.....Formation of the opinion required for exercise of power under Rule 12.21 must be based on definite material or else it would be wholly arbitrary and capricious. The only instance which seems to have weighed with the Superintendent of Police to invoke Rule 12.21 appears to be the incident of 3rd August, 1985. For that, the proper course was to hold a departmental enquiry for misconduct, efficiency and misconduct are two different things. We are, therefore, of the opinion that the Superintendent of Police, Bhiwani, was not justified in invoking rule 12.21 of the Punjab Police Rules, 1934.”

(6) Besides, we have also seen the service book of the appellant, brought by HC Tej Pal, which on reproduction reads as :

- “1. Constable Surrender Kumar No. 787/Jind was enrolled as Constable in Haryana Police on 11th July, 1989.
2. While posted at P.S. Sadar, Narwana, he was deputed to deliver dark to S.P. Office, Jind,—*vide* DDR No. 31, dated 19th July, 1990 at 6.15 A.M. But he did not return back to police station till 20th July, 1990 evening and

his absence was recorded,—*vide* DDR No. 21, dated 20th July, 1990 at 5.35 P.M. of P.S. Sadar, Narwana. He came back,—*vide* DDR No. 21, dated 21st July, 1990 at 2.00 P.M. of P.S. Sadar, Narwana, after absenting himself for 20 hours and 25 minutes. Report of S.H.O., P.S. Sadar, Narwana is placed below.

3. He was deputed to Police Lines, Jind to undergo training in S.L.R.,—*vide* DDR No. 12, dated 25th July, 1990 at 11.40 A.M. of P.S. Sardar, Narwana, but he did not report in Police Lines, Jind and he got recorded his arrival back to P.S. Sadar, Narwana,—*vide* DDR No. 21, dated 10th August, 1990 at 5.00 P.M. Thus, he absented himself for 17 days, 5 hours and 20 minutes. Report of SHO is placed below.
4. He proceeded on 7 days C.L. from P.S. Sadar, Narwana,—*vide* DDR No. 14, dated 24th August, 1990 at 3.10 P.M. of P.S. Sadar, Narwana. He was due to report back on 1st September, 1990 afternoon. But he did not come back in time and his absence was recorded,—*vide* DDR No. 12, dated 1st September, 1990 at 12.20 P.M. of P.S. Sadar, Narwana. He returned back to P.S. Sadar, Narwana,—*vide* DDR No. 16, dated 11th September, 1990 at 6.10 P.M., of P.S. Sadar, Narwana after absenting himself for 10 days and 6 hours. Report of S.H.O., P.S. Sadar, Narwana is placed below.
5. He is habitual and wilful absentee from duty without leave or permission.

Submitted for orders please.

(Sd.) . . . ,
NIHAR SINGH HC

S.P.

I am convinced that the defaulting Constable Surinder Kumar No. 787 has wilfully absented from duty at

3 different occasions. He is unlikely to prove an efficient Police Officer, hence, discharged under PPR 12.21 with effect from forenoon of 26th August, 1991.

(Sd.) . . . ,
S.P./26-8-1991.”

(7) Interestingly enough, though the first ground taken is that the appellant was absent from duty in July, 1990, but there is no communication from the police station to the Superintendent of Police concerned and it has been made a ground at later stage for discharge of the appellant from service. Besides, we also notice in the Punjab Police Rules, that there is no specific period of probation prescribed for a Police Constable and the Rule being placed reliance in this behalf by the police official present in Court, is Rule 12.8 of the Punjab Police Rules, which only deals with Inspectors, Sub-Inspectors and Assistant Sub-Inspectors. We may also like to say that the duties of these officers are more onerous and demanding as they have to conduct investigations apart from maintaining law and order, whereas, a Police Constable has nothing to do with investigation of a criminal case.

(8) In view of all the aforesaid and also for the reasons that the impugned order passed by the Superintendent of Police, Jind, dated 26th August, 1991 is stigmatic in nature and that no departmental enquiry was conducted wherein the appellant could have been granted an opportunity of hearing, we set-aside the impugned judgment passed by the learned Single Judge in CWP No. 5576 of 1992 and quash the order of discharge passed by the Superintendent of Police, Jind. Resultantly, this appeal stands allowed and the authorities concerned are directed to reinstate the appellant in service with full back wages and other consequential benefits.

R.N.R.