

Before K. Kannan, J.

SANJEEV KUMAR—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 931 of 1994

August 26, 2013

Constitution of India, 1950 - Art. 14 & 226 - Writ Jurisdiction - Service Law - Probation - Petitioner-Constable discharged during his probation period on account of absence from duty for 28 days - Discharge on the ground that he did not take any interest in the Recruit Basic Course and lacked professional skills and that he would not prove to be an efficient police officer - Further, could not qualify the prescribed test - Held, order not stigmatic - Writ Petition dismissed

Held, that the difference, which we find in this case, is that apart from an observation that he was not likely to become an efficient police officer and he was being discharged from service, the impugned order records the fact of his absence for over a long period of time during his period of probation. I cannot understand as to how an observation of

(K. Kannan, J.)

absence from duty for long spells could constitute any stigmatic observation, if an observation in the same order that he was not likely to become an efficient police officer cannot be termed as stigmatic. In Sukhwinder Singh (supra), there was a reference to a superior officer's perception that the delinquent police constable was not likely to become efficient police officer. If that was not stigmatic, a mere reference to absence cannot also be taken as stigmatic. Indeed, there cannot be an order of discharge even without framing an opinion whether a person would become an efficient officer or not. Even without such an assessment, the order of discharge shall become arbitrary and shall be liable to be challenged as violative of Article 14 of the Constitution of India. There has to be therefore a modicum of consideration of whether a person could turn out to be an efficient officer or not. This assessment could be under various stages; it could be of a person, who is recurrently absent; it could be of a person, who was guilty of serious misconduct, such as commission of some offence. If it was merely a case of absence and the higher official states that he will not turn out to be an efficient police officer, it is a manner of ensuring that the inference that he was making had a valid basis and was not whimsical or arbitrary. I will not find this order to be stigmatic to make an intervention. The orders passed were justified and I find no reason for intervention in the writ petition. The writ petition is dismissed.

(Para 5)

Naubat Singh Panwar, Advocate, *for the petitioner.*

Harish Rathce, Senior DAG, Haryana.

K. KANNAN, J. (ORAL)

(1) The writ petition challenges an order issued on 01.06.1993 discharging the petitioner during his probation observing that he was not likely to prove to be an efficient police officer. The order is in challenge contending that the order was stigmatic and, therefore, the impugned order could not have been passed in favour of the petitioner in a normal departmental enquiry imputing misconduct. The counsel would rely on a judgment of this Court in *Const. Surinder Kumar versus State of Haryana and others (1)* and the judgment of the Supreme Court in *Prithipal Singh versus State of Punjab and others (2)*. The Supreme Court was holding that

(1) II.R 2009 (2) P&H 253

(2) (2002) 10 SCC 133

the order of discharge in that case was not discharge simpliciter and it was stigmatic. The Supreme Court was considering the tenor of the order that read as follows:-

(i) That the Petitioner remained absent from 12.12.1988 to 15.12.1988 without any leave or permission from the Competent Authority. This period of absence was sanctioned Leave Without Pay and warned to improve accordingly.

(ii) That on 1.6.1989, he again remained absent and was sanctioned one day's Leave Without Pay. He was warned to eradicate the habit of remaining absent.

(iii) That the Petitioner was transferred from Police Lines to Police Control Room on 17.11.1990 vide this office Order No.34410-23/B dated 17.11.1990, but he failed to report at his new place of posting without any reason. Thus he disobeyed the order of his seniors.

(iv) That the Petitioner remained continuously absent without any leave or permission from the Competent Authority w.e.f. 11.12.1990 till the impugned order was passed i.e. on 22.2.1991.”

(2) The counsel appearing on behalf of the State would point out that the judgment in *Prithipal Singh* (supra) was itself considered by the Supreme Court in *State of Punjab and others* versus *Rajesh Kumar* (3), but it chose not to follow the same by referring to a three member Bench of the Supreme Court in *State of Punjab and others* versus *Sukhwinder Singh* (4). The contention in both the cases was that the order of discharge might conceal the true intentions. In such an event, there was a need to involve the police officer in a proper departmental enquiry and it could not have skirted the procedure and proceeded to pass an order of discharge to make it seem that there was nothing stigmatic about such an order.

(3) Since the issue of whether the order passed was stigmatic or not, I believe that it will become relevant to reproduce the entire text of the order that was passed:-

“Recruit constable Sanjiv Kumar No.1821/Ambala while undergoing recruit Basic Course Batch No.47 absented himself from training on

(3) (2006) 12 SCC 418

(4) 2005(3) SCT 616

21.4.1993 without any leave or permission of the competent authority. This constable has been absenting himself since then continuously.

Previously this recruit/constable also absented himself on 28.3.93 from parade/training and reported back on 13.4.1993 after absenting himself for 27 days 1 hour and 50 minutes. For this omission, he was issued a show cause notice for censure by the Director, P.T.C. Madhuban vide No.2676/OASI dated 20.4.93. He submitted his reply to show cause notice on 27.4.93 but did not get his return recorded in Daily Diary at P.T.C. Madhuban and whisked away. His absence period i.e. 28 days has been sanctioned as leave without pay.

This recruit/constable remained absent from training on different occasions and his absence were decided as under:-

10.10.92 to 10.10.92	18 hrs.55 minutes	6 days P.D.
1.9.92 to 4.9.92	9 hrs 55 minutes	6 days P.D.
3.10.92 to 5.10.92	1 day 15 hrs. 5 minutes 1 day leave without	10 days
16.12.92 to 16.12.92	5 hrs. 20 minutes	3 days P.D.
8.1.93 to 10.1.93	2 days 1 hours & 35 minutes	9 days
31.1.93 to 31.1.93	10 hours 10 minutes	3 days P.D.
7.2.93 to 9.2.93	2 days 1 hour 10 mts	2 days P.D.
16.3.93 to 18.3.93	2 days 45 minutes	5 days

From the above facts, it is clear that the recruit Constable Sanjiv Kumar No.1821/Ambala did not take any interest in Recruit Basic Course and could not qualify the prescribed test. He lacks in professional skill, I am of the firm opinion that he cannot prove to be an efficient police officer, so much so, he failed to complete his examination and training. I am of the considered opinion, that it is a fit case to discharge Recruit Constable Sanjiv Kumar No.1821/Ambala under the P.P.R. 12.21.

Keeping in view the facts and circumstances explained above, Recruit Constable Sanjiv Kumar No.1821/Ambala is hereby discharged from the Police force w.e.f. 1.6.93 F.N. under P.R.12.21.

Issue orders in O.B.”

(4) The counsel for the petitioner would explain that in *Sukhwinder Singh* (supra), the order that was passed was a cryptic one sentence order that merely discharged a person from service on an observation that he was not likely to become an efficient police officer. Since the manner of draft of the termination order is made out to be material by the counsel for the petitioners, I deem it appropriate to reproduce the same:-

“Constable Sukhwinder Singh No.644/ASR of this District is discharged from service w.e.f. 16.3.1990 under Punjab Police Rule 12.21 as her is not likely to become an efficient police officer.”

In the case before a 3-member Bench of the Supreme Court, the impugned order makes a reference to observations by the Senior Superintendent of Police, who has passing the order that the police officer was perceived not to become an efficient police officer. No other reasons are mentioned. The text of the judgment shows in para 5 that the employee was trying to contend, the same way as it is done here, that although the order seemed innocuous, it attempted to conceal what really went into the mind of the higher officials for discharge. The Court was making reference to a plea made by the constable that the petitioner had been earlier issued with notice of absence from duty w.e.f. 22.02.1990 and the order of discharge was passed on 16.03.1990 taking the absence to constitute a misconduct. The Court rejected this plea of the employee and proceeded to observe that when the order was passed discharging him on an observation that he was not likely to become a police officer, it ought not to be taken as stigmatic.

(5) The difference, which we find in this case, is that apart from an observation that he was not likely to become an efficient police officer and he was being discharged from service, the impugned order records the fact of his absence for over a long period of time during his period of probation. I cannot understand as to how an observation of absence from duty for long spells could constitute any stigmatic observation, if an observation in the same order that he was not likely to become an efficient police officer

cannot be termed as stigmatic. In *Sukhwinder Singh* (supra), there was a reference to a superior officer's perception that the delinquent police constable was not likely to become efficient police officer. If that was not stigmatic, a mere reference to absence cannot also be taken as stigmatic. Indeed, there cannot be an order of discharge even without framing an opinion whether a person would become an efficient officer or not. Even without such an assessment, the order of discharge shall become arbitrary and shall be liable to be challenged as violative of Article 14 of the Constitution of India. There has to be therefore a modicum of consideration of whether a person could turn out to be an efficient officer or not. This assessment could be under various stages; it could be of a person, who is recurrently absent; it could be of a person, who was guilty of serious misconduct, such as commission of some offence. If it was merely a case of absence and the higher official states that he will not turn out to be an efficient police officer, it is a manner of ensuring that the inference that he was making had a valid basis and was not whimsical or arbitrary. I will not find this order to be stigmatic to make an intervention. The orders passed were justified and I find no reason for intervention in the writ petition. The writ petition is dismissed.

S. Gupta