



**104+218 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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**CWP-19202-2020 (O&M)  
Date of Decision: 21.07.2025**

Jatinder Sharma

...Petitioner

Vs.

Union Territory of Chandigarh and Others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Ms. Divya Sharma, Advocate  
for the petitioner.

Mr. J.S. Chandail, Additional Standing Counsel,  
for U.T., Chandigarh.

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**JAGMOHAN BANSAL, J. (ORAL)**

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 21.09.2015 (Annexure P-2) whereby he was discharged from the Home Guards Organization and order dated 19.04.2021 (Annexure P-4/D) whereby his request for re-induction has been declined.

2. The petitioner joined Home Guard Volunteer on 12.01.2005. On account of a matrimonial dispute, an FIR No.142 dated 25.07.2015 under Sections 323, 325, 406 and 498-A came to be registered against him. He was arrested on 17.08.2015 and released on bail on 27.08.2015. The respondent noticing aforesaid FIR and petitioner's absence from duty formed an opinion that petitioner should be discharged from service. The matter was put up before Higher Authorities. He came to be discharged

vide order dated 22.09.2015. He preferred writ petition before this Court assailing his discharge on the ground that he has been actually terminated though nomenclature 'discharge' has been used. As per applicable Rules, he could not be terminated without issuing show cause notice and granting opportunity of hearing. It is apt to notice here that petitioner came to be acquitted vide judgment dated 04.10.2019 passed by trial Court *qua* offence under Sections 325, 406, 408 and 498-A of IPC, however, he was found guilty *qua* offence under Section 323. He was awarded punishment of fine of Rs.1,000/-. The trial Court held that prosecution has proved charge under Section 323 beyond the shadow of reasonable doubt, thus, accused is liable for punishment.

3. This Court vide interim order dated 12.11.2020 while issuing notice of motion directed the respondents to consider case of the petitioner for reinstatement keeping in mind that he was working since January' 2005. The order dated 12.11.2020 reads as:

*“Learned counsel for the petitioner refers to judgment of acquittal dated 04.10.2019 (Annexure P-3) whereby he has been acquitted and offence under Section 323 has been made out against him, which relates to simple injury.*

*The petitioner is seeking direction that he should be taken back in service as Home Guard Volunteer and order dated 21.09.2015 (Annexure P-2) be set aside.*

*Notice of motion.*

*Mr. Jaivir Chandail, Advocate accepts notice on behalf of official respondents and seeks time to address arguments.*

*List on 23.02.2021.*

*In the meantime, the respondents will consider the*

*case of the petitioner for reinstatement keeping in view that he has been working since 12.01.2005 and will file written statement thereafter.*

*Rajeev Kumar Ambasta, DANIPS,  
District Commandant Home Guards,  
for Commandant General Home Guards  
Union Territory Chandigarh”*

4. The respondent in compliance of aforesaid order, constituted a committee which heard the petitioner in-person and rejected his claim on the ground that he stands convicted under Section 323 IPC, thus, he cannot be re-enrolled.

5. Ms. Divya Sharma, Advocate submits that impugned order has been passed in gross violation of Rule 27 of Punjab Home Guards Rules, 1963 as applicable to U.T., Chandigarh (for short ‘1963 Rules’) as applicable to U.T., Chandigarh. It is a case of dismissal from service noticing registration of FIR and absence from duty. In the impugned order, nomenclature ‘discharge’ has been used, however, petitioner has been actually dismissed from service. Order of dismissal from service could not be passed without recording reasons in writing and granting opportunity of hearing against the action proposed to be taken.

6. *Per contra*, Mr. J.S. Chandail, Additional Standing Counsel submits that impugned order was passed in terms of Rule 18 of 1963 Rules. The Government of India has issued instructions with respect to service of Home Guard Volunteer. As per paragraph 14.4 of the instructions, the petitioner was liable to be discharged. It is a case of discharge from service, thus, there was no reason to issue show cause notice or grant opportunity of hearing.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. Service of Home Guard Volunteers is governed by Punjab Home Guards Act, 1947 (for short '1947 Act'). The said Act came into force w.e.f. 04.12.1947. The State Government in exercise of power conferred by Section 9 of 1947 Act has framed Rules known as Punjab Home Guards Rules, 1963 (for short '1963 Rules'). As per Section 3 of 1947 Act, the State Government may appoint as members of Punjab Home Guards so many persons who are fit and willing to serve, as the State may think fit. As per Section 4 of 1947 Act, the State Government in any area, at any time, may call out a member of the Home Guards for training or to discharge any of the function assigned to the Home Guards. As per Section 5, a member of the Home Guards shall have same powers, privileges and protection as an officer of police appointed under any law for the time being in force. As per Section 7, if a member of the Home Guards is found guilty of misconduct, he is liable to punishment of simple imprisonment for a term which may extend to three months. Sections 3, 4, 5 and 7 of 1947 Act are reproduced as below: -

*“3. **Appointment of members.** - The State Government may appoint as members of the Punjab Home Guards so many persons who are fit and willing to serve as such, as the State Government may see fit to appoint and may appoint any such member to any office of command in the Punjab Home Guards.*

*4. **Calling out of members.** - The State Government in any area at any time may call out a member of the Punjab Home Guards for training or to discharge any of the functions assigned to the Punjab Home Guards in*

*accordance with the provisions of this Act and the rules made thereunder.*

**5. Powers, protection and control.** - (1) *A member of the Punjab Home Guards when called out under section 4 shall have the same powers, privileges and protection as an officer of police appointed under any law for the time being in force.*

(2) *No prosecution shall be instituted against a member of the Punjab Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions as such member, except with the previous sanction of the State Government.*

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**7. Penalty.** - (1) *If any member of the Punjab Home Guards on being called out under section 4, without sufficient excuse neglects or refuses to obey such order, or to discharge his functions as a member of the Punjab Home Guards, or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction by a competent Court, be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.*

(2) *An offence under this Act shall be cognizable”*

Section 9 empowers the State Government to frame Rules with respect to organization, appointment, conditions of service, duties, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service.

Section 9 of 1947 Act is reproduced as below: -

**“9. Rules.** - *The State Government may make rules consistent with this Act –*

*(a) providing for the exercise of control by officers of the police force over members of the Punjab Home Guards*

*when acting directly in aid of the police force;*  
*(b) regulating the organisation, appointment, conditions of service, duties, discipline, arms, accoutrements and clothing of members of the Punjab Home Guards and the manner in which they may be called out for service;*  
*(c) conferring on members of the Punjab Home Guards according to their office any powers, other than magisterial or judicial powers, exercisable by any person under any law for the time being in force; and*  
*(d) generally for giving effect to the provisions of this Act.”*

9. The Government in exercise of power conferred by Section 9 has made 1963 Rules. Title ‘*Conditions of Service*’ comprises Rules 14 to 25 and title ‘*Discipline*’ comprises Rules 26 to 31. As per Rule 18, any member may be discharged at any time by the authority which has appointed him when his services are no longer required. Rule 27 provides that any member, for misconduct or absence of duty, may be dismissed from service. The said Rule further provides for appellate remedy. Rules 18 and 27 of 1963 Rules are reproduced as below :-

**“18. Discharge of members.** [Section 9(b)] - Any member may be discharged at any time by the authority which had appointed him when his services are no longer required.

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**27. Dismissal.** [Section 9(b)] - (1) Any member may, for misconduct or for absence from duty without sufficient cause, be dismissed from service:

*Provided that no order of dismissal shall be passed unless reasons of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.*

*(2) The authority competent to pass an order of dismissal in the case of a Gazetted Officer shall be the Government and that in the case of a Non-gazetted Officer and other members, the Commandant-General or the Gram Raksha Dal Chief, as the case may be.*

*(3) An appeal against an order of dismissal passed by the Commandant General or Gram Raksha Dal Chief shall lie to the Government.*

*(4) the order of the Government passed under sub-rule (2) or sub-rule (3) shall be final and shall not be called in question in any proceedings whatsoever.”*

10. In the case in hand, the petitioner joined service in 2005. An FIR under Sections 323, 325, 406 and 498-A came to be registered against him. The FIR was registered on 25.07.2015 and petitioner was discharged on 21.09.2015. The petitioner has placed on record file notings of respondent. File notings as well as order dated 21.09.2015 passed by respondent read as:

*“Subject: Complaint against HGV Jatinder Sharma  
No.243*

*Vide PUC placed, PW201510225 dated 08.08.2015 along with enclosures has been received from PS-34 through proper channel that the complaint has been filed by Ms. Sonal Sharma r/o I1649 Sec-23/8 Chandigarh vide application dated 08.08.2015 against her husband Jatinder Sharma who is volunteer in Chandigarh Home Guards vide no.243 and presently posted in PS-34 in which she has alleged that her marriage was solemnized with Jatinder Sharma on 27.05.2011. She is being maltreated by her husband and his family members so she filed a complaint in Police Station City Kharar (Punjab) and*

*case FIR 142 dated 25.07.2015 U/s 323,406,498A IPC was registered against him and she further requested to take departmental action against her husband.*

*The enquiry is conducted by PS-34 in which it has been revealed that the marriage of the complainant was solemnized with Jatinder Sharma No.243, posted in PS-34. There is a matrimonial dispute between them and complainant got registered FIR No.142 dated 25.07.2015 U/s 323,406,498A IPC, PS-City Kharar and the same is under investigation there. The complainant wants departmental action is taken against her husband for offence made by him.*

*In this connection it may be stated that it is matrimonial dispute between them. There are no such rules/instructions existing in Home Guards organization for taking departmental action against the volunteer the above said circumstances.*

*However, a copy of note dated 31.08.2015 has also been received from the SHO/PS-34 (at Flag 'A') that HGV Jatinder Kumer No.243, posted in PS-34 was marked absent on 17.08.2015 and till date he has not reported back on duty. It has further been stated that on inquiry from his home it has come to notice that an FIR. No. 142 dated 25.07.2015 V/S 323,406,498A IPC has been registered against him in PS-City Kharar, Punjab and he was under judicial custody from 17.08.2015 to 27.08.2015.*

*From the position explained above it is therefore requested that orders with regard to retention of HGV Jatinder Sharma No.243, posted in PS-34 in the HG organization may please be solicited.*

*Submitted please.*

ADC

03.09.2015

CC (HQs)	03.09.2015
DCHG	03.09.2015
ACG	<i>It is recommended that he may be discharged forthwith.</i>
WCG	<i>He is discharged.</i>
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**ORDER**

*With immediate effect HGV Jatinder Sharma No.243 is hereby discharged from the rolls of Chandigarh Home Guards organization as his services are no longer required.*

*R.P Upadhyaya, IPS  
Commandant General Home Guards,  
Union Territory, Chandigarh  
No.2009-13 /DCHG/E-1/F-43/2015 dated Chandigarh, the  
21/09/2015”*

From the perusal of above quoted orders, it is quite evident that petitioner was discharged on account of aforesaid FIR and absence from duty.

11. From the perusal of Rule 18 of 1963 Rules, it is evident that a member may be discharged after its services are no longer required. A member may be dismissed for mis-conduct or absence from duty without sufficient cause.

A conjoint reading of Rules 18 and 27 of 1963 Rules reveals evident that Rule 18 is applicable where services are no longer required whereas Rule 27 if applicable in case of mis-conduct or absence from duty. The respondent by order dated 21.09.2015 discharged the petitioner, however, file notings make it clear that he was actually dismissed from service on account of registration of FIR against him and his consequent

absence from duty. The respondent on the direction of this Court, during the pendency of instant petition passed order dated 19.04.2021 which reads as:

*“In compliance of interim Orders dated 12.11.2020 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No.19202 of 2020 titled as Jatinder Sharma Vs. UT, Chandigarh and others, the committee constituted for the purpose, heard Ex-HGV Jatinder Sharma No.243 to redress his grievance regarding his re-enrolment as Volunteer in Chandigarh Home Guards Organization. The committee after due consideration has recommended that Ex-HGV Jatinder Sharma no.243 is not fit for re-enrolment as a volunteer in Chandigarh Home Guards organization as he stands convicted u/s 323 IPC as per the Judgement dated 04.10.2019 passed by the Ld. Court of Ms. Ankita Gupta, PCS, JMIC, Kharar in an FIR No.142 dated 15.07.2015 u/s 323,406,498 IPC in PS-City Kharar registered against him.*

*Therefore, there is not any reason to interfere in the earlier order passed by the then Competent Authority vide order no. 2009-12/DCHG/F-43/2015 dated 21.09.2015 wherein he was discharged from the rolls of Chandigarh Home Guards organization. The case for re-enrolment of Ex-HGV Jatinder Sharma has been found devoid of merit and his claim for re-enrolment is rejected.*

*This issues with the approval of the Competent Authority.*

*Rajeev Kumar Ambasta, DANIPS,  
District Commandant Home Guards,  
for Commandant General Home Guards  
Union Territory Chandigarh”*

12. By aforesaid order, the respondent rejected petitioner's claim on the sole ground that he stands convicted under Section 323 of IPC.

The order dated 19.04.2021 vindicates stand of the petitioner that he was actually dismissed from service because of his involvement in a criminal case. He was not reconsidered because of his conviction under Section 323 IPC. The respondent is claiming that despite imposition of fine of Rs.1,000/- on account of violation of Section 323 IPC, the petitioner is liable to be dismissed because he stands convicted. It is immaterial under which Section he has been convicted and what is the quantum of punishment. The respondent is a disciplined force where a convicted person cannot be retained.

13. The respondent has miserably failed to consider nature of the alleged offence and punishment awarded. A Constitution Bench in '*Union of India v. Tulsiram Patel*', (1985) 3 SCC 398 while adverting to Rule 14 of the Railway Servants Rules, 1968 has held that in case of a trivial offence employee should not be dismissed from service. Conviction in a particular offence may not warrant dismissal from service. The authorities are bound to consider nature of offence and awarded punishment.

14. In the case in hand, the petitioner was dismissed from service. There was no compliance of Rule 27 of 1963 Rules. He was denied to be re-inducted on the ground of conviction. He was not awarded term sentence whereas fine of Rs.1,000/- was imposed. In such circumstances, impugned order cannot be sustainable.

15. In the wake of above discussion and findings, this Court is of the considered opinion that impugned order deserves to be set aside and accordingly set aside.

16. The respondent is at liberty to comply with Rule 27 of 1963 Rules. If the petitioner is issued show cause notice within one month from today, the petitioner shall not be deemed to be reinstated, however, if either show cause notice is not issued within one month or fresh order is not passed within three months from today, he shall be deemed to be re-enrolled from the expiry of said period. The respondent would pass fresh order, if any, in accordance with law.

17. ***Disposed of.***

**(JAGMOHAN BANSAL)**  
**JUDGE**

**21.07.2025**

Prince Chawla

Whether Speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No