

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 72 of 2026

Reserved on: 22.04.2026

Date of decision: 30.04.2026.

Uploaded on: 30.04.2026

 Sapna Devi ...Appellant.

Versus

State of H.P. & others ...Respondents.

 Coram:
The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.***The Hon'ble Mr. Justice Bipin Chander Negi, Judge.****Whether approved for reporting?¹*

For the appellant : Mr. Anshul Jairath, Advocate.

For the respondents : Mr. Varun Chandel, Additional
Advocate General.

Bipin Chander Negi, Judge

The present appeal is preferred against the impugned judgment dated 18.11.2025, whereby the learned Single Judge has dismissed CWPOA No. 5173 of 2019, filed by the present appellant and has further upheld the order dated 25.08.2010, discharging the appellant from the post of Lady Constable, during her training period. Besides the aforesaid, order dated 22.04.2015, passed on

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Whether reporters of Local Papers may be allowed to see the judgment?

the representation made by the appellant against the order of discharge dated 25.08.2010, has also been upheld.

2. The appellant had been appointed as a Lady Constable on 01.01.2010 (appointment letter is at page 77 of the paper book). Thereafter, she was sent to Training Center, Sakoh. While under training, the appellant proceeded on medical leave, on 14.02.2010. The appellant was permitted to do so by the Commandant 2nd Indian Reserve Battalion. However, the appellant did not resume training and as a result whereof, the appellant was marked absent from training w.e.f. 19.02.2010.

3. The appellant was directed to resume training vide wireless message dated 22.02.2010. However, on 22.02.2010 itself a telegram was received in the office of the Commandant 2nd Indian Reserve Battalion from the appellant for extension of leave on medical ground. The appellant resumed training on 07.04.2010, after absenting for about 47 days from training.

4. With respect to her absence from training, the appellant produced three medical certificates, first w.e.f. 18.02.2010 to 02.03.2010, issued by the MO PHC,

Bhadsali, District Una, second medical certificate advising rest w.e.f. 03.03.2010 to 09.03.2010, was issued by the MO, Kumar Nursing Home, Una. Other than the aforesaid, a third medical certificate advising rest w.e.f. 10.03.2010 to 06.04.2010 was issued by MO, New Saini Hospital, Hoshiarpur. The same are placed on record from pages 79 till 91. In the enquiry report, medical certificates issued by the Private Hospitals have been ignored on account of the fact that the same are not approved by the government. Besides in all three certificates it has been held in the enquiry report that the present appellant is affected by different medical problems and in the response filed to the summary of allegations a different version of a medical problem was forthcoming.

5. On account of her aforesaid willful absence, the appellant was repatriated from the Training Center Sakoh to her parent unit i.e. 5th India Reserve Battalion vide order dated 07.04.2010. In pursuance thereto, the appellant reported for training on 08.04.2010. Thereafter, on 16.04.2010, the appellant proceeded on sanctioned four days casual leave and one day station leave.

6. In the aforesaid attending circumstances, the appellant was to report back at Battalion Headquarter on 22.04.2010. However, the appellant did not turn up on the conclusion of the sanctioned period. Vide wireless messages dated 24.04.2010 and 06.05.2010, the appellant was directed to resume duty. The appellant failed to join. On account of her willful absence a departmental enquiry was ordered against her by the Commandant 5th Indian Reserve Battalion, vide order dated 28.05.2010 and the appellant was placed under suspension.

7. The enquiry was conducted in accordance with the provisions of Rule 16.24 of the Punjab Police Rules, as applicable to the State of Himachal Pradesh. In the enquiry, the appellant had submitted a response to the summary of allegations. The same were duly considered by the Inquiry Officer. However, to the formal charge-sheet, no reply was filed by the appellant. The appellant had requested that her reply to summary allegations be considered as reply to the charge-sheet. At the enquiry, the defense of the appellant was that the appellant was

under acute medical depression, for which, she was being treated by a “*Tantrik*”.

8. In the enquiry, the appellant did not produce any defense witness despite opportunity being afforded. Based on the enquiry, an enquiry report was prepared and as per which, the appellant was guilty of willful absence from the training center & Battalion Headquarters. The same was sent to the appellant for making a representation. However, no representation was made by the appellant. Subsequent thereto, a show cause notice was issued to the appellant, to which again, the appellant failed to file any reply. It is on consideration of the aforesaid material that the order of discharge dated 25.08.2010 was passed against the appellant. The same was passed under Rule 12.21 of the Punjab Police Rules.

9. While on suspension, the appellants headquarter was fixed at Battalion Headquarter, Police Line, Bilaspur. Therein on 01.07.2010, the appellant was found absent from the Battalion headquarter. The appellant reported back after absenting herself for seven days. On 09.07.2010 suspension was revoked. Thereafter,

she left for Una without seeking appropriate necessary permission. Despite reminders to join duty on 15.07.2010 and 27.07.2010, the appellant did not join back on duty.

10. No statutory appeal/revision before the Competent Authority was filed against the discharge order dated 25.08.2010. A representation dated 29.11.2014 was filed by the appellant, after a lapse of almost four years. Before the representation could be decided, the appellant assailed the discharge order dated 25.08.2010 by filing CWP No. 320 of 2015. The same was disposed of by the Coordinate Bench of this Court vide order dated 07.01.2015, directing the respondents/competent authority to decide the representation by affording due opportunity of hearing to the petitioner. In pursuance thereto, the appellant was heard and a detailed impugned speaking order on 22.04.2015 was passed by the authorities.

11. Heard counsel for the appellant and perused the record and the impugned judgment.

12. The only contention raised is based on a judgment of the Apex Court in ***Bhagwan Lal Arya*** vs.

Commissioner of Police, Delhi & others, (2004) 4 SCC

560. The contention raised on the basis of the aforesaid judgment is that the penalty imposed on the appellant, in the case at hand, is highly disproportionate and therefore, the same is required to be set aside. The aforesaid judgment is clearly distinguishable, as in the said case, there was only one instance of absence and that too because of bad health. Therefore, therein the Apex Court was of the view that there was valid and justifiable ground for the absence from duty. Hence, awarding of punishment of removal from service was held to be excessive and disproportionate. The relevant extract of the judgment relied upon is being reproduced herein below:-

“It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment”.

13. The initial order of discharge dated 25.08.2010 was passed under Rule 12.21 of the Punjab Police Rules.

Rules 12.21 reads as under:-

“12.21. 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.”

14. The said proviso came up for consideration before the Apex Court before a three Judge Bench in **State of Punjab & others vs. Sukhwinder Singh, (2005) 5 SCC 569**, wherein it was held that when an employee is on probation, an opportunity is afforded to the employee to watch the work, ability, efficiency, sincerity and competence of the employee and if the employee is not found suitable for the post, the employer has a right to dispense his service without anything more during the period of probation. The relevant extract wherein reads as under:-

“In the present case neither any formal departmental inquiry nor any preliminary fact finding inquiry had been held and a simple order of discharge had been passed. The High Court has built an edifice on the basis of a

statement made in the written statement that the respondent was habitual absentee during his short period of service and has concluded therefrom that it was his absence from duty that weighed in the mind of Senior Superintendent of Police as absence from duty is a misconduct. The High Court has further gone on to hold that there is direct nexus between the order of discharge of the respondent from service and his absence from duty and, therefore, the order discharging him from service will be viewed as punitive in nature calling for a regular inquiry under Rule 16.24 of the Rules. We are of the opinion that the High Court has gone completely wrong in drawing the inference that the order of discharge dated 16.3.1990 was, in fact, based upon the misconduct and was, therefore, punitive in nature, which should have been preceded by a regular departmental inquiry. There cannot be any doubt that the respondent was on probation having been appointed about eight months back. As observed in Ajit Singh and others etc. vs. State of Punjab and another (supra) the period of probation gives time and opportunity to the employer to watch the work ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated

an inquiry as envisaged under Rule 16.24(ix) of the Rules”.

15. In *State of Punjab & others vs. Constable Avtar Singh*, (2008) 7 SCC 405, the said view was followed when there was absence of period of one month and thus the discharge order was upheld by allowing the appeal of the State. The relevant portion reads as under:-

*“11. We have heard learned counsel for the parties. We are in total agreement with the submission of the learned counsel for the State of Punjab that the controversy involved in this case is no longer res integra. Learned counsel appearing for the respondent had drawn our attention to a two-Judge bench decision of this court in *Prithipal Singh v. State of Punjab & Others* (2002) 10 SCC 133 [LQ/SC/2000/835]. The court held that once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. Even where an order of discharge looks innocuous, but on a close scrutiny, by looking behind the curtain if any material exists of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves no room for doubt that any consequential order, even of discharge, would be construed as stigmatic. The decision in *Sukhwinder Singh*, (2005) 5 SCC 569 (supra) was given by a three-Judge bench and in view of that decision in 2005, there is no scope for this court to take a different view. We are squarely bound by the said decision.”*

16. From the perusal of the aforesaid judgments, it is evident that in terms of Rule 12.21, holding of a formal departmental inquiry/preliminary fact finding inquiry is also not required while considering the case of an employee thereunder. In the case at hand, the appellant had been discharged from service after holding a full-fledged inquiry under Rule 16.24 of the Punjab Police Rules.

17. The issue of a member of a disciplined force remaining absent from duty without seeking leave came up for consideration in ***State of Punjab & others*** vs. ***Mohinder Singh, (2005) 12 SCC 182***. The Apex Court was of the view that remaining absent without leave in disciplined force would amount to a grave act of misconduct and employee, who remains on leave without seeking permission in a disciplined force cannot be retained in service. The relevant extracts of the same read as under:-

“5. The conduct of the respondent who is a member of a disciplined force in remaining absent from duty for five-and-a-half months without sanctioned leave or prior intimation is reprehensible.

6. Rule 16.2 of the Punjab Police Rules reads as follows:

“16.2 Dismissal.—Dismissal shall be provided only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

*(2)***”*

7. Rule 16.2 provides that an order of dismissal can be passed only for the commission of gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

8. We do not agree with the High Court that a single act of remaining absent without leave would not amount to gravest act of misconduct. This would depend upon the fact situation of each case. In the present case we find that the respondent remained absent without leave for quite a long period. The explanation rendered by him did not find favour either with the enquiry officer or the punishing authority. The finding of facts were not disturbed in the departmental appeal/revision. This finding was also not disturbed in the suit. The only ground for setting aside the orders impugned in the suit is that a single act of remaining absent from duty without sanctioned leave did not merit an order of dismissal from service. We find from the record that the respondent had remained absent from duty without sanctioned leave on 15 different occasions. Although no major punishment was awarded to him but he was ordered to be censured once. In our view, the respondent being member of a disciplined force could not be permitted to remain absent

without taking leave and that too for such a long period.
He cannot be retained in service. The order impugned before us is set aside and the suit is ordered to be dismissed.

9. Counsel appearing for the respondent submitted that the order of dismissal may be converted into an order of compulsory retirement from service as the respondent has already put in more than 23 years of service. Counsel appearing for the appellants after taking instructions states that the case of the respondent would be considered sympathetically by the authorities if he moves an application for converting his order of dismissal into an order of compulsory retirement. Impugned orders are set aside. The authorities however shall be at liberty to pass an appropriate order on the representation, if any, filed by the respondent for converting the order of dismissal into an order of compulsory retirement”.

18. No other contention has been raised. Specifically no contention regarding the findings pertaining to willful absence from duty, has been raised. Other than the aforesaid, no infirmity in the regular departmental enquiry under Rule 16.24 of the Punjab Police Rules has been pointed out to this Court. From a perusal of the record, it is evident that the enquiry was conducted in accordance with the principles of natural justice. The findings of the enquiry officer and the disciplinary

authority are sustainable with reference to the evidence which was adduced during the enquiry.

19. In view of the aforesaid, we see no reason to differ with the view taken by the learned Single Judge. Hence, the present appeal is dismissed being devoid of any merit. Pending applications, if any, also stand disposed of.

(G. S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

30th April, 2026
(kck)