IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 6th OF MARCH, 2026

WRIT PETITION No. 4682 of 2026

HEMANT YOGI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. Nirmal Sharma - Advocate for the petitioner.

Mr. Sohit Mishra - GA for the State.

ORDER

The petitioner has filed this writ petition challenging the order dated 27.01.2026, whereby he has been discharged from service on account of filing of challan in a criminal case against him.

2. The petitioner was working as Home Guard Sainik and was posted in the office of District Commandant, Guna. An FIR was registered against him at the instance of his wife for offences punishable under Sections 85, 296, 351(3) & 3(5) of BNS and Section 3/4 of the Dowry Prohibition Act. The FIR was registered on 10.10.2024. As required under Rule 23(f) of the M.P. Home Guard Rules, 2016, the petitioner intimated about the registration of FIR to respondent no.3 vide communication dated 12.10.2024 and further on 29.09.2025.

3. A show-cause notice was issued to the petitioner on 16.01.2026 asking him to show-cause as to why action under Rule 27(2)(f) of the Rules

of 2016 be not taken against him. He was asked to furnish his reply within three days. The petitioner submitted his reply on 20.01.2026, thereby informing about the circumstances in which, based upon certain matrimonial disputes, the FIR has been lodged against him. Thereafter, the impugned order was passed on 27.01.2026, whereby the petitioner has been discharged from service. The order also states that the petitioner can prefer an appeal under Rule 26 of the Rules of 2016 within 30 days before the Commandant, Home Guards, Gwalior & Chambal Division. Challenging this order, the petitioner has filed this writ petition.

4. Learned counsel for the petitioner challenged the impugned order on the ground that the petitioner has been discharged by way of punishment, as the order refers to Rule 24 of the Rules of 2016. It is his submission that the punishment could not have been imposed upon the petitioner without affording him an opportunity of hearing. The learned counsel further submits that the offences for which the FIR has been registered do not involve moral turpitude and, therefore, discharge of the petitioner on the basis of such FIR is illegal. He further argued that the petitioner has explained the circumstances in which the FIR has been lodged against him; however, the respondent authority failed to consider the explanation while passing the impugned order. He thus submitted that the impugned order deserves to be set aside and the petitioner deserves reinstatement.

5. On the other hand, the learned Government Advocate supported the impugned order. It is submitted by him that the impugned action has been taken against the petitioner under Rule 27(2)(f) of the Rules of 2016, which

does not contemplate any inquiry to be conducted. As per his submission, once the challan is filed in the criminal case against the petitioner, he is liable to be discharged. It is further submitted by him that the petitioner was given a show cause notice by respondent no.3 and, after taking his reply, the impugned order has been passed. The learned Government Advocate thus submitted that the impugned action is in consonance with the procedure prescribed under the Rules of 2016 and does not warrant any interference.

6. In the rejoinder, learned counsel for the petitioner submitted that the impugned order itself states that an appeal can be filed under Rule 26, which clearly indicates that the petitioner has been discharged as a measure of punishment. Even otherwise, if the action is taken under Rule 27, the same is required to be approved by the higher authority as is evident from the discharge certificate in Appendix-G of the Rules. The learned counsel submits that since no approval has been taken from the higher authority and no certificate in Appendix-G has been issued, the discharge under Rule 27(2)(f) is also illegal inasmuch as the procedure prescribed therein has not been followed. He also argued that before discharge, either under Rule 24 or under Rule 27, the authority is required to consider the nature of allegation made against the delinquent in the criminal case.

7. In response, the learned Government Advocate referred to the memo dated 19.12.2025 (Annexure R/1) to say that the action was approved by the Deputy Director General of Police, Home Guards, and therefore the requirement of Rule 27 is satisfied.

8. Considered the arguments and perused the record.

9. The facts which are not in dispute are that an FIR for offences under Sections 85, 296, 351(3) & 3(5) of BNS and Section 3/4 of the Dowry Prohibition Act has been registered against the petitioner. It is also not in dispute that after investigation the challan has been filed and the trial is pending in Court against the petitioner. The petitioner has been discharged on account of filing of challan in the aforesaid case.

10. Based upon the rival submissions made by respective counsel, the first dispute is about the provision under which the impugned action has been taken. As per the submission of the petitioner's counsel, the impugned action is taken by way of punishment under Rule 24 of the Rules of 2016 while, as per the learned Government Advocate, the action has been taken under Rule 27 of the said Rules.

11. Rule 23 of the Rules of 2016 provides for rules of conduct to be followed by a Home Guard volunteer. Clause (f) provides as under :

> *"(f) If he commits any act in violation of law which comes in the category of cognizable or non-cognizable offence, he shall inform his District Commandant within 48 hours. In the event of not informing he shall be liable to be discharged from the Home Guards district reserve."*

12. Thus, if a Home Guard Sainik commits any act in violation of law which falls in the category of cognizable or non-cognizable offence, he is required to inform the District Commandant within 48 hours. It is not in dispute that the petitioner furnished information about the registration of offence vide his communication dated 12.10.2024 and further on 29.09.2025.

13. Rule 24 thereafter provides for punishment. Rule 24(A)(5)

provides for premature discharge of district reserve. Rule 25 then provides that the District Commandant can impose any punishment provided under Rule 24 after affording an opportunity of hearing to the delinquent. Rule 26 thereafter provides for filing of an appeal against the order of punishment that may be passed under Rule 25.

14. The impugned order refers to Rule 24(A)(5), which gives an impression that the impugned action has been taken by way of punishment. This impression gets strength from the concluding paragraph of the impugned order which informs the petitioner that he can file an appeal under Rule 26 within 30 days under the Rules of 2016. Thus, if the impugned order has been passed by way of punishment, the same could not have been passed without taking into account the explanation given by the petitioner on 20.01.2026. Needless to mention, the authority was required to take into account the gravity of charge levelled against the petitioner

15. While imposing punishment, the District Commandant was required to consider the gravity of the allegations made against the petitioner and the material to *prima facie* support such charge. However, from reading of the impugned order, the same does not appear to have been done by the District Commandant and the maximum punishment of discharge from service has been imposed upon him. The doctrine of proportionality of punishment in disciplinary matters is one of the important aspects that needs to be considered by the authority. While examining the issue of proportionality, the authority should consider the circumstances in which the alleged act was committed and may also take into account the past record of

the delinquent.

16. The ***Dinesh Kumar Bilthare vs. State of M.P.*** reported in **2024(1) MP LJ 339** was a case were the employee was a teacher and was convicted for offence under Section 324 of IPC. Based upon the same, he was dismissed from service. Adjudicating the validity of dismissal order, this Court opined as under:

> *"10. The point involved in this case is no more res integra. The Constitution Bench of Supreme Court in Union of India v. Tulsiram Patel, (1985)3 SCC 398 opined that even if an employee is convicted under some provision of penal laws/IPC, it is not mandatory or obligatory on the part of the department to impose the punishment of removal or dismissal from service. The competent authority needs to apply its mind whether the conduct which led to conviction is such grave which warrants punishment of 'dismissal' or 'removal' only. In a given case, it is open to the department to impose even a lesser/minor punishment. The dicta of Tulsiram Patel (supra) was followed in Hazarilal (supra) and it was held that while taking decision under Rule 19(1) of CCA Rules, authority is required to examine the gravity of conduct which led to conviction minutely and punishment orders cannot be passed in a routine manner. Relevant para reads thus:*
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> > *"7. By reason of the said provision, thus, "the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a government-servant on the ground of conduct which has led to his conviction on a criminal charge", but the same would not mean that irrespective of the nature of the case in which he was involved or*

the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion, is not warranted."

(Emphasis Supplied)

The Division Bench of this Court in Rajendra Pasad Chourey (supra) has taken the same view.

Keeping in view the aforesaid legal position, if the impugned order is minutely examined, it is evident that no reason has been assigned by the authority as to why the extreme punishment of discharge is found to be adequate for registration of FIR. The authority was required to examine the gravity of conduct which led to registration of FIR. There is no finding of authority that the conduct of petitioner which led to registration of FIR was so grave that no other punishment would be commensurate to such conduct."

17. The aforesaid judgment deals with a case under Rule 19 of M.P. Civil Services (Classification, Conduct & Appeal) Rules, 1966, which empowers the disciplinary authority to take action without conducting enquiry, on account of conviction of employee. In other words, even after conviction, the authority is required to examine the gravity of allegation in the criminal case and based upon the same, the punishment should be imposed. It is not a thumb rule that in every case of conviction, employee is to be dismissed from service.

18. The petitioner stands on a better footing inasmuch as he is not convicted yet and only a FIR has been registered against him and challan filed. Thus, while imposing punishment under Rule 24(A) of Rules of 2016, the authority was required to examine the gravity of allegations levelled against the petitioner and the material to prima facie support such allegation.

He can also consider any other factor, material for taking decision in the matter. However, from the impugned order, it is evident that the authority failed to consider these aspects and passed order of discharge as if it is automatic on filing of challan.

19. Now, if the submission made by the learned Government Advocate is to be accepted that the impugned action is taken under Rule 27 of the Rules of 2016, the ultimate decision of this case would not vary. A perusal of Rule 27(2)(f) provides for discharge of a Home Guard volunteer on filing of charge-sheet in a criminal case or on being detained in police custody for more than 48 hours. However, while ordering such discharge, the competent authority is required to issue a discharge certificate in Appendix-G. Reading the language of discharge certificate, it is gathered that the approval of the higher authority is required before passing the discharge order. The format of discharge certificate prescribed in Appendix-G is as under :

APPENDIX-G

Discharge Certificate

[See Rule 27(2)]

This is to certify that No ..... Rank ..... Name ..... S/D/W of ..... was enrolled in the District Reserve of ..... district on and was discharged on .....

He is discharged with approval of ..... in consequence of ..... (ground to be mentioned) under Rule 30 (ii) of the Rules framed under the Madhya Pradesh Home Guard Act, 1947 (No. 15 of 1947).

Character: .....

Periods of training attended:. .....

Particulars of embodied service, if any .....

Resident of Town/Village ..... Post Office .....
Police Station ..... District ..... Pin Code .....

District Commandant
.....

20. Thus, firstly no discharge certificate is issued in relation to petitioner. Secondly, when the approval of the higher authority is required before ordering discharge of a Home Guard Sainik, the matter needs to be considered by the higher authority before granting approval. This is all the more necessary when the incumbent is being discharged merely on filing of challan in the criminal case. At this stage, he is not even held guilty of the allegations made against him. Again, the authority who has to accord approval is required to take into account the gravity of the offence alleged, material to *prima facie* support such allegations, and the explanation offered by the delinquent regarding his involvement in case.

21. In the case in hand, it is evident that no such approval was obtained by respondent no.3 before passing the impugned order. The submission of the learned Government Advocate that the approval was granted by the Deputy Director General of Police, Home Guards, vide memo dated 19.12.2025 (Annexure R/1) is also not acceptable, inasmuch as vide the aforesaid memo the Director General of Police has only directed respondent no.3 to take action under Rule 27(2)(f) of the Rules of 2016. There is no consideration of the circumstances and the explanation given by the petitioner.

22. The learned Government Advocate also submitted that in view of the mandatory language of Rule 27(2) of the Rules of 2016, there is no

discretion left with the authority while ordering discharge. This submission is also not acceptable. Once the discharge order needs approval of the higher authority, the necessary implication is that the approving authority is required to apply its mind before granting approval. Otherwise, there was no need for seeking approval of the authority and the discharge of a Home Guard Sainik would have been automatic on filing of the challan.

23. In view of the discussion made above, this Court is of the considered opinion that the impugned order of discharge of the petitioner dated 27.01.2026 is not in consonance with either Rule 24 or Rule 27 of the Rules of 2016. The matter therefore needs to be reconsidered by respondent no.3.

24. Accordingly, the order dated 27.01.2026 is set aside. The matter is remitted to respondent no.3 to pass a fresh order taking into account the observations made by this Court in this order. Let this be done within a period of 30 days from the date of communication of the certified copy of this order.

25. With the aforesaid observations, this petition stands **disposed of.**

(ASHISH SHROTI)
JUDGE

bj/-