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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 24.09.2015

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W.P.(C) 4663/2013

VIRENDER KUMAR

..... Petitioner

Through: Mr Sachin Chauhan, Adv.

versus

CRPF

..... Respondent

Through: Ms Archana Gaur, Adv for
respondent/UOI

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner's grievance in this petition is that he was terminated from employment by invocation of Rule 5 of the Central Civil Services (Temporary Servant) Rules, 1965 (hereinafter referred to as 'the said Rules'). The petitioner was at the relevant time working as a probationary Constable with the Central Reserve Police Force (CRPF).

2. The brief facts are that the petitioner joined the CRPF, after successfully participating in the recruitment process in 2009. He was appointed on 16.02.2009 as Constable. On 29.05.2012, the CRPF abruptly issued an order under Rule 5(1) of the said Rules. The said order reads as follows:-

"In pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I

AKHILESH Kumar SINGH (COMMANDANT—114 BN. CRPF) hereby terminate forthwith the service of No.095080314 CT/GD Virendra Kumar and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service or as the case may be, for the period by which such notice falls short of one month.”

3. The petitioner’s appeal was rejected on 22.10.2012. In these circumstances, he has approached this Court. Learned counsel argues that even though the impugned termination order is facially non-stigmatic, nevertheless, the materials placed on record—including the appellate order itself reveal that the real foundation of the termination was alleged misconduct. Counsel relied upon the order dated 22.10.2012 issued by Inspector General, i.e., the Appellate Authority which states that complaints were received as to the genuineness of the certificate concerning birth which were investigated and a preliminary inquiry was held on the basis of which the CRPF was of the opinion that false and fabricated documents were used to obtain employment. The appellate order dated 22.10.2012 first lists out the materials considered during the preliminary inquiry and verified by the concerned authority and then recites as follows:-

“3. The aforesaid verification reports adequately denotes that, No.095080314 CT/GD Virendra Kumar is a hypocrite and his integrity is not beyond doubt. Therefore, the Commandant 114 BN CRPF vide order No.P.VIII.3/2012-114/EC-2 dated 11.02.2012 ordered a Preliminary Enquiry to elicit veracity of facts. The Inquiry Officer concluded that, No.095080314 CT/GD Virendra Kumar was appointed as CT/GD in CRPF W.e.f. 05/03/2009 and nevertheless completed 02 years of service, could not be confirmed in the entry grade for want of

authenticity report of his education documents. Based on the verification reports received from the Principal of Shastri Smarak Inter College and Jatna Inter College, it was established that, the candidate has forged his Date of Birth to conceal his age.

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6. *The verification reports received from the Principal, Shastri Smarak Inter College, Ahmedshahpur, Padra, Bagpat [UP] and the Principal, Janta Inter College, Basi, Bagpat [UP] caste aspersion on the conduct of the Appellant and render him unsuitable for continuing in Govt. Service. The Appellant has misled the department by producing a dubious certificate. Subsequent verification in this regard have revealed that individual has two certificates exhibiting two different DOBs i.e 10/02/1982 and 25/12/1973. The Appellant has not produced any material evidence which could establish that he was not the student of Janta Inter College, Basi, Bagpat [UP] and cannot distinguish him categorically from his date of birth recorded as 25/12/1973 in Janta Inter College, Basi Bagpat [UP]. The stigma of furnishing skewed and fabricated information to secure Govt. Service and misleading the Department is more severe than the stigma of termination.*

7. *The Appellant was a temporary Government servant and accordingly his case was dealt under Rule 5 of CCS [Temporary Services] Rules 1965. The provisions below Rule 5[1] of CCS [Temporary Services] Rules 1965 do not stipulates for any Departmental Enquiry against a temporary Government servant. There was no such enquiry conducted against the Appellant. However, a preliminary enquiry was ordered by the Appointing authority to examine the verification reports received against the Appellant and to submit report with regard to prima-facie evidences against the Appellant. Therefore,*

submission of the Appellant is denied in-toto. The object of Preliminary Enquiry is to ascertain the prima-facie truth of the allegations and the evidences available in support thereof in order to enable the superior Officers of the Force to form a judicious opinion regarding the nature of proceedings that may be drawn up against the defaulters, depending upon the gravity of the offence committed. The nature of Preliminary Enquiry is not quasi-judicial. It may be conducted in presence of concerned employee or ex-parte.”

4. Counsel for the respondents submitted that since the petitioner had not completed his period of probation, he could not assert a right or title to the post. Considering the overall nature of his conduct and the allegations, the respondents have acted within their jurisdiction in determining the period of probation through an order terminating the petitioner’s services simpliciter.

5. This Court recollects that tenor or appearance of an order terminating a probationer simpliciter is never considered conclusive. Even a facially innocuous order can be interfered with if there is a reason to suspect that what impelled the authority was not pure considerations of suitability of the employee for the post he held, but rather whether his suitability was suspect because of an alleged misconduct by him. (*S.B.I & Ors vs. Palak Modi & Anr.* 2013 (3) SCC 607, *Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors.*, 1999 (3) SCC 60, *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences and Another*, (2002) 1 SCC 520)

6. In the present case, the materials on record in the form of appellate order itself disclose that the verification reports persuaded the authorities to invoke Rule 5 virtually as a short-cut from holding an inquiry. The verification reports went into allegations that the petitioner had relied on

fabricated documents to obtain employment. These were serious allegations at least the petitioner had to be issued with a show-cause notice and granted immediate hearing considering that he had entered public employment.

7. On an application of the tests indicated in *Dipti Prakash Banerjee (supra)*, this Court is satisfied that invocation of the power to terminate the petitioner simpliciter as it were was arbitrary and is untenable in the circumstances of the case. The impugned order terminating the petitioner from the employment is consequently set aside. However, the Court is of the opinion that it is not an appropriate case where arrears of salary or back wages ought to be granted; rather the Court should leave it to the respondents to exercise their jurisdiction in terms of Rule 54 of the Fundamental Rules and Supplementary Rules (FRSR) and pass an appropriate order as to the manner in which the petitioner's interregnum period (i.e., between the date of termination and the date when he has to be taken back to the service) is to be treated for the purpose of salary and continuity of service. It goes without saying that the respondents are at liberty to conduct an inquiry following the procedure established by the rules and prevailing policies in that regard.

The writ petition is allowed in above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

SEPTEMBER 24, 2015
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