

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18994 of 2008

SUDHIR KUMAR, SON OF SRI SURESH SHARMA, RESIDENT OF VILLAGE
SARTA POLICE STATION PARASBIGHA IN THE DISTRICT OF JEHANABAD
.... Petitioner

Versus

1. THE UNION OF INDIA THROUGH THE DG, CARPF, BLOCK NO.1, PREMISES OF CENTRAL OFFICE, LODHI ROAD, N.DELHI
2. THE DG, CRPF BLOCK NO.1, PREMISES OF CENTRAL OFFICE, LODHI ROAD, N.DELHI
3. DEPUTY INSPECTOR GENERAL, (PERSONNEL 3), BLOCK NO.1, PREMISES OF CENTRAL OFFICE, LODHI ROAD, N.DELHI
4. ADDL.DIG OF POLICE, QC, CARPF. MOKAMAHGHAT, PATNA
5. THE IG OF POICE, BIHAR SECTOR, CRPF, PATNA Respondents

With

Civil Writ Jurisdiction Case No. 1053 of 2009

AJIT KUMAR SON OF SRI RAM PRAVESH SHARMA RESIDENT OF VILLAGE
GOPALPUR, POST OFFICE JAMUK POLICE STATION PARASBIGHA, DISTRICT
JEHANABAD, BIHAR
.... Petitioner

Versus

- 1 THE UNION OF INDIA THROUGH THE SECRETARY , MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI.
- 2 THE DG, CRPF BLOCK NO.1, CGO COMPLEX, LODHI ROAD, NEW DELHI
- 3 THE INSPECTOR GENERAL OF POLICE, BIHAR SECTOR, CRPF, DIGHA COMPLEX, ASHIYANA NAGAR POST, PATNA
- 4 ADDL.DIG OF POLICE, QC, CARPF. MOKAMAHGHAT, PATNA Respondents

Appearance :

(In CWJC No.18994 of 2008)

For the Petitioner : Mr. DINU KUMAR, Advocate
Mr. Manoj Kumar, Advocate
For the Respondents : Mr. Sanjay Kumar (ASST.SG)
Mr. A K Sharan (CGC)

(In CWJC No.1053 of 2009)

For the Petitioner : Mr. T.K. Sinha, Advocate
For the Respondents : Mr. Awadhesh Pandey, Sr. CGC
Mr. RK Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 15-07-2016

The petitioners were appointed as CT/GD in the
Central Reserve Police Force (herein after referred to as 'the

CRPF'). They were dismissed from service, while they were on probation. The dismissal orders have been upheld in appeal and revision, which are in challenge in the writ petitions.

2. The short facts of the case are as follows:-

(a) Both the petitioners were appointed as CT/GD in the CRPF') bearing Batch Nos. 060112604 and 060047128 and were sent to RTC-III, CRPF for undergoing basic training. After completion of basic training at RCT-III, CRPF, petitioners along other 204 newly passed out CT/GD, reported back from RTC-III, CRPF to GC, CRPF, Mokamehghat on 6.11.2007.

(b) It appears that as posting of these newly passed out CT/GD including petitioners to Unit/GCs were not decided by the competent authority, they were awaiting their posting to Units/GCs, and staying at GC, CRPF, Mokamehghat.

(c) In the meantime, during surprise roll-call check of the newly passed out CT/GD conducted at GC, CRPF, Mokamehghat at about 1 PM on 15.1.2008, the petitioners were found absent/deserted from Group Centre Campus, CRPF, Mokamehghat. Consequently, the petitioners' services were terminated vide letter, dated 9.2.2008 issued under the signature of the ADIGP, MKG as per sub-Rule (2) of Rule

5 of the Central Civil Services (Temporary Service Rules), 1965 (herein after referred to as the 'Rules 1965'). A copy of letter is contained in Annexure 1 to the writ petition.

(d) Appeals preferred before the Inspector General of Police, Bihar Sector, CRPF, Patna too were dismissed vide order, dated 2.7.2008. Copies of orders dated 2.7.2008 and 30.6.2008, are annexed as Annexure 2 to the writ petitions. Revision application of Sudhir Kumar and Ajit Kumar were rejected on 10.11.2008 (Annexure 7 to C.W.J.C.No. 18994/2008) and 4.11.2008 (Annexure 3 to C.W.J.C.No. 1053/2009), respectively. The dismissal orders, the appellate and revisional orders, almost identical in nature, are in challenge in this writ application.

3. Learned counsel for the petitioners submits that the dismissal order should have contained some reasons, so that they could effectively file an appeal before the higher authorities. The order passed by the Disciplinary authority in case of either of the petitioners does not contain any reason. However, the reason for dismissal has been mentioned in appellate orders. As per the appellate orders, the services of petitioners were terminated by the Disciplinary authority as during surprise roll-call check of the newly passed out CT/GD conducted at GC, CRPF, Mokamehghat at about 1 PM on 15.01.2008, the petitioners



were found absent/deserted from Group Centre Campus, CRPF, Mokamehghat. The petitioners contend that that the appellate authority committed an error of record by observing that they were dismissed by the disciplinary authority, as at the relevant time they were found absent from the Group Centre, CRPF, Mokamehghat, as no reason is assigned in the dismissal order. He next submits that it is essential that original order should contain reason, if the same does not contain the grounds, it cannot be supplemented by the appellate order. In support of their submissions that if the punishment order does not contain reasons for awarding punishment, the same cannot be supplemented by the appellate order, learned counsel relies upon a decision in case of **Oryx Fisheries Pvt. Ltd Vs Union Of India & Ors**, reported in **(2010) 13 SCC 437**, particularly **paragraph 41**. Paragraph 41 of the judgment are quoted herein below for easy reference:-

"41. *In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below*

a. *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

b. *A quasi-judicial authority must record reasons in support of its conclusions.*

c. *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as*

well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See

David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

4. On the other hand, learned counsel appearing for the Union of India has justified the impugned actions. He submits that the petitioners are probationers and their termination orders have been passed in terms of Rule 5(1) of the Rules, 1965. He further submits that it is not necessary to either give notice or assign reasons while terminating the services of the recruits on probation, if not suitable, as it may not prejudice their future appointments. Learned counsel submits that the petitioners were found absent from the Group Centre without information and as such they were not found suitable and thus their services were terminated. He further submits that the Hon'ble Apex Court in case of **Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and another**, reported



in **(2002) 1 SCC 520** has drawn a distinction between stigmatic and non-stigmatic probation. He further submits that if a person on probation is discharged from service on the ground that he is not suitable or has remained absent, the same would not carry stigma and as such no notice would be required in terms of decision in case of **State of West Bengal and others Vs. Tapas Roy**, reported in **(2006)6 SCC 453**.

5. I have heard learned counsel for the petitioners, the Union of India and perused the materials on record.

6. The issue for consideration before this Court is whether a probationer of a disciplined/elite force can be discharged from service without any notice. The other issue would be whether the order terminating the service should be accompanied with reasons.

7. The case of respondents is detailed in the counter affidavit. It has been stated in paragraph 4 of the counter affidavit that petitioners were appointed as CT/GD in the Central Reserve Police Force (herein after referred to as 'the CRPF') bearing No. 060112604 and 060047128 and were sent to RTC-III, CRPF for undergoing basic training. After completion of basis training at RCT-III, CRPF, petitioners along other 204 newly passed out CT/GD,



reported back from RTC-III, CRPF to GC, CRPF, Mokamehghat on 6.11.2007. It appears that as posting of these newly passed out CT/GD including petitioners to Unit/GCs were not decided by the competent authority, they were awaiting their posting to Units/GCs and staying at GC, CRPF, Mokamehghat. In the meantime, during surprise check roll-call of these newly passed out CT/GD conducted at GC, CRPF, Mokamehghat at about 1 PM on 15.1.2008, the petitioners were found absent/deserted from Group Centre Campus, CRPF, Mokamehghat and were consequently dismissed without any notice. Their case is that if the order is not stigmatic, a notice may not be given.

8. The issue, whether notice necessarily has to be given if an order is not stigmatic in case of temporary, casual or probationer came to be considered in case of **P.N.Verma (Supra)**. In the aforesaid case, the Hon'ble Apex Court observed that if the termination is stigmatic, in such case, notice to the delinquent employee would be imperative, as the same would contain element of punishment. However, if the service of sepoy is terminated on the ground that he has been found unsuitable or his conduct is not found satisfactory, it would not *ex be facie* stigmatic.

9. The view was reiterated in case of **State of West Bengal and others Vs. Tapas Roy**, reported in **(2006)6**



SCC 453. In this case, the probationer/trainee constable in police department was discharged as he had remained on unauthorized leave/absence and thus was not interested in training, and had no respect for discipline and thus unsuitable for the police department. The Hon'ble Apex Court observed that such discharge order would not be stigmatic, as there is no allegation of any moral turpitude or misconduct.

10. In case of State of **UP Vs. Rekha Rani**, reported in **2011(11)SCC 44**, in **paragraph 13** at page 144, Hon'ble Supreme Court observed that the respondent's service was not terminated as a measure of punishment, as such, no opportunity of hearing was necessary for terminating her service. The direction for her reinstatement is not sustainable as she was only a temporary employee and hence had no right to the post.

11. In view of conspection of decisions on the matter, one may conclude that in case of a probationer or a temporary employee, no notice is required to be given prior to the termination/removal, if the same is not stigmatic or does not contain element of punishment. Conversely, notice would be necessary if that order is stigmatic or contain element of punishment.

12. However, still a more important issue arises, as

to whether order of termination of a probationer should contain reasons or not.

13. The issue whether there should be a disclosure of reason in an order may vary from case to case. For instance, while considering the legality of administrative order, the general principle is that in the absence of statutory requirement to give reasons, an administrative order need not be speaking order, except when there was provision for administrative appeal. Nonetheless, it may not be appropriate to completely ignore the background facts and grounds behind the decision, as in such situation, the scope of judicial review would become very restrictive. In a quasi judicial proceeding or statutory proceeding, like disciplinary proceeding, it would be essential to give reasons in support of the order.

14. However, the situation would be different in a case of probationer or a temporary or daily wage employee. The service of a probationer does not attain permanence, unless and until he successfully completes his probation. If there is adequate ground for not confirming a probationer, he can be discharged from service. It would not be mandatory to give reasons, unless the statute requires otherwise.

15. The service condition of a temporary recruit or probationer in CRPF is governed by Rules, 1965. I may

agree with the submission of learned counsel for the Union of India that as per of the Central Civil Services (Temporary Service Rules), 1965, it may not be mandatory for the authorities to provide reason. Underlying consideration for not mentioning reasons in the order is not to prejudice the case of the probationer in his future employment. However, non-mentioning of reason in the order would not mean that there should be no reason in the file. In case of **R. Chitralekha v. State of Mysore**, reported in **AIR 1964 SC 1823**, Hon'ble Apex Court has observed that the Court can always take recourse to satisfy itself, whether there is reason or not for passing of the impugned order.

16. As such, I am of the considered view that under the Rules, 1965 it would not be mandatory for the authorities to give reasons, while terminating the service of probationer. As such, the impugned orders of the disciplinary authority not mentioning any reason for terminating the service of the petitioners, do not suffer from any vice or infirmity.

17. The writ petition is accordingly dismissed.

Shashi.

(Samarendra Pratap Singh, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	3.8.2016
Transmission Date	3.8.2016