

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18768 of 2008

=====

Jitendra Kumar Yadav, S/O Kapildeo Yadav, R/O Village – Deoria Tola, P.S. – Kopa, District – Saran.

.... Petitioner

Versus

1. The Union of India through the Director General, Central Reserve Police Force, C.G.O. Complex, Lodhi Road, New Delhi.
2. Director General, Central Reserve Police Force, C.G.O. Complex, Lodhi Road, New Delhi.
3. Inspector General, Central Reserve Police Force, Salt Lake, Kolkatta.
4. Deputy Inspector General, Central Reserve Police Force, Salt Lake, Kolkatta.
5. Commandant, 3, SIG BN, Central Reserve Police Force, Salt Lake, Kolkatta.
6. Deputy Inspector General, Patna Region, Central Reserve Police Force, Patna, Bihar.

.... Respondents

=====

Appearance :

For the Petitioner	: Mr. Brisketu Sharan Pandey, Advocate. Mr. Prince Kumar Mishra, Advocate.
For the Respondents	: Mr. Sanjay Kumar, (ASST.SG) Mr. Anjani Kumar Sharan, (Cgc)

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 04-02-2017

Heard both sides.

2. The petitioner seeks quashing of the order dated 30.06.2004 issued under the signature of Commandant, 3 Signal Battalion, Central Reserve Police Force, Salt Lake Kolkata by which the petitioner was terminated from the service under Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and further to quash the order passed in appeal by the Directorate General, Central Reserve Police Force, CGO Complex, Lodhi Road, New Delhi dated 13.04.2005, whereby the order of



dismissal of the petitioner is confirmed.

3. The petitioner was appointed on 10.07.2003 as Head Constable/Radio Operator bearing no. 034031236 in 3 Signal Battalion, Central Reserve Police Force. The petitioner had to undergo basic training for five months and, thereafter the petitioner had to undergo technical training for ROG-III from 23.11.2003 to 01.05.2004, but he fell ill and he was admitted in police hospital with effect from 04.12.2003 to 11.12.2003 and the doctor advised him to rest for eight days. The petitioner applied for further leave, but he was asked to join the training. The petitioner sent the medical certificate duly issued by the Chief Medical Officer, Chapra who recommended for 15 days rest. The petitioner again sent application for leave along with medical certificate on 21.01.2004. The petitioner reported back on 04.03.2004 and he was again detailed to the next batch for technical training commencing from 29.03.2004 to 10.12.2004. The petitioner while undergoing training, again fell ill on 01.04.2004 and remain in hospital till 12.04.2004. The petitioner was advised to take rest from 12.04.2004 to 25.04.2004, but the physical condition of the petitioner deteriorated and he could not join his duty. The petitioner sent application for leave and again came on 12.06.2004 to join his duty but again he proceeded for leave on 16.06.2004. The petitioner was diagnosed and was found suffering from Masked Depression, but



the service of the petitioner was terminated vide order dated 30.06.2004. The petitioner preferred appeal and the Directorate General, Central Reserve Police Force, CGO Complex, Lodhi Road, New Delhi on 13.04.2005 confirmed the order of his termination issued under the signature of Inspector General (Prov & Comn).

4. Learned counsel for the petitioner submits that the order of dismissal is violations of natural justice. The order is punitive in nature and no notice was ever served to the petitioner. It is further submitted that the Commandant, who dismissed the petitioner from service has not given any reason of dismissal and this defect cannot be cured, if the appellate authority enumerated the same. The reason for dismissing the petitioner from service is his overstay, but no medical ground was considered and the same is punitive in nature. Learned counsel for the petitioner placed his reliance on the following judgments *State Bank of India and Others vs. Palak Modi and Another* reported in (2013) 3 SCC 607, *Ram Lakhan Yadav vs. Union of India (UOI) and Others* reported in (2001) 3 PLJR, *Anoop Jaiswal Vs. Government of India and Anr.* reported in AIR (1984) SC 636 and *Jawahar Chaudhary vs. State of Bihar* reported in (2012) 3 PLJR 876.

5. Admittedly, the petitioner was appointed as Head Constable in 3 Signal Battalion, Central Reserve Police Force and he



was getting training for Radio Operator. During the period of his training the petitioner repeatedly fell ill and could not successfully complete his technical training. When the petitioner reported back to his training his service was terminated under Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 which says as follows:

2. Termination of services of temporary Government servants by the appointing authority

2.1 Under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965, the services of a temporary Government servant, who has not been declared quasi permanent, can be terminated at any time by a month's notice writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.

2.2 The services of such a Government servant can also be terminated by the appointing authority forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period for which such notice falls short of one month.

6. The question arises that whether the order of termination of the petitioner is simplicitor or it carries a stigma and punitive. On bare perusal of the order impugned, it appears that no reason has been assigned and the service of the petitioner was terminated, but when



the petitioner preferred an appeal the appellate authority enumerated in detail the reasons for which the petitioner has been terminated from his service. It has been specifically stated that the petitioner repeatedly fell ill and overstayed of his leave without information and, could not complete his technical training that is why the petitioner was removed from his service.

7. Learned counsel for the petitioner placed his reliance on the case of *State Bank of India and Others vs. Palak Modi and Another* reported in (2013) 3 SCC 607 - Paragraph -17

17. In *State of Bihar v. Shiva Bhikshuk Mishra* the three-Judge Bench considered the question whether the respondent's reversion from the post of Subedar-Major to that of Sergeant in the backdrop of an inquiry made into the allegation of assault on his subordinate was punitive. On behalf of the Appellant, reliance was also placed on the judgments in *State of Punjab v. Sukh Raj Bahadur* and *Union of India v. R.S. Dhaba* and it was argued that the order of reversion cannot be treated as punitive because it did not contain any word of stigma and the High Court committed an error by relying upon the inquiry conducted by the Commandant for coming to the conclusion that the order of reversion was punitive. While rejecting the contention, this Court observed:

“5. We are unable to accede to the contention of the appellant that the ratio of the above decision is that so long as there are no express words of stigma attributed to the conduct of a government officer in the impugned order it cannot be held to have been made by way of punishment. The test as previously laid and which was relied on was whether the misconduct or negligence was a mere motive for the order of reversion or whether it was the very foundation of that order. In *Dhaba* case, it was not found that the order of reversion was based on misconduct or negligence of the officer. So far as we are aware no such rigid principle has ever been laid down by this Court that one has only to look to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine



and the court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. *The form of the order is not conclusive of its true nature and it might merely be a cloak or camouflage for an order founded on misconduct..... It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order.*"

Paragraph 7 of ***Ram Lakhan Yadav vs. Union of India***

(UOI) and Others reported in ***(2001) 3 PLJR*** reads as follows:

"7. This Court finds substance in the submission of the learned Counsel for the Petitioner. In the case of *Anoop Jaiswal v. Government of India and Anr.* reported in AIR 1984 S.C. 636, the Apex Court even held that the form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case* establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2). "It has been held that the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order and that such type of order of discharge if the service has not been accorded as, provided under Article 311(2) of the Constitution."

Paragraph-2 of ***Anoop Jaiswal Vs. Government of India***

and Anr. reported in ***AIR (1984) SC 636*** reads as follows:

"2. It would appear that the Director without holding an enquiry into the alleged misconduct recommended to the Government of India that the appellant should be discharged from the service. On the basis of the above report, the Government of India passed the order of discharge dated November 5, 1981 and communicated it to the appellant. The material part of the order reads thus:

No. I-22011/9/81 Pers. III Government of India/Bharat Sarkar Ministry of Home Affairs/Grih Mantralaya New Delhi-110001, the 9 Nov. 1981



ORDER

Whereas the Central Government is satisfied that Shri Anoop Jaiswal, appointed to the Indian Police Service on probation on the result of the Civil Service Examination held in the year 1979, is unsuitable for being a member of the said service, he is hereby discharged under Clause (b) of Rule 12 of the Indian Police Service (Probation) Rules, 1954.

The order of discharge will take effect from the date on which it is served on the said Shri Anoop Jaiswal.

In the name of and on behalf of the President of India.

Sd/- (NARENDRA PRASAD DIRECTOR”

8. From perusal of the aforesaid judgments, it is evident that in aforesaid cases the order of dismissal was on the ground of some allegations against the petitioner, but no notice or any departmental proceeding was held. On the aforesaid facts the dismissal was held to be punitive and stigmatic.

9. From perusal of the order terminating the services of the petitioner passed by the commandant and the appellate authority confirming the order of termination of the petitioner, it is amply clear that the petitioner was removed from service on the ground of his physical unsuitability on account of his illness and mental depression. The petitioner, himself, has stated that he could not complete his probation period and training as he fell ill on account of mental depression. Of course, the order of the commandant terminating the services of the petitioner does not disclose the reasons of termination, but the appellate authority has given the reasons and when veil is uplifted by this Court it transpired that it is a simple case of



termination on the ground of physical unsuitability and mental depression of the petitioner and such order is not stigmatic or punitive in nature.

10. Having considered the facts and discussed above, I do not find any merit in this writ petition. Accordingly, the writ petition is dismissed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2017
Transmission Date	

