

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.206 of 2018

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Rahul Kumar son of Shri Krishna Murari Prasad resident of Village - Khojagachhi, P.O. & P.S. - Barbigaha, District - Shekhpura.

... .. Petitioner/s

Versus

1. The Union of India through the Inspector General of Police, Central Reserve Police Force (CRPF), having office at Ashiyana Digha Road, Bihar Sector, CRPF, P.O. & P.S. - Digha, Town and District - Patna.
2. The Deputy Inspector General of Police, Central Reserve Police Force (CRPF) having office at Group Centre, CRPF, Mokamaghat, Town and District - Patna.
3. The Commandant, having office at DIGP, Group Centre, Central Reserve Police Force, Mokamaghat, Town and District - Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Adv. Mr. Manoj Tandon, Adv. Mr. Ram Vinay Pd. Singh @ Sanjay, Adv.
For the Respondent/s	:	Mr. S.D Sanjay (Addl. Soc. Gen.) Mr. Rabindra Kr. Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 02-08-2018

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the office order no. D-V-1/2017-EC-6 dated 24.8.2017 passed by Commandant, Group Central Reserve Police Force, Mokamaghat (respondent no.3), whereby and whereunder, the services of the petitioner has been terminated and further prayer has been made to quash the order dated 18.10.2012 passed by the Inspector General of Police, C.R.P.F., Patna, who has also rejected the appeal of the petitioner.

Prayer has been made for payment of entire salary for the period 1.8.2017 to 24.8.2017. At the same times, the petitioner



makes prayer for an interim relief for preventing the respondent from implementing of the impugned order dated 24.8.2017 (Annexure-7).

An advertisement was published by the Staff Selection Commission for the appointment of Constable in different paramilitary force including Central Reserve Police Force vide advertisement dated 24.1.2015 calling upon the interested persons to participate in the recruitment and, in pursuance thereof, the petitioner also participated, he was finally selected and was sent for training. After proper verification of the credential certificates produced by the petitioner, he was allowed to complete the training, was paid salary up to 31.7.2017, while he was taking proper training, the Commandant vide office order no. D-V-1/2017-EC-6 dated 24.8.2017, terminated the service of the petitioner in exercise of power under Rule 5(1) of the Central Services Temporary Services Rule, 1965. When it was served to the petitioner, he filed an appeal before the Inspector General of C.R.P.F., Bihar Sector dated 28.10.2017 who affirmed the order of termination passed against the petitioner as he did not find any merit in the contention of the petitioner. The reason for termination has been mentioned in the order passed by the appellate authority that the petitioner has purposely concealed the fact that he was



facing criminal proceeding on account of lodging of the First Information Report by one Rocky Kumari in Barbigha P.S. Case No. 224 of 2015 lodged on 1.7.2015 for offence under Sections 323, 504, 506, 354-A and 341 of the Indian Penal Code having stated that while she was returning from her office, one Rahul Kumar, S/o Murari Singh intercepted her and started doing obscene activity with her as well as hurled abuses to her. When she had objected his behavior, then he threatened to kill her, giving a description of entire events and, in the body of the First Information Report, it has been mentioned that she could know the name of person on enquiry made from the person who was witness to the incident.

Though it appears that the petitioner had filed a compromise petition for bail and vide order dated 3.7.2015 in Barbigha P.S. Case No. 224 of 2015 on the basis of compromise, he was granted bail and, ultimately, the petitioner has been acquitted in G.R. No. 711 (Tr. No. 364 of 2017) and the trial court has adjudicated the incident and vide order dated 19.9.2017 passed the order of acquittal in favour of the petitioner.

It appears that while filling up the form, the petitioner was supposed to disclose the queries truthfully whatever has been asked from the applicant. Annexure-C is the Verification Roll



where each column has to be filled up by the candidates intending to participate in the recruitment process. The form has been attached to the counter affidavit, where different queries have been mentioned including providing information with regard to pendency of the criminal case, if any. Specifically it has been mentioned that if the candidate would fail to give correct disclosure, his candidature can be canceled at any stage.

Learned counsel for the petitioner submits that the petitioner, being a young person, he could not understand the implication of making an incorrect statement and submitted that there is no doubt the correct disclosure was to be made but, the fact that the complainant has later on found that it was not the petitioner who had teased her or misbehaved with her and, on that account, she was agreeable to file a compromise petition showing that nothing was done by the petitioner and, as such, the authority should take a lenient view and should not have dismissed the petitioner from service looking to the fact that in present hard days, it is very difficult to procure a job for carrying the livelihood. In support of the submission, learned counsel for the petitioner has placed reliance on the judgment in the case of Joginder Singh Vs. Union Territory of Chandigarh & Ors.; 2015 (2) SCC 377, Commissioner of Police & Ors. Vs. Sandeep Kumar; 2011(4) SCC



644 and The Union of India & Ors. Vs. Naulesh Prasad & Ors.;
2017 (3) PLJR 189.

Having submitted that even a wrong disclosure or non-enclosure, will not lead to ultimately the termination from the services as because sometimes, young person do not muster a courage to disclose the truth and correct story of his/her past life and, as such, the authority should have taken a lenient view looking to the young age of the petitioner and, inasmuch as, he had not thought to disclose the fact of criminal case as the victim lady herself had come forward, withdrawn all criminals charges and incriminating allegation against the petitioner and as such there was no vicious attending circumstances against the petitioner. In a case of clean-chit in criminal trial, the termination of the services of the petitioner during training period is completely illegal and not sustainable in law. Further point has been raised that before termination of his service, he was not given any show-cause asking the petitioner in what circumstances he failed to make correct disclosure in his application form and in failure to observe the minimum level of natural justice of giving an opportunity to explain his stand, the authority has illegally terminated the services of the petitioner in exercise of power under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.



Learned counsel for the petitioner has submitted that when a person has joined the central government services, in such circumstances, even during period of probation, minimum is required that before terminating the services, the delinquent should have been asked the explanation, in failure to observe, the order of termination cannot withstand the test of fairness of Article 14 of the Constitution of India.

Learned counsel for the Union of India has submitted that as per terms of the advertisement and the statement mentioned in the form, the petitioner was mandatorily required to disclose the correct picture about his past life and one by one the counsel for the Union of India has shown that how much it is necessary to make the correct statement. He has specifically mentioned that if the disclosure is found to be wrong or any suppression has been made, the candidate can be terminated at any stage. In support of his submission, he has placed reliance to the notification dated 19.5.2013 and placing emphasis that "If he is a probationer or a temporary Government servant, he should be discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the



Government servant should be removed or dismissed from service”.

He has further placed reliance on Rule 5 of the aforesaid Rule, 1965 which prescribes that “the services of a temporary Government servant shall be liable to termination at any time by giving notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant;”. So it is a termination of service by giving one month notice to other side and vice-versa so, it has been submitted that Rule 5(1) does not prescribe to follow any natural justice before termination of the services and in support of his submission, learned counsel for the Union of India has placed reliance on the judgment in the case of Jainendra Singh Vs. State of Uttar Pradesh & Ors.; (2012) 8 SCC 748, Avtar Singh Vs. Union of India & Ors.; 2016 (8) SCC 471.

Having considered the rival contentions of the parties, there is no dispute and there cannot be any doubt that at the time of filling up the form, the candidates are obliged to make true disclosure about the present and past life as to whether he had ever faced any criminal case or he was placed in jail custody and none disclosure of the correct statement may lead to adverse situation to the candidate and even to the termination from service but, one



thing is very clear that when the petitioner has produced the credentials, the Central Government must have made the police verification and having found nothing against him, he was allowed to join and participate in the training. While the petitioner was under training, during verification, it was found that the petitioner has concealed his involvement in the criminal case and the criminal case is of a serious nature of having misbehaved with a female in the broad day light.

Learned counsel for the Union of India has submitted that the petitioner has influenced the Informant which is apparently clear from the order of bail wherein it has been mentioned that the parties have entered into the compromise which itself discloses that the petitioner has tampered the witness and obtained the bail order as well as acquittal. Here is the question only to that extent that whether the Commandant being a competent authority, before terminating the services was required to issue a show-cause and, after receipt of the explanation, he could have formed his own opinion.

Learned counsel for the Union of India has submitted that it is not necessary in terms of the Rule 5(1) as it does not prescribe such procedure to be followed but, one thing comes to my mind that it is not a simplicitor termination but connected with



the serious allegation against him of suppression of fact with respect to his past life, at least, it was desired from the Commandant that before terminating the services, he should have brought to the notice of the petitioner of suppression of fact considering the explanation and would have taken a decision in accordance with law.

In such view of the matter, the order of termination contained in office order no. D-V-1/2017-EC-6 dated 24.8.2017 and the order of appeal dated 18.10.2012 are set aside and the matter is remanded back to the competent authority to give show-cause to the petitioner and after consideration of the explanation, would take decision in accordance with law.

With the aforementioned observation and direction, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2018
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