

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 284 OF 2018

Dnyaneshwar s/o Laxman Mane,
age 25 years, occ. service,
R/o Village Eknathwadi,
Post Munguswade,
Tq. Pathardi, Dist. Ahmednagar ...Petitioner

VERSUS

- 1] Union of India,
through Ministry of Home Affairs,
North Block, Central Secretariat,
New Delhi 110001
- 2] The Senior Commandant,
Central Industrial Security
Force, KRTC, Mundali,
Dist. Cuttack,
State-Orissa, PIN 754 013 ...Respondents

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Mr. S.S.Jadhavar, advocate with
Mr. S.R.Shirsat, advocate for the petitioner
Mr.S.B.Deshpande, ASG for respondent nos. 1 and 2

CORAM : S.V.GANGAPURWALA & SUNIL K.KOTWAL, JJ.

DATE OF RESERVING THE JUDGMENT : 12.7.2018

DATE OF PRONOUNCEMENT OF JUDGMENT : 24.8.2018

J U D G M E N T (Per Sunil K. Kotwal, J.)

Rule. Rule is made returnable forthwith.

With the consent of the learned counsel for the parties, the petition is taken up for final hearing.

2. By filing this Writ Petition, the petitioner sought quashment of termination notice cum orders, dated 6.9.2017 and 8.9.2017, passed by respondent no.2, thereby terminating service of the petitioner as constable in Central Industrial Security Force (CISF).

3. Heard strenuous arguments submitted by Mr. S.S.Jadhavar, advocate holding for Mr. S.R.Shirsat, learned counsel for the petitioner and Mr. S.B.Deshpande, learned Additional Solicitor General for respondents.

4. Learned counsel for the petitioner submits that in response to the advertisement published by Staff Selection Commission, the petitioner applied and he was selected for the post of constable. After undergoing all the process of physical test, efficiency test, medical test, etc. and after receiving the appointment order, the petitioner joined at RTC, Mundali, Batalian 2, Kharavela Recruit Training Center, Mundali, Orissa on 2.5.2017. When the petitioner was undergoing

training at the said training center on 8.9.2017, respondent no.2 served notices/termination orders, thereby terminating service of the petitioner, on the ground that the petitioner has criminal antecedents and he faced criminal trial.

5. Learned counsel for the petitioner submits that after issuing termination notice, dated 6.9.2017, no opportunity of submitting explanation was given to the petitioner. He pointed out that during past, the petitioner and co-accused were prosecuted for the offences punishable under Sections 307, 326, 325, 324, 323, 504, 506 r/w 149 and under Sections 120B, 143, 147 and 148 of the Indian Penal Code. However, in the said Sessions Case No. 301 of 2011 the petitioner was acquitted on 22.4.2015. Therefore, the impugned termination order being passed in violation of principles of natural justice is illegal and deserves to be set aside.

6. Learned counsel for the petitioner placed reliance on the judgment of Division Bench of this

Court in Writ Petition No. 910 of 2018 [Jayram Babanrao Sanap vs Union of India and others], dated 19.3.2018, wherein only direction was given by this Court to the competent authority to take appropriate decision in respect of appointment of the then petitioner in furtherance of his selection. Validity of opinion of Standing Screening Committee is not examined by this Court.

7. Learned counsel for respondents submits that at the time of reporting at regional training center, Mundali on 2.5.2017, the petitioner was directed to fill up two copies of attestation form duly filled in completely and if the answer to any question of column 12 of the attestation form is "yes", then the petitioner was directed to submit complete details of the criminal case to the Principal, RTC, Mundali. The petitioner was also directed to fill up questionnaire form. Though while filling up questionnaire form the petitioner has admitted that in the past he was kept under detention and he was neither convicted by any criminal Court nor any criminal case is pending

against him, while answering question no.3, "Whether any FIR has been lodged against you?", the petitioner answered the said question as "no". However, it was noticed that criminal case for the above said offences was registered against the petitioner, and therefore, the matter was referred to the Standing Screening Committee for their opinion. The Standing Screening Committee considered the antecedents of the petitioner and opined that the petitioner was not suitable for appointment in the Central Industrial Security Force. Therefore, service of the petitioner was terminated by serving notice, dated 6.9.2017 on payment of one month salary in lieu of one month notice period as per Rule 25 (2) of the Central Industrial Security Force Rules, 2001.

8. Learned counsel for the respondents submits that the petitioner was guilty of suppression of registration of FIR while filling up the questionnaire as well as after examining the antecedents of the petitioner and his involvement in serious crime like attempt to commit murder and

riot by holding deadly weapons. The Screening Committee rightly opined that the petitioner was not suitable for being appointed to the post of constable in CISF. He placed reliance on the judgments of the Apex Court in the case of (1) "Avtar Singh vs Union of India and others (AIR 2016 SC 3598)" and (2) "Commissioner of Police, New Delhi and others vs Mehar Singh (AIR 2013 SC 2861)"

9. With the help of learned counsel for both the parties, we have gone through the documents placed on record. After going through the termination notice cum order, dated 6.9.2017, it emerges that under the provisions of Sub-rule 2 of Rule 25 of the CISF Rules, 2001 the service of the petitioner was terminated on payment of one month salary in lieu of one month notice for the reason that the 18th Standing Screening Committee of CISF opined that the petitioner was not suitable person to be continued in CISF, as he was involved in criminal case before joining CISF. The second termination order, dated 8.9.2017 is nothing but

further directions to remove the name of the petitioner from the strength/pay roll of CISF.

10. Rule 25 (2) of CISF Rules, 2001 reads thus : -

" 25. Probation: -

(1)

(2) If during the period of probation the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, the appointing authority may discharge him or terminate the service from the Force after issue of notice of one month or after giving one month pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his parent department, as the case may be."

Undisputedly, appointment of petitioner in 2017 was on probation of two years. A bare glance at Rule 25 (2) of the CISF Rules makes it clear that during the period of probation of two years, if the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, his services can be terminated after issue of one month notice or after giving one month

salary in lieu of such notice. In view of this clear provision in CISF Rules, when termination notice, dated 6.9.2017 indicates that the service of the petitioner was terminated as 18th Standing Screening Committee found him unsuitable for appointment as a member in CISF on account of his criminal antecedents and in lieu of one month notice, one month pay was paid to the petitioner, no further opportunity of hearing needs to be given to the petitioner. Even the petitioner by filing rejoinder has not disputed the payment of salary of one month to him in lieu of one month termination notice. In the circumstances, as under the CISF Rules, before terminating the services of the petitioner no hearing needs to be given to the petitioner, the petitioner cannot object that there is violation of principles of natural justice as opportunity of submitting explanation was not given to him. Thus, initial objection raised by the learned counsel for the petitioner regarding violation of principles of natural justice deserves to be rejected.

11. Now, question arises whether only because before joining CISF service, the petitioner faced criminal trial for the offences punishable under Sections 307, 326, 325, 324, 323, 504, 506 r/w 149 and under Sections 120B, 143, 147 and 148 of the Indian Penal Code, the 18th Standing Screening Committee can declare him not suitable for appointment to the post of constable in CISF. This aspect has been already considered in detail by the Supreme Court in the case of "Commissioner of Police, New Delhi and others vs Mehar Singh" (cited supra). The facts of that case are identical like the present case. In the case before Supreme Court, one Mehar Singh was prosecuted for committing offences under Sections 143, 341, 323 and 427 of the Indian Penal Code for causing hurt by iron chain, lathi, belt, stones, etc. Parties in that case arrived at compromise and accused were acquitted of the offences under Sections 323, 341, 427 of the Indian Penal Code. As regards offence under Section 147 of the Indian Penal Code, the Trial Court acquitted Mehar Singh as witnesses turned hostile. On selection of Mehar Singh in

Delhi Police Force his antecedents were examined by Screening Committee and considering his involvement in above referred crime, the Screening Committee did not recommend his case for appointment to the post of constable. That matter went up to the Apex Court and the Apex Court held that opinion formed by the Screening Committee does not merit any interference. The Apex Court observed thus : -

" 28. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case

because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is *mala fide*. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand. "

others" (cited supra) Larger Bench of the Apex Court considered the effect of suppression of fact by the employee at the time of recruitment. After elaborate discussion, the Apex Court summarised the conclusions. The relevant conclusion is reproduced as under: -

" Para 30 : -

.....

(4) (c) - If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

..... "

In view of this settled position of law, if we go through the questionnaire filled up by the petitioner at the time of joining the training center, it emerges that while answering the question, "Has any FIR been lodged against you ?",

the petitioner answered as "no". When the petitioner was knowing that in the past he was prosecuted for the offences under Sections 307, 326, 325, 324, 323, 504, 506 r/w 149 and under Sections 120B, 143, 147 and 148 of the Indian Penal Code, he must be knowing that FIR was registered against him under those Sections. Suppression of registration of that FIR indicates the dishonesty of the petitioner. Apart from this, after going through the judgment in Sessions Case No. 301 of 2011, delivered by Sessions Court, Ahmednagar, it emerges that the petitioner and other co-accused were facing charges for commission of the offences punishable under Sections 307, 326, 325, 324, 323, 504, 506 r/w 149 and under Sections 120B, 143, 147 and 148 of the Indian Penal Code. The allegations against the petitioner and co-accused are that on the date of incident on 26.7.2011 the petitioner and co-accused assaulted complainant Annasaheb, his brother, wife and daughter-in-law by using axe, iron pipe and stones. Axe blows were inflicted even on the head of the complainant. However, at the stage of recording evidence, probably the

matter was settled between the complainant and the accused, therefore, including complainant almost all injured witnesses turned hostile. In the result, the petitioner and co-accused were acquitted. He was absolved from criminal liability only because the complainant and other witnesses turned hostile. The acquittal was recorded only on technical ground i.e. hostility of all prosecution witnesses except the investigating officer. Therefore, it was not the case of honourable acquittal.

13. If the Screening Committee considered the above discussed criminal antecedents of the petitioner and his direct involvement while causing bodily injury by deadly weapon like axe, certainly the Screening Committee is justified while holding that the petitioner was not suitable person to be continued in CISF, which is important wing of the Armed Force of the India. In view of law settled by the Apex Court in "Avtar Singh" and "Commissioner of Police, New Delhi & others" (cited supra), certainly the opinion expressed by the

Screening Committee while rejecting the candidature of the petitioner in CISF cannot be faulted only because the petitioner can get acquittal in the above said criminal case.

14. Accordingly, we have come to the conclusion that the opinion expressed by 18th Standing Screening Committee regarding unsuitability of the petitioner for appointment as constable in CISF is justified. The subsequent action initiated by the respondents by following Rule 25 (2) of the CISF Rules is within four corners of law and there is no violation of principles of natural justice. We find no reason to interfere with the impugned order of termination passed by respondent no.2. It follows that this petition fails. Writ Petition is dismissed. Rule is discharged. No order as to costs.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]

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