

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 11.07.2018

Pronounced On: 20.07.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No. 3225 of 2009

K.P.Suresh

... Petitioner

Vs.

- 1.The Union of India,
Represented by its,
Secretary to the Government,
Department of Home Affairs,
New Delhi.
- 2.The Director General,
Central Reserve Police Force,
C.G.O. Complex,
Lodhi Road, New Delhi.
- 3.The Deputy Inspector General,
Central Reserve Police Force,
Group Centre, Avadi,
Chennai - 600 65.
- 4.The Commandant,
120 Battalion, CRPF,
Udaipur, Tripura.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the fourth respondent dated 11.07.2006 in his Office Order No.D.V-1/2006-East-2 and quash the same and direct the respondents to take the petitioner into the strength of Central Reserve Police Force as 'Safai Karmachur-Sweeper' with all monetary benefits.

For Petitioner : Mr.M.Mohamed Ibrahim Ali

For Respondents : Mr.D.Simon,
Central Government Standing Counsel
for R1 to R4

O R D E R

The instant writ petition has been filed for quashing the order of termination dated 11.07.2006 passed by the fourth respondent in Office Order No.D.V-1/2006-East-2 and for consequential benefits.

2.The petitioner joined the Central Reserve Police Force as Sweeper (Safai Karmachur) under Central Reserve Police Force, Group Centre, Avadi, Chennai on the following terms and conditions:-

"a)Your services are liable to be terminated at any time on one month's notice during the initial period of your service i.e. 2 years by the appointing authority without assigning any reason in accordance with the provisions contained in CRPF Rules, 1955.

b)You shall be at liberty to resign from your service, provided before the expiry of first three months of your service, provided three months pay or training charges whichever is higher is refunded.

c)The appointing authority may during the period of initial appointment, permit you, for good and sufficient reasons, to resign from the force with effect from such date as may be specified in the order accepting discharge/resignation provided that on the acceptance of your resignation you shall be required to refund to the Government all the cost of training imparted for you in the force or a sum equal to three months pay and allowances received by you prior to the date of your resignation whichever is higher.

d)The appointment carries with it the liability to serve any where in India or outside the country, if required.

e)On joining this Organization, you will be governed by CRPF Act, 1949 and CRPF Rules, 1955 and other Rules applicable to Central Government Employees as amended from time to time.

f)You will be covered by Defined Contribution Pension Scheme as introduced vide Government of India, Ministry of Finance (Department of Expenditure) vide O.M.F.No.1(7)(2)/2003/TA/1 dated 7/1/2004 and the existing defined Pensions System and GPF would not be applicable in you case.

g)You will be required to undergo basic training at any of the training institution of the CRPF after reporting. If you are not successfully undergoing/completing the training your service will be terminated.

h)You will not be entitled to re-imburse any expenses for the journey from your home town to the

place of joining and return journey, if you are found unfit in any respect.

i) On arrival your chest X-ray PA view should be carried out at your own cost and your appointment is subject to your medical fitness in all respect which will be determined by the appropriate medical officer of the department/force on your reporting to this Group Centre.

j) In case you do not report by the stipulated date mentioned at para 4, the officer of appointment made to you will be deemed to be lapsed automatically and no correspondence whatsoever on the subject will be entertained.

k) On your joining the post offered, authenticity of the educational date of birth/caste certificates produced by you shall be verified from the concerned issuing authority. In case of any discrepancy found at a later stage, your services shall be liable to be terminated without assigning any reasons.

l) The appointment in respect of OBC candidate is provisional and is subject to the Community Certificate being verified through the proper channels. If the verification reveals that the claim of the candidate to belonging to OBC or not to belong to creamy layer is false, his/her services will be terminated without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of Indian Penal Code for production of false certificate."

3. The petitioner was sent for basic training for a period of six months from 07.07.2004 to 30.11.2004 at New Delhi. He was transferred to 120 Battalion, deployed at Bandwar, Udaipur, Tripura on completion of training. The petitioner received a termination notice on 11.07.2006. This termination is being challenged by this instant writ petition stating that the petitioner has served Central Reserve Police Force for more than two years and regularization is automatic. He was not served with any show cause notice and therefore the termination order is bad in law. Counter has been filed by the respondents stating that the petitioner was involved in a criminal case No.126 of 2004 pertaining to Karambakkudi Police Station, Pudukottai District on 18.04.2004 under Section 147, 148, 324, 506 and 25(1) of Arms Act, and the pendency of the criminal case was not divulged in his application for appointment and that therefore his service were terminated after giving one month notice.

4. Heard, Mr.M.Mohamed Ibrahim Ali, learned counsel for the petitioner and Mr.D.Simon, learned Standing Counsel for the Central Government.

5.The petitioner has joined Central Reserve Police Force. The terms of appointment states that the services of the petitioner will be amended by Central Reserve Police Force Act Rule and other Rules applicable to Central Government employees as amended from time to time. Rule 16 of the Central Reserve Police Force Rules reads as under:-

"16.Period of Service-(a)All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per schedule, to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three month's notice in accordance with the said rules, as amended from time to time.

(b)Should the Central Government decide at any time to disband the Force or any part of it either before termination of the period for which a member of the Force is enrolled or at any time thereafter, he shall be liable to discharge, without compensation from the date of disbandment.

(c)No member of the Force shall withdraw from the duties of his office without the express permission of the Commandant or an accredited gazette officer.

(d)The appointing authority may, during the period of initial appointment of a member of the Force appointed under [Section 4 and 5] of the Act, permit him, for good and sufficient reason, to resign from the Force with effect from such date as may be specified in the order accepting his resignation;

Provided that on the acceptance of his resignation any such member of the Force shall be required to refund to the Government all the cost of training imparted to him in the Force or a sum equal to three month's pay and allowances, received by him prior to the date of his resignation whichever is less'.

Explanation -(1) For the purpose of this sub-clause "during the period of initial appointment" shall mean the period before a member of the Force is declared quasi-permanent.

(2) The appointing authority may refuse to permit a member of the Force to resign if any

emergency has been declared in the country either due to internal disturbances or external aggression.

(e) The appointing authority may give substantive status to such members of the Force as are found suitable in all respect."

6. The petitioner has not been given a substantive status. The records do not indicate that he was declared as quasi permanent. He is therefore a temporary employee. The petitioner is therefore liable to be discharged on one month's notice.

7. It is settled law a person a temporary employee can be discharged without holding any enquiry provided no stigma is attached in the order of termination.

7. It is settled law that if the termination is motivated by some other reason and has been brought about after some enquiry conducted behind the back of the employee then it will not be a case of termination simpliciter but a case of punitive termination founded on misconduct. The Hon'ble Supreme Court in the case of Chandra Prakash Shahi vs. State of U.P reported in (2000) 5 SCC 152 at para 27, 28, 29, 30 has observed under:-

"27. The whole case law is thus based on the peculiar facts of each individual case and it is wrong to say that decisions have been swinging like a pendulum; right, the order is valid; left, the order is punitive. It was urged before this Court, more than once including in Ram Chandra Trivedi's case (supra) that there was a conflict of decisions on the question of order being a simple termination order or a punitive order, but every time the Court rejected the contention and held that the apparent conflict was on account of different facts of different cases requiring the principles already laid down by this Court in various decisions to be applied to a different situation. But the concept of "motive" and "foundation" was always kept in view.

28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his

service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action. If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary enquiry.

30. Applying these principles to the facts of the present case, it will be noticed that the appellant, who was recruited as a Constable in the 34th Battalion, Pradeshik Armed Constabulary, U.P., had successfully completed his training and had also completed two years of probationary period without any blemish. Even after the completion of the period of probation under Para 541 of the U.P. Police Regulations, he continued in service in that capacity. The incident in question, namely, the quarrel was between two other Constables in which the appellant, to begin with, was not involved. When the quarrel was joined by few more Constables on either side, then an enquiry was held to find out the involvement of the constables in that quarrel in which filthy language was also used. It was through this enquiry that appellant's involvement was found established. The termination was founded on the

report of the preliminary enquiry as the employer had not held the preliminary enquiry to find out whether the appellant was suitable for further retention in service or for confirmation as he had already completed the period of probation quite a few years ago but was held to find out his involvement. In this situation, particularly when it is admitted by the respondent that the performance of the appellant throughout was unblemished, the order was definitely punitive in character as it was founded on the allegations of misconduct."

8. The order of termination in the present case if read in isolation would show that it is a case of termination simpliciter. However, a reading of the counter would show that the termination was based on material collected behind the back of the petitioner.

9. Para 10, 12, 16, 17 of the counter filed by the respondent reads as under:-

"10. As per the allegations in para 2(k) it is submitted that as per the existing rules, the appointment of the employee after medical fitness depends upon the authenticity of the records submitted by the employee and information so furnished/filed by the individual in verification Roll forms No. 25. As per warning envisaged on the top of the form wherein it is clearly mentioned that on furnishing of false information or suppression of any factual information his service are liable to be terminated under the Government rules. In the instant case the petitioner was found to have suppressed the facts while filing the form at the time of his records. In other words he did not disclose the facts and has hid the material facts from A.A. Since the petitioner was governed under CRPF Rules 1965 and CCS[Ts] Rules being Central Government employee his service were correctly terminated within the purview of rules. Further had only undergone the basic Training and before his confirmation as a permanent employee, the discrepancy of suppression was discovered and these are the applying authorities in his wisdom has rightly exercised the power under Rule 5 (1) of the Temporary Service Rules.

12. It is submitted that the fact regarding pendency of criminal case/involvement was hidden by the petitioner while filing the Verification Roll on 01.08.2004 though the case was registered on 18.04.2004 i.e., prior to his enlistment in CRPF. Furnishing of false information /

suppression of factual information in verification roll is a disqualification and renders the candidate unfit for further employment. The facts of his involvement / pendency in criminal case came to know from the verification report of the Hon'ble District Magistrate furnished vide letter No. RC-C/229116/2005 dated 30.03.2006. The Commandant after due verification in the light of Rule- 5 (1) of CCS [Temporary Service] Rules, 1965 terminated the service of petitioner after given one month notice to the petitioner and on expiry of the same his services were terminated vide our office order No.D-V-1/2006-Estt-2 dated 11.07.2006 which is within the purview of rules.

16.As per Rule -17 of CRPF Rules, 1955, discharge is claimed by an individual by applying to the appointing authority through proper channel and acceptance of the discharge is the discretion of the appointing authority. In the instant case the petitioner was found ineligible to continue in Government service due to his involvement in criminal case which is suppressed while furnishing the information in Verification Roll [CRPF Form-25] wherein as per warning Sl.No.1 to 3 envisaged on the first page of the form, it is clearly mentioned that the false information or having suppressed the factual information in verification roll comes to notice at any time during the service of a person and his services would be liable to be terminated.

17.It is submitted that the Rule-17 of CRPF rule 1955 which says that "If the fact that the false information has been furnished or that there has been suppression of any factual information in verification roll comes to notice at any time during the service of a person, his service would be liable to be terminated". The verification of character and antecedents Roll CRPF Form No.25 was filed by the petitioner on 01.08.2004 and thereby suppressed the information by denying about the pendency of any Criminal Case No.126/2004 under Sections 147,148,324,506 and 25(1) of Arms Act in Karambakkudi Police Sataion, Pudukottai District and registered on 18.04.2004 in the court of law . Further acquittal of the petitioner latter on does not absolve him from warning mentioned in the verification form."

10.A perusal of the counter shows that the petitioner has not been terminated on the ground of general unsuitability. He has been terminated on the ground of misrepresentation. The termination is based on misrepresentation of the petitioner in as much as he did not divulge that he was

involved in a criminal proceeding for offences under Sections 147,148,324,506 of IPC and Section 25 of the Arms Act in FIR dated 18.04.2004 in Karambakudi Police Station, Pudukkottai District. The termination has therefore become punitive for which an enquiry had to be conducted.

11.The issue as to whether non furnishing of details regarding involvement in a criminal case in the application for appointment in the CRPF amounts to suppression of material facts or not is no longer res integra. The Hon'ble Supreme Court by a judgment pronounced by a bench of three holders judge in the case of Avtar Singh vs. Union of India reported in (2016) 8 SCC 471 in para 38 has summarized its conclusions which read as under:-

"We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1.Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2.While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. 38.3.The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4.In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

38.4.1.In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2.Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3.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.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

12.A perusal of the said Judgment would show that there had to be an application of mind as to the effect of acquittal of the petitioner, the nature of case etc., for which purpose the petitioner should have been given a chance to defend

himself. The respondents have to conduct an enquiry for this purpose and the order of termination which was passed without conducting any enquiry but which is founded on the basis of the information that the petitioner has suppressed the information that he was involved in a criminal at the time of appointment has to be set aside.

13.Resultantly, the order of termination dated 11.07.2006 passed by the office of the Commandant 120 Battalion, CRPF, Udaipur, Tripura is set aside. The writ petition is allowed, the respondents are directed to reinstate the petitioner and to give full backwages and to conduct an enquiry and complete the same within a period of three months from the date of receipt of a copy of this order.
gsp

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to the Government,
Union of India,
Department of Home Affairs,
New Delhi.

2.The Director General,
Central Reserve Police Force,
C.G.O. Complex,
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+1 CC TO Mr.M.Mohamed Ibrahim Ali Advocate SR.NO. 48407

+1 C.C. To MR.D.SIMON Advocate SR.NO.48757

W.P.No. 3225 of 2009

PPA(CO)
ASK(10/08/2018)