

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.12918, 12939 & 12941 OF 2010

Dated: 10.04.2018

W.P.No.12918 of 2010

Between:

Mr. Amit Kumar, S/o. Ranbeer,
Aged about 27 years, R/o. Sadruddinnagar
Post Sisoli, P.S. Bhora Kala, Muzaffarnagar,
Uttar Pradesh State

.. Petitioner

And

Central Industrial Security Force,
Ministry of Home Affairs, Hakimpet,
Hyderabad, rep., by Inspector General
(Training Sector) and another

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.12918, 12939 & 12941 OF 2010

COMMON ORDER:

Heard learned counsel for petitioners Smt K Udaya Sree and learned counsel for respondents Smt M Indrani.

2. Petitioners were provisionally selected and appointed as Sub Inspector (Executive) in Central Industrial Security Force (CISF). While undergoing training in the National Industrial Security Academy at Hakimpet, Telangana State they were served notice informing them that their performance during the fortnight was found below the standard and they were indulging in arguing with instructors and showing unwanted aggression, which amounts to gross indiscipline. Petitioners were advised to take training seriously and improve their performance and behavior. Within a short period thereafter, the services of the petitioners were terminated by paying one-month salary in lieu of notice. The appellate authority rejected the appeals confirming decision to terminate services of petitioners. Challenging termination, these Writ Petitions are filed.

3. Heard learned counsel for the petitioners and learned Standing Counsel for the respondents.

4.1 Learned counsel for the petitioners contended that within short period of reporting to training, it cannot be assumed that their performance was so bad to terminate their services. They should have been given reasonable time to rectify their shortcomings. He further submitted that petitioners were served with notice of poor performance, petitioner in W.P.No.12918 of

2010 on 06.11.2009, petitioner in W.P.No.12939 of 2010 on 16.11.2009 and petitioner in W.P.No.12941 of 2010 on 06.11.2009. So far as petitioner in W.P.No.12939 of 2010 is concerned, within two days of issuing notice, his services were terminated, and termination orders were served on petitioners in W.P.Nos.12918 and 12941 of 2010, within a short period from the date of service of notice. He would further submit that after notice of poor performance was served, reasonable time ought to have been given and services could not have been terminated depriving employment to petitioners causing lot of hardship and suffering to them and their family.

4.2 According to learned counsel for petitioners, Rule 25 of the Central Industrial Security Force Rules must be read in consonance with Section 8 of the Central Industrial Security Force Act, 1968 and in terms of Section 8, services cannot be terminated without following due procedure.

4.3 He would further submit that termination is arbitrary. Another probationer against whom similar allegations were made and probation was terminated was subsequently reinstated.

4.4 Order of termination is punitive and stigmatic. In supported of said contention he placed reliance on the decisions of the Supreme Court in ***Dipti Prakash Banerjee v. Satyendra Nath Bose, National Centre for Basic Sciences, Calcutta and others***¹ and ***V.P Ahuja v. State of Punjab and others***².

¹ (1999) 3 SCC 60

² (2000) 3 SCC 239

4.5 In support of his contention, particularly with reference to alleged involvement in crime earlier and holding that their behavior was not satisfactory earlier to joining service is erroneous and no such reliance can be placed on past conduct to terminate their services, learned counsel for the petitioners placed reliance on the decision of the Supreme Court in ***Commissioner of Police and others v. Sandeep Kumar***³.

5.1 Per contra, learned Standing Counsel would submit that there is no requirement even to inform the trainees to improve their performance. According to procedure evolved by the Academy, performance of trainees is assessed every week and on noticing the shortcomings, trainees are informed orally to improve their performance and in the said manner, petitioners were also informed to improve their performance. Weekly assessment of performance is made by instructors and trainees would sign on performance reports and therefore petitioners were aware of assessment made by the instructors. Despite assessment was appraised, petitioners did not improve their performance.

5.2. In addition to their deficiencies in undergoing training, they were also found to be aggressive, in disciplined, argumentative, showing disrespect to the instructors. The Force cannot tolerate indiscipline and disobedience to the directions of the superiors more particularly by persons undergoing training on recruitment. On assignment of regular duties, Sub Inspectors would be holding weapons and command 30 constables. With this temperament,

³ (2011) 4 SCC 644

force would be at greater risk in handing over weapons to them and making them charge of 30 constables.

5.3 Responding to the contention of learned counsel for petitioner that Appellate Authority referred to past conduct and same is illegal, she would submit that as contention was raised in the appeal, it was referred to in the decision.

5.4 She would submit that termination was not stigmatic.

6. On recruitment, persons are placed on training to train them on various aspects of the force and to prepare them to take the challenges in the force. The Force expects high degree of obedience to the commands given by the instructors, follow the instructions scrupulously and obey the directions of the superiors. The CISF being the Security Arm of the State, higher degree of discipline and obeying the command of superior officers is expected from trainees.

7. The photocopies of performance appraisal of petitioners are placed on record. Petitioners were part of 34th batch of Sub Inspectors / Executives undergoing training in the year 2009. As per training module every week performance of trainees is assessed, their short comings are pointed out and trainees were informed to improve on the short comings noticed. The training officer submits weekly reports. The Deputy Commandant in-charge of training submits fortnightly reports. He has submitted two reports dated 24.10.2009 and 7.11.2009, petitioners are at Serial Nos.1, 3 and 4.

8. Following is the assessment of Deputy Commandant in his fortnightly reports dated 24.10.2009 and 7.11.2009:

I. Report dated 24.10.2009:

Sl No.	C/No	Rank	Name	performance	Conduct behaviour &	remark
1	309	SI/UT	Amit Kumar	poor	Indiscipline, arguing with instructor, aggressive	
3	376	SI/UT	Dheeraj Yadav	Poor	Aggressive, argumentative, short temper, indiscipline	
4	495	SI/UT	Satyeshwar Singh	Poor	Short temper, argumentative, showing unwanted aggression, indiscipline	

II. Report dated 7.11.2009:

Sl No.	C/No	Rank	Name	performance	Conduct behaviour &	Remark
1	309	SI/UT	Amit Kumar	poor	Indiscipline, arguing with instructor, aggressive	
3	376	SI/UT	Dheeraj Yadav	Poor	Aggressive, argumentative, short temper, indiscipline	
4	495	SI/UT	Satyeshwar Singh	Poor	Short temper, argumentative, showing unwanted aggression, indiscipline	

9. Vide proceedings dated 6.11.2009 petitioners were informed of performance during fortnight ending 24.10.2009. While petitioners were apprised of their poor performance and behavior, for the subsequent period also their performance was poor. It is categorically asserted and not specifically denied by the petitioners that the trainees would be informed orally also of their shortcomings and advised to improve. It appears, despite giving advice, there was no improvement. The record would disclose that within short period of joining in the training, they displayed rough

temper, riotous behavior and proved that they were difficult to handle.

10. The note copy placed on record by the respondents would disclose that as per the assessment, petitioners were found to be in-disciplined, arguing with the instructors on trivial issues and showing unwanted aggression. Further with reference to Dheeraj Yadav, it is also stated that he was short tempered. Persons with unwarranted aggression, indiscipline, short temper cannot be molded to be good members of the Force. Such conduct should be nipped in the bud, else it may spread to other trainees. It is not desirable to induct persons who are no longer obedient, belonging or accepted and hence not controllable or answerable. It is surprising to note that within few days of joining training, they displayed this kind of attributes and there was no improvement.

11. It is not the case of petitioners that training officers were inimical to them and their actions are malafide. There is no allegation of personal prejudice against training officers. It is not the case of petitioners that they were not put on notice on their performance. However, it was contended that very short time was given to them to improve their assessment. There is no merit in the said contention. According to training module, as contended by learned standing counsel, the trainee would be told of his short comings and general behavior and every week he would be informed of weekly assessment. Short comings in performance is tolerable and trainee can be given opportunity to improve but more serious assessment by training officers was on behavior of trainee. Trainee himself must realize and regulate his behavior. As seen

from assessment reports, there was no improvement and consistently it was deteriorating.

12. There is merit in the contention of learned standing counsel that persons with such attributes are unfit to serve any organization, much less, paramilitary force. They cannot be expected to lead 30 constables placed under them, with weapons in their hands and can lead to more dangerous consequences. It is not in public interest to induct such persons into a paramilitary force.

13. The very objective of placing persons on training after recruitment is to assess whether they would be fit to join the service. In the facts of the case, it cannot be said that the decision of CISF is whimsical and arbitrary. Much less, there is no impropriety in the course adopted by CISF. Such hooliganism should be nipped at the initial stage. Otherwise, it would lead to more dangerous consequences.

VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

14. It is vehemently contended that giving very short time, two days or little more does not amount to granting reasonable time and thus offending principles of natural justice.

15. It is to be noted that concept of principles of natural justice is not molded into a strait jacket pattern or formula. It is a dynamic concept. It is flexible and requires application depending on fact situation of a case. It only requires that person must be put on notice/afforded reasonable opportunity before penalizing him. What is reasonable opportunity depend on facts of a given case.

Applicability of principles of natural justice is not a rule of thumb or a strait jacket formula as an abstract proposition of law. **[MAHARASTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION Vs K.S. GANDHI AND OTHERS (1991) 2 SCC 716]** The rules of natural justice are not embodied rules **[SURESH KOSHY GEORGE Vs. UNIVERSITY OF KERALA: AIR 1969 SC 198]** ; are not rigid, immutable or embodied rules that may be capable of being put in strait jacket nor have the same been so evolved as to apply universally to all kinds of domestic tribunals and enquiries [**A.S. MOTORS (P) LTD Vs UNION OF INDIA (2013) 10 SCC 114**] It is futile to look for definitions or standards **[Keshav Mills Co Ltd Vs. UOI: 1973(1) SCC 380]**.

16. As noted above, petitioners cannot plead ignorance of their riotous behavior. In the facts of this case, it cannot be said that they were not given reasonable opportunity. The order of termination of probation cannot be held as illegal only because after the notice of poor attitude, within few days they could not have been terminated and that they could have been afforded further opportunity. As seen from the assessments extracted above their behavior within short period is not tolerable.

ORDER OF TERMINATION IS STIGMATIC:

17. It was vehemently contended that impugned order is stigmatic. A bare reading of the termination order would show that it is termination simplicitor. Order does not assign any reasons except holding 'not fit for permanent appointment in CISF'.

18. Learned counsel for petitioners sought to contend that Court should lift the veil and look into the record to find out whether stigma is attached and on doing so, it is stigmatic.

19. Whether termination order is stigmatic depends on the facts and circumstances of each case and the language or words employed in the order of termination of the probationer to assess whether the words employed amount to a stigma [paragraph 31 of **DIPTI PRAKASH BANERJEE**]. If order of termination does not assign reasons on the face of it, no stigma is attached. It is termination simplicitor. Even an innocuous order of termination can be held as stigmatic if material which amounts to stigma may be contained in any document referred to in the termination order or in its annexures. If so, the order of termination would stand vitiated because no regular enquiry was conducted (paragraph 35 of **DIPTI PRAKASH BANERJEE**). In the cases on hand, in the order of termination there is no reference to any other material. The foundation to the order of termination is not based on enquiry held behind the back of petitioners. Having regard to performance of petitioners during the training as asserted by training officers, the competent authority opined that petitioners are not suitable to serve the force and therefore terminated.

20. In similar fact situation, in **RAJESH KUMAR SRIVASTAVA Vs STATE OF JHARKHAND**⁴, a case of termination of probation of Munsif, Supreme Court discussed as under:

“9. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable

⁴ (2011) 4 SCC 447

the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probationer (appellant) are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job.

10. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither is any notice required to be given to the appellant nor is he required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination *simpliciter* and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.”

21. In **RANENDRA CHANDRA BANERJEE Vs THE UNION OF INDIA AND ANOTHER**⁵, Supreme Court observed as under:

5. The first question that falls for determination is whether the appellant is entitled to the protection of Article 311(2): for if he is entitled to that protection it is not disputed that that provision was not complied with in this case before his services were terminated. It is now well settled that the protection of Article 311 of the Constitution applies to temporary government servants also where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment. But it is equally well settled that where the services of a temporary government servant are terminated not by way of punishment, Article 311 will not apply and the services of such a servant can be terminated under the terms of the contract or by giving him the usual one month's notice; (see, *Parshotam Lal Dhingra v. Union of India*) [(1958) S.C.R. 828] . Further it is equally well settled that a government servant who is on probation can be discharged and such discharge would not amount to dismissal or removal within the meaning of Article 311(2) and would not attract the protection of that Article where the services of a probationer are terminated in accordance with the rules and not by way of punishment. A probationer has no right to the post held by him and under the terms of his appointment he is liable to be discharged at any time during the period of his probation subject to

⁵ AIR 1963 SC 1552

the rules governing such cases: (see *State of Orissa v. Ram Naran Das*) [(1961) 1 S.C.R. 606] . The appellant in the present case was undoubtedly a probationer. There is also no doubt that the termination of his service was not by way of punishment and cannot therefore amount to dismissal or removal within the meaning of Article 311. As a probationer he would be liable to be discharged during the period of probation subject to the rules in force that connection. The High Court therefore was right in holding that the appellant was not entitled to the protection of Article 311(2) of the Constitution.

6. It is however urged on behalf of the appellant that the rules themselves made it obligatory that Article 311(2) should be complied with before the services of a probationer were terminated. This new Explanations which was in force at the relevant time, is in these terms:

“The termination of employment—

(a) of a person appointed on probation during or at the end of the period of probation, in accordance with the terms of the appointment and the rules governing the probationary service; or

(b)-(c)

does not amount to removal or dismissal within the meaning of rule or of this Rule 55.”

Therefore when action was taken against the appellant in 1962, it was this Explanation which governed the appellant and accordingly if his services were terminated in accordance with the terms of his appointment and the rule governing his probationary service and not as a measure of punishment, the appellant cannot claim the protection of Article 311(2). His contention based on Explanation 2 to Rule 49 as it existed after the amendment of October 1947 must therefore fail as that Explanation had been deleted long before action was taken against the appellant. The main contention of the appellant therefore that he was entitled to the protection of Article 311 must fail.”

ORDER OF APPELLATE AUTHORITY:

22. In the appeal filed by petitioners, they have specifically asserted that termination order does not assign reasons. It was further alleged that because of involvement in criminal cases earlier to joining CISF, their services were terminated.

23. It is useful to extract order dated 9.4.2010 of Appellate Authority in the appeal filed by petitioner in WP No. 12918 of 2010. It reads as under.

“4..... It is worthwhile to mention here that discipline is the very foundation on which the entire superstructure of a uniformed paramilitary force is built. Therefore, this trainee is supposed/expected to cultivate a high level of discipline and correct attitude towards his instructors/Seniors so that he will be able to exercise command and control with discipline/decorum on his subordinates, which he failed to do. It is also worthwhile to mention that while scrutinizing the records of the case file of the petitioner, it has come to my notice that a criminal case was registered against him in an altercation during his academic period, in which he was suspected of opening fire on a fellow student. However, he has been acquitted by the Court on 29.09.2007 in the said case allowing him benefit of doubt due to lack of eye witnesses. Though he was acquitted by the Hon'ble Court, an inference can be drawn that his conduct, behavior was aggressive by his very nature, right from his college days. The Termination Order issued by the Disciplinary Authority is in consonance with the established rules/procedures and therefore no procedural lacunae or legal infirmities are seen.....”

24. It appears these observations were made in response to the contentions of petitioners. In the other two writ petitions also, similar observations were made. Appellate Authority was only pointing out that aggressive behavior was also seen prior to joining CISF. Apparently, the Appellate Authority was considering the request of petitioners to re-induct them to training and to assess said request he was referring to previous conduct. It is also appropriate to note that the appeal filed by Sri Ramsnehi Sharma was favorably acted taking note of recommendation of training supervisors. It is not a case where past conduct was relied on behind the back of petitioners to deprive them employment by the original authority. Petitioners, therefore cannot rely on those observations of appellate authority to contend that termination

was stigmatic and was on the ground of involvement in a criminal case earlier to joining service. As seen from the order of termination, it is termination simplicitor. It does not assign reasons. The competent authority invoked power under Rule 25(2) to terminate their services. The precedent decisions relied by learned counsel for petitioner do not come to his aid. Further, in the cases on hand, the decision of Appellate Authority cannot be said that it does not contain reasons to hold it as vitiated on that ground.

DISCRIMINATION:

25. It is further contended that against four trainees' adverse comments were made. Sri Ramsnehi Sharma was also terminated but on appeal, he was permitted to join back in training. This is discriminatory. It appears from counter affidavit that instructors volunteered to inform superiors that just before his termination his behavior started improving and was taking interest in training seriously. This was considered by Appellate Authority to decide in his favor. Admittedly, there was no similar recommendation by trainers in favor of petitioners. Therefore, they cannot compare with Mr.Sharma. It also shows that competent authority was objectively considering the issue and wherever leniency could be shown benefit was granted. Further, there cannot be a negative equality. Admittedly, conduct of petitioners was not commensurate to serve in a disciplined force.

TERMINATION IS CONTRARY TO SECTION 8:

26. Section 8 of Central Industrial Security Force Act, 1968 prescribes various punishments that can be imposed on a member of the force and procedure required to be followed to impose such punishments. The petitioners were only probationers and did not become permanent members of service and their discharge was not on alleged misconduct. Petitioners were not removed. Their performance was assessed and having found that they are not suitable to become members of the force, their probation was terminated. Thus, Section 8 of the Act is not attracted. The impugned decision is traceable to Rule 25 (2) and the impugned decision does not violate Section 8 of the Act.

EQUITY JURISDICTION UNDER ARTICLE 226:

27. Under Article 226 of the Constitution of India writ court exercises equity jurisdiction. The power under Article 226 is discretionary. *'It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point'* **[RAMNIKLAL N BHUTTA Vs. STATE OF MAHARASTRA⁶]**. It must be exercised with great caution and only in furtherance of public interest or to set right grave illegality. Larger public interest must be kept in mind to decide whether intervention of the court is called for in a given case, more so when issue concerns employment in Central Industrial Security Force.

28. While considering the grievance in a petition under Article 226, the writ court need not grant relief merely because the petitioner makes out a legal point. *'Even if a legal flaw can be electronically detected, this Court would not interfere save manifest*

⁶ (1997) 1 SCC 134

injustice or unless a substantial question of public importance is involved [RASHPAL MALHOTRA Vs SATYA RAJPUT MRS AND ANOTHER⁷ & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT⁸].

29. In **M.C.MEHTA vs. UNION OF INDIA AND OTHERS⁹**, Supreme Court observed,

“21. It is, therefore, clear that if on the *admitted or indisputable* factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.”

30. Suitability of a person to work as Sub Inspector in the Force is assessed and recruitment is made at a fairly young age. Recruiting person at a very young age would help the Force to train and mould him to be a good officer in the Force. With advancement in age it would be difficult to mould to suit the requirements of the force. Petitioners were discharged from service few weeks after joining the Academy in the year 2009. They are out of employment for more than nine years. It is not known whether they secured any other employment. Though specifically asked, learned counsel for petitioners was unable to inform the Court about present status of petitioners. Be that as it may, even if contention of petitioners is accepted on violation of principles of natural justice and that order is stigmatic, no relief of re-induction to training can be granted at this stage.

Thus, on all parameters of judicial review of decision to discharge a probationer, petitions fail. The writ petitions are

⁷ AIR 1987 SC 2235

⁸ AIR 1089 SC 1972

⁹ (1999) 6 SCC 237

accordingly dismissed. Pending Miscellaneous applications stand closed.

JUSTICE P.NAVEEN RAO

Date: 10.04.2018
KH/tvk



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