

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 208

LPA No.780 of 2016 (O&M)
in CWP No. 2969 of 2014
Date of decision : 07.05.2018

Union of India and others

..... Appellants

VERSUS

Satish Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Rajvir Singh Sihag, Advocate, for the appellants.

Mr. Jashandeep Singh Sandhu, Advocate, for the respondent.

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DEEPAK SIBAL, J.

Through the instant intra-court appeal filed under Clause X of the Letters Patent challenge is made to the order dated 16.02.2016, passed by the learned Single Judge through which the writ petition filed by the respondent has been allowed.

The facts in brevity leading to the filing of the present appeal are that through appointment letter dated 09.09.2011 the respondent was provisionally selected for appointment as a Constable in the Central Industrial Security Force (for short the 'CISF'). However, on 24.10.2011, while he was undergoing the basic training course, FIR No.270, dated 24.10.2011 was registered against him at Police Station Sadar Narnaul under Sections 302/120-B IPC and in pursuance thereof he was arrested on 03.12.2011.

On 09.12.2011, in terms of the conditions of his appointment, read with the Rules 25/26 of the Central Industrial Security Force Rules, 2001 (for short 'the Rules'), the respondent was discharged from service by

the competent authority. The respondent challenged the afore-referred order dated 09.12.2011 through a writ petition filed before this Court being CWP No. 17047 of 2013-**Satish Kumar** vs. **Union of India and others** which petition was disposed of on 07.08.2013 with a direction to respondent No. 4 therein to decide the representations submitted by the respondent against termination of his services within a period of two months by passing a speaking order. In terms of the order passed by this Court, after affording an opportunity of personal hearing to the respondent, his representations were rejected vide order dated 21.10.2013. Such rejection was also affirmed by the Director General, CISF through his letter dated 03.12.2013.

The afore-referred termination order dated 09.12.2011; order dated 21.10.2013 and the letter dated 03.12.2013 were challenged by the respondent through a petition filed in this Court being CWP No.2969 of 2014 -**Satish Kumar** vs. **Union of India and others** which was allowed by the learned Single Judge vide order impugned in the present appeal.

After hearing learned counsel for the parties, we are of the view that the impugned judgment passed by the learned Single Judge cannot be sustained.

A perusal of the judgment reveals that the respondent's plea has been accepted primarily on the ground that his services have been terminated only for the reason that a criminal case had been registered against him and that since he had been acquitted in that case, the reason for termination of his services ceased to exist. However, before arriving at such conclusion the learned Single Judge failed to notice that at the time when

the services of the respondent were terminated he was on probation. Rather, he had by that time not even completed his basic training course and that his services had been done away with through an innocuous, non-stigmatic order which was in accordance with the terms and conditions of his appointment as also Rules 25/26 of the Rules.

The relevant terms and conditions of appointment of the respondent are extracted below: -

- “(i) xxx xxx xxx
- (ii) Your appointment will be subject to the conditions given in the Agreement Form which will be required to be filled at the time of the reporting at DIG/Principal, CISF, RTC, Bhilai, P.O. Utal, Distt.-Durg, Chhatisgarh, PIN Code 490001 on 25.09.2011 for joining the post and to attend basic training scheduled to commence w.e.f. 26.09.2011.
- (iii) You will on probation for a period of two years.
- (iv) The appointing authority may discharge you from service at any time during the period of probation, if in their opinion, your work of conduct during this period is considered unsatisfactory, or shows that you are not fit for permanent appointment.
- (v) You will be considered for confirmation in service on your successful completion of probation and if you are found fit in every respect for confirmation.
- (vi) to (xiv) xxx xxx xxx
- (xv) The offer of appointment is purely provisional and

subject to verification of your eligibility criteria as well as suitability for Government service. The offer of appointment can be revoked/cancelled till publication of the service order appointing you in the rank of Constable (Driver).” (emphasis supplied)

From the above, it is clear that the offer of appointment to the respondent was subject to his attending the basic training course which was scheduled to commence w.e.f 26.09.2011; he was to be on probation for a period of two years; that the appointing authority had the power to discharge the respondent from service at any time during the period of probation, if it is of the opinion that his work and conduct was not satisfactory; that he would be considered for confirmation of his services only on his successful completion of probation and that the offer of appointment was purely provisional.

At this stage, it would also be worthwhile to refer to Rules 25 and 26 of the Rules as also to the order dated 09.12.2011 through which the respondent was discharged during his probation period.

Rules 25 and 26 of the Rules are reproduced below for ready reference: -

“25. Probation - (1) Every member of the Force except those appointed on deputation/absorption, shall be on probation for the period specified in relevant column of the Recruitment Rules:

Provided that in the absence of a specific order of confirmation or a declaration of satisfactory completion of

probation, a member of the Force shall be deemed to be on probation:

Provided further that no member of the Force shall ordinarily be kept on probation for more than twice the period prescribed in respective recruitment rules.

(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 terminated the services from the Force after issue of notice of one month or after giving one month's 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.

(3) On successful completion of probation by a member of the Force, the appointing authority shall pass an order confirming the member of the Force in the grade in which he joined the Force.

26. Termination - (1) Where the appointing authority has terminated the services of probationer, the Inspector General may on his own motion or otherwise, reopen the case and after making such enquiry as he thinks fit may : (i) confirm the action taken by the appointing authority; (ii) withdraw the notice; (ii) reinstate the probationer in service; or (iv) make such other order in the case as he may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under

this sub-rule after the expiry of three months.-

(a) From the date of notice, in a case where notice is given.

(b) From the date of termination of service in a case where no notice is given.

(2) Where a probationer is reinstated in service under above rule, the order of reinstatement shall specify; (i) the amount of proportion of pay and allowances, if any, to be paid to the probationer for the period of his absence between the date of termination of his services and date of his reinstatement; and (ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

(3) Where the Inspector General has terminated the service of a probationer, acting as appointing authority, all the powers prescribed in sub-rule (1) and (2) above shall be exercised by the Director General and where the Director General has issued the order of termination by the Central Government.

(4) During the period of probation or its extension thereof, as the case may be, the appointing authority may without assigning any reason terminate the services of a member of the Force on the grounds of furnishing false or incorrect information at the time of appointment of that member of the Force or for his failure to pass the basic training or repeat course, by tendering a notice of one month to that effect or one month's pay in lieu thereof.” (emphasis supplied)

Order dated 09.12.2011

“Whereas Roll no.290102962 const. Dvr.9 (U/T) Satish Kumar

was reported CISF RTC Bhiali on 25.9.2011 to undergo Basic training of constable/Driver scheduled w.e.f. 26.9.2011 as per the offer of appointment issued by Commandant CISF 5th RB Ghaziabad vide letter No. E-32023/5th RB. Rectt.-CT (Dvr & DCPO)/Adm-3/2011-5153 dated 09.09.2011. He has been on probation for a period of two years from the date of appointment/reported for basic training and still continues to be so.

2. Whereas, by virtue of the provision contained in rule 25 and 26 of CISF Rule 2001, the appointment authority of roll no.290102962 const/Dvr. (UT) SATISH KUMAR, is empowered to terminate his services during the period of probation, if it is of the opinion that he is not fit for permanent appointment in CISF.

3. Now, therefore, in exercise of powers conferred upon the undersigned by the virtue of Rule 25 and 26 of CISF Rules 2001, I hereby issue one month's salary in lieu of one month's notice to roll no.290102962 const./Dvr (UT) SATISH KUMAR for termination of his service. He shall be deemed to be no more in service of CISF with effect from the date of issue of this order.”

A harmonious reading of the terms of appointment of the respondent, as extracted above, alongwith Rules 25/26 of the Rules leaves no matter of doubt in our mind that the respondent could be discharged/his services could be terminated during the period of his probation, through an innocuous and non-stigmatic order if the competent authority during his

period of probation found him unfit to be retained in service.

A perusal of the order dated 09.12.2011, passed by the Commandant, CISF, Bhilai reveals that through an innocuous and non-stigmatic order the respondent's services have been done away with during the probation period strictly as per the terms of his appointment as also the applicable Rules. That being so and especially in the absence of violation of any Rules or malafides having even been alleged, no fault can be found with the action taken by the appellants.

The learned Single Judge apparently got swayed by the respondent's acquittal in the murder case. That event is not found referred to in the respondent's order of discharge/termination. Even otherwise, the respondent was tried for murder of his relative and was acquitted as the prosecution witnesses, who were also related to him, turned hostile. The trial Court had thus no other choice but to acquit the respondent after giving him the benefit of doubt. In these circumstances, it was for the competent authority to consider whether a person who is yet to even complete his basic training course and who is found involved in a murder case is fit enough to be retained in a paramilitary force like the CISF which undoubtedly is involved in sensitive operations.

In this regard reference can be made to the following observations of the Apex Court in-**Daya Shankar Yadav vs. Union of India and others** (2010) 14 SCC 103: -

“10. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:
(i) on the ground of unsatisfactory antecedents and character,

disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.” (emphasis supplied)

In view of the above, while allowing the appeal, we set aside the impugned order passed by the learned Single Judge. As a consequence, the writ petition filed by the respondent is dismissed.

No costs.

[RAJESH BINDAL]
JUDGE

[DEEPAK SIBAL]
JUDGE

07.05.2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No