

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	23.01.2019
Orders pronounced on	05.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.2993 of 2011

and

M.P.No.1 of 2011

Ved Pal Boora

Inspector No.952070010

Central Industrial Security Force,

C.I.S.F. Unit, D.A.E.,

Kalpakkam - 603 102.

.... Petitioner

Vs.

1 The Director General,
Central Industrial Security Force,
C.G.O. Complex, Block No.13,
Lodhi Road, New Delhi 110 003.

2 The Inspector General,
Central Industrial Security Force,
Western Sector - 35,
Khargar, Taloga,
New Mumbai - 10.

3 The Deputy Inspector General, D.A.E.,
Central Industrial Security Force,
Zonal Head Quarters,
ECIL P.O.,
Hyderabad 600 062.

4 The Commandant,
Central Industrial Security Force,
C.I.S.F. Unit, D.A.E.,
Kalpakkam - 603 102.

.... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent, dated 25.1.2011 which was affixed in the quarters of the petitioner on 3.2.2011 in his order No.E-30013/Insp.-Prob/DAE-HQ/2011/41 and quash the same and to direct the respondents to pay all benefits.

For Petitioner
For Respondents

: Mr.A.S.Mujibur Rahman
: Mr.M.Sundar,
Central Govt. Standing Counsel

ORDER

According to the petitioner, the writ petitioner was selected as Sub Inspector on 5.1.1995 and posted for basic training at Hyderabad. After completion of training, he was promoted as Inspector and posted in Central Industrial Security Force (CISF) Unit, ONGC, Mehsana, Gujarat and was transferred to 4th RB Jaipur on 11.9.2010. According to the petitioner, due to injury on spinal cord at the time of rope climbing process, doctors diagnosed as spinal tuberculosis and the petitioner was advised to take treatment for one year. However, On 15.5.2009, the petitioner was transferred to D.A.E. Kalpakkam. During the period 21.7.2008 to 30.4.2009 at CISF, ONGC, Mehsana, Gujarat, petitioner raised voice against the Deputy Commandant Aksharma for his involvement in the Oil Pilferage from ONGC, Mehsana and their anti establishment activities. The petitioner made a complaint to I.G./W.S. and Senior Commandant, ONGC, Mehsana but the petitioner was threatened not to make such allegation against higher authorities. The petitioner was issued charge memo on 28.11.2008 alleging misbehaviour against one Mr.Suriyaprakash, Head Constable. Another charge memo also has been issued against the petitioner under Rule 37 of the CISF Rules on 5.12.2008, because of the complaint made by the petitioner, against one Mr.R.K.Trivedi.

2. The original authority without conducting enquiry passed an order awarding penalty of "Censure", dated 5.2.2009. Challenging the said order, an appeal has been preferred by the petitioner and the same was rejected. The petitioner also filed revision before the second respondent and the revision was also rejected. A punishment of withholding one increment for a period of one year was imposed on 24.1.2009. The appellate authority and the revision authority without considering the petitioner's case rejected the revision as barred by limitation. The fourth respondent by order, dated 23.7.2010 has allotted additional duty to act as flying squad in charge in township security. While the petitioner was on medical leave from 29.1.2001 to 7.2.2011, the third respondent passed the impugned order, dated 25.1.2011 reverted the petitioner to the rank of Sub Inspector with immediate effect in accordance with Rule 25(2) of the CISF Rules and affixed the same in the petitioner's headquarters.

3. According to the learned counsel for the petitioner, the impugned order has been passed without giving one month notice as contemplated under Rule 25(2) of the CISF Rules. Further, it is submitted that the period of probation was extended from 21.7.2010 to 21.1.2011 by order, dated 30.3.2010. The aforesaid order was not communicated to the petitioner nor any notice served to the petitioner before passing the impugned order. According to the petitioner, punishment awarded under Rule 37 of CISF Rules is not bar for promotion to the post of Inspector. Therefore, petitioner has filed the present writ petition to quash the impugned order.

4. Counter affidavit has been filed by the fourth respondent wherein it is stated that the petitioner was promoted to the rank of Inspector with effect from 21.7.2008. The petitioner has to successfully complete the probation period of two years from the rank of Inspector viz., from 21.7.2008 to 20.7.2010. As per the conditions, the promotion will be subject to the satisfactory completion of the probation period and assumed charge of Inspector on regular basis on 21.7.2008. During his tenure as CISF Unit, ONGC, Megsana, the petitioner was awarded following advisory memo on three occasions.

(i) On 31.10.2008 Inspector/ Exe.Vedpal Boora made a complaint to Dy. Commandant, CISF Unit, ONGC, Mehsana against one HC/GD Suryaprakash, BHM alleging misbehaviour with him by the HC/GD where he expressed lack of faith in the officers of CISF/ONGC Mehsana Unit and requested to get the enquiry conducted by any outside officer. Thus, he showed lack of faith in his officers without any valid reasons and tried to tarnish the image of the officers and obstruct the administrative process.

(ii) In reply to DC office letter No.4310, dated 1.11.2008 Inspector/Exe.Vedpal Boora in his application, dated 2.11.2008 requested to shift him immediately from the duties of Coy. Commander for smooth functioning of the unit. Thus, his attitude was of shirking of responsibility and he tried to pressurize the unit administration by creating obstacles.

5. Petitioner was also awarded punishment of withholding of one increment for a period of one year, which will not have the effect of postponing his future increment of pay, under Rule 37 of CISF Rules 2001. Challenging the aforesaid punishment, petitioner preferred an appeal and the said appeal was rejected

on 16.4.2009. When the petitioner was working at Regimental duties, he was found absent on 23.2.2009. He was issued with Advisory memo vide Dy. Commandant, CISF Unit, ONGC, Mehsana letter No.V-15099/ONGC(Meh)/Disc/09/806, dated 24.2.2009. By letter No.E-38014/04/WZ/Adm./2009/1082, dated 1.4.2009, petitioner was posted to CISF Unit, DAE Kalpakkam, he reported at CISF Unit, DAE, Kalpakkam on 15.5.2009. The Reporting Officer after assessment of the petitioner's performance having found unsatisfactory, recommended probation period may be extended for a period of six months. Further, Reviewing officer recommended that the petitioner may be reverted to the rank of Sub Inspector/Exe., because he lacks discipline, always tries to undermine the authority of seniors, is found involved in provoking juniors against seniors, his attitude is vindictive and tries to blame his seniors and colleagues for his failures. Final order has been passed by the DIG/DAE on going through the probation report, decided to extend the probation period of the petitioner for further six months with effect from 21.7.2010 in view of his unsatisfactory performance. The probation period was extended to give him an opportunity to change his behaviour and complete the probation period to the satisfaction of administration. The said order was communicated to the petitioner by letter, dated 3.9.2010. However, the petitioner refused to receive the said letter on 6.9.2010 in the presence of Reserve Inspector. Subsequently, said letter was sent through post and the same was returned with an endorsement refused on 20.9.2010. The performance assessment was done by the Supervisory Officers and the Reporting officer in his report mentioned that the petitioner has not meet the requirement of the job on all the counts. The Reporting officer also mentioned that the petitioner instigates others for anti establishment activities whenever his fault is pointed out and blames superiors, never accepts his fault and has no respect for seniors and department.

6. Therefore, petitioner's performance during the probation period was unsatisfactory. Hence, Reviewing Officer concurred with the Reporting officer and made a remark that the petitioner may be reverted to Sub Inspector/Exe. During the last six months period, two charge memos were issued under Rule 36 of CISF Act and Rule. Further, departmental enquiry has been in process against the petitioner for loss of government property, disobeying of bonafide official order, fabricating the document. A police case has been registered against the petitioner under Section 294(b), 323, 506(i) of I.P.C. r/w section 3(1) (x) of SC/ST Act, for abusing his senior colleagues as low caste (SC) person. According to the respondent, because of punishment of Censure and the assessment report, the petitioner was reverted and he was also awarded punishment of withholding of one increment for a period of one year. According to the

respondent, there is no violation of procedure as contemplated under the Rules wherein no notice was required to revert the individual to the original post as per Rule 25(2) of the CISF Rules. Therefore, the order of the respondent is perfectly valid and hence, writ petition is liable to be dismissed.

7. Heard the learned counsel appearing for the petitioner and the learned Central Government Standing Counsel appearing for the respondents and perused the materials available on record.

8. Now, the issue in this writ petition is that whether the order passed by the respondent reverting the petitioner to the lower post without issuing one month notice under Rule 25(2) of CISF Rules violates Rules ?

9. It is not disputed that the charge memo was issued against the petitioner on 28.11.2008 and 5.12.2008 under Rule 37 of CISF Rules. The charge memo, dated 28.11.2008 is as follows:

Charge I

Force No.952070010 Inspector/Exe Ved. Pal Boora of CISF, Unit, ONGC Mehsana has filed a written complaint addressed to Deputy Commandant, CISF, ONGC against Head Constable Suriyaprakash, BHM, dated 31.10.2009 for misbehaviour. While expressing his disbelief on the officers of Mehsana unit Inspector/Exe. Ved Pal Boora as for enquiry against the Head Constable Suriyaprakash by the outside officer. In this way, the Inspector has tried to defame the departmental officers. Being the disciplined force personnel, this act amounts to an act of gross indiscipline. hence, the charge.

Charge II :

In reply to the letter No.4310, dated 1.11.2008 force No.952070010 Inspector/Exe Ved Pal Boora CISF Unit, ONGC, Mehsana requested to relieve him from the post and duty of company Commander for the smooth functioning. He has tried to escape from the duty and created pressure to demanding him relieve from the post of company Commander which shows his unnecessary pressure. This amounts to gross negligence for his duty. So, this is the charge against him.

10. On 5.12.2008, the respondent framed the following

charges against the petitioner:

Charge I :

Force No.952070010 InspectorExe Ved. Pal Boora of CISF, Unit, ONGC Mehsana, dated 12.11.2008 was detailed for the "C" shift near the control room. During the detailment the said Insepector insulted No.821150087 Head Constable R.K.Trivedi in front of other personnel. Due to that he became tension. This act shows the gross indiscipline. Hence, the charge.

Charge II :

Force No.952070010 InspectorExe Ved. Pal Boora of CISF, Unit, ONGC Mehsana have submitted false complaint report on 13.11.2008 stating that No.821150087 Head Constable RK Trivedi and No.904480261 and doing act in a conspiracy which is baseless and fabricated. This is an act of indiscipline and negligence. Hence, the charge.

11. The reply submitted by the petitioner to the charge memo on two charges issued by the respondent, dated 28.11.2008, was found not satisfactory, the Discipline Authority by order, dated 24.01.2009, awarded punishment of withholding one increment for a period of one year and the same was confirmed by the Appellate Authority on 16.4.2009 and the revision authority on 10.11.2010. In so far as charge memo, dated 5.12.2008 also, the reply submitted by the petitioner was found not satisfactory by the Disciplinary Authority and he was awarded the punishment of "Censure" vide punishment order, dated 5.2.2009 after following the due process and the said order has become final. The performance of the petitioner during his probation was closely watched and found unsatisfactory and therefore, the probation was extended for further six months from 21.7.2010 to 20.1.2011 vide order in DA HQ Part I No.24/2010, dated 23.8.2010. During the probation period also, performance of the petitioner was not satisfactory, therefore, the impugned order has been passed by the respondent reverting the petitioner to the rank of Sub Inspector of Police under Rule 25(2) of CISF Rules, 2001. It is useful to extract Rule 25(2) of the CISF Rules.

"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 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."

12. From the aforesaid Rule, if a member of the force is not fit for permanent appointment, after issue of one month notice 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. On careful reading of the aforesaid rule, would reveal that one month notice or one month pay is required for discharge, termination or reversion to the lower post.

13. During the probation period, the performance of the petitioner was assessed by the Reporting Officer and found not satisfactory and the petitioner was reverted back to the rank of Sub Inspector of Police. Therefore, as per Rule 25(2) of CISF Rules, one month notice or payment of one month salary is required for reverting to the lower post.

14. The learned counsel for the petitioner relied upon the judgment of this court in K.S.SANKARANARAYANAN VS. INSPECTOR GENERAL OF POLICE, RAILWAYS, CHENNAI - 8 (W.P.No.39395 of 2005 dated 1.4.2010) to contend that the reversion order passed by the respondent without providing an opportunity to the petitioner is liable to be set aside. In the aforesaid case, petitioner was promoted as Head Constable in non gazetted post and he was thereafter, reverted on the ground that he was promoted in non sanctioned post. Whereas in the case in hand, the petitioner has not completed the probation period. Therefore, the aforesaid decision is not helpful to the petitioner.

15. Yet another judgment relied upon by the counsel for the petitioner in the case of V.KRISHNAVENI VS. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, COMBINED DISTRICT COURTS CAMPUS, MADURAI 625 020 (W.P.No.16985 of 2017, dated 21.3.2018). In the aforesaid case, petitioner was promoted contrary to Rule 36 of Tamil Nadu State and Subordinate Service Rules and therefore, promotion given to the petitioner was cancelled and reverted to the original post. In the present case, petitioner was promoted to the higher post, not completed the probation period. Therefore, the aforesaid decision is not helpful to the petitioner.

16. The learned counsel for the respondent relied upon the unreported judgment of the Jharkand High Court in NEERAJ GOLIYAN VS. UNION OF INDIA & OTHERS [W.P.No.1020 of 2011, dated

26.11.2014], wherein it is held as follows:

"Admittedly, the petitioner had been appointed as a constable under the respondents-C.I.S.F. When he was sent for training, he could not pass the Basic Training within the stipulated period, as such his training period was extended for a period of two months and thereafter he qualified for the Basic Training. In the appointment letter, there was specific condition that the petitioner will be on probation for a period of two years and it is informed by the competent authority that if the service of the petitioner is not satisfactory, his service will be terminated. The Reviewing Officer concurred with the finding of the Reporting Officer that the performance of the petitioner was found not satisfactory during the probationary period, as such one extension was given to him during short span of his service. Altogether five punishments, minor in nature, had been imposed on the petitioner. Since the petitioner had been appointed as a member of a disciplined force, he supposed to perform his duty with utmost sincerity and satisfaction to the higher authority. If any employee will not perform his duty upto mark and to the satisfaction of the higher authority during the probationary period, it is for the higher authority to take a decision to retain the petitioner in service by extending the period of probation as per the terms and conditions mentioned in the appointment letter. However, the petitioner was given opportunity to improve himself, but even thereafter he had not improved himself. The provision has been made under Rule 25(2) of the C.I.S.F Rules, 2001 for terminating the service of such employee, which is quoted herein below:

"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 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."

The competent authority has been vested with the power to take appropriate decision for

discharging a probationer, if he is of the opinion that the employee is not fit for the service. The word 'fit' has been referred to in Rule 25(2) of the C.I.S.F Rules, 2001, which has broad meaning. Fitness includes conduct, character and satisfactory service. Admittedly, the petitioner had been awarded five punishments, which itself indicate that the service of the petitioner was found unsatisfactory by the competent authority, as such one opportunity was provided to the petitioner to improve himself by giving one extension during the probationary period, but even thereafter, there was no improvement in the performance of the petitioner. Thereafter, a show cause notice was issued to the petitioner on 2.2.2007 and the impugned notice was issued to him on 19.2.2007 by the competent authority under the provision prescribed in Rule 25(2) of the C.I.S.F Rules, 2001. So far as the contention made by learned counsel for the petitioner that since the impugned order has been passed on certain allegation/misconduct, the petitioner was entitled to be provided an opportunity of hearing under Article 311 of the Constitution of India, since there is specific Rule/statute to pass an appropriate order with respect to a probationer, Article 311(2) will not come into play. When the competent authority is of the opinion that the conduct / service of an employee is found to be not satisfactory, can pass appropriate orders. The employee cannot challenge the same, merely on the ground, not provided adequate opportunity. Moreover, since the petitioner was on probation for a period of two years and there are serious allegations of irregularities against him, as has been referred to by the Inspector General, C.I.S.F in his order, the respondents authorities have taken a decision in exercise of power conferred under Rule 25(2) of the C.I.S.F Rules, 2001 by which the competent authority has been vested with power to discharge a probationer from the service on the ground of dissatisfactory service.

17. In the aforesaid case, petitioner therein was appointed and was not satisfactorily completed probation period. Therefore, aforesaid termination order was upheld. By taking

the same principle on the present case, petitioner's service during the probation period was not satisfactory. During his tenure, an adverse report submitted against the petitioner. Based of the assessment of the petitioner's performance, petitioner was reverted to lower post.

18. The main contention of the petitioner is that the respondent while reverting the petitioner to the lower post, has not followed the principles of natural justice. Following the judgment of the Hon'ble Supreme Court in ALIGARH MUSLIM UNIVERSITY vs. MANSOOR ALI KHAN (AIR 2000 SC 2783), the Division Bench of this Court in L.JUSTINE AND ANOTHER VS. THE REGISTRAR OF CO-OP. SOCIETIES, CHENNAI-10 AND TWO OTHERS [2002(4) CTC 385] held as under:

"6. It is true that termination of services results in civil consequences and that audi alteram partem rule has to be followed. But the theory of principles of natural justice cannot be put in a straight jacket and it is not an absolute rule that in each and every adverse order, there should be a strict adherence to the principles of natural justice. One such exception to audi alteram partem rule is absence of any legal right to defend the impugned action and in fact, such cases are covered by the 'useless formality theory' propounded by the Supreme Court in ALIGARH MUSLIM UNIVERSITY v. MANSOOR ALI KHAN (AIR 2000 SC 2783). Even for availment of the alternative remedy, a legal right should subsist and there may be some cases like the instant one where there is no right accrued even at the time of entry into service and when the top administrative authority, i.e. the Government, has already taken a stand, it serves no purpose to drive a party to avail of the alternative remedy as there is absolutely no discretion for the subordinate officers of the Government to take any decision contra to the view taken by the Government. Further, when interpretation of the provisions of the Statute, Rules framed thereunder and the Governmental Orders are involved, it is for the High Court to embark upon enquiry to adjudicate the matter and cannot be left to the subordinate officers of the Government, who are named as the statutory authorities. Added to that, having regard

to the magnitude of the problems and the bulk of cases, it serves no purpose in driving the parties to approach the statutory authorities as it is bound to bounce back again to this Court resulting in multiplicity of proceedings creating a fluid situation without concretisation of the legal principles. Having regard to these factors, we are of the considered view that the matter should be set at rest by laying down the definite and clear-cut legal principles so that the statutory authorities can be left only with the task of fact finding and then give a quietus to the situation. We now proceed to adjudicate.''

19. Even assuming for the sake of arguments that the respondent violated the principles of natural justice, there is no dispute in so far as the punishment of 'Censure' awarded to the petitioner and the same was not challenged by the petitioner. As such, the contention of the petitioner that the respondent violated the principles of natural justice is unsustainable, in the light of judgment of the Division Bench of this Court in L.JUSTINE case (supra).

20. The conduct of the petitioner is also exposed as notice served by the respondent through RPAD was also 'refused' as seen in the acknowledgment. Petitioner was working in the disciplinary force he should work in the department with honesty, integrity without any blemish during his service period. There is no materials is available for alleged malafide against the higher authorities.

21. Therefore, there is no illegality or irregularities in the order passed by the respondent. Therefore, this Court is of the view that there is no merit in the writ petition to interfere with the impugned order passed by the third respondent, dated 25.1.2011 and thus the writ petition deserves to be dismissed.

In fine, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

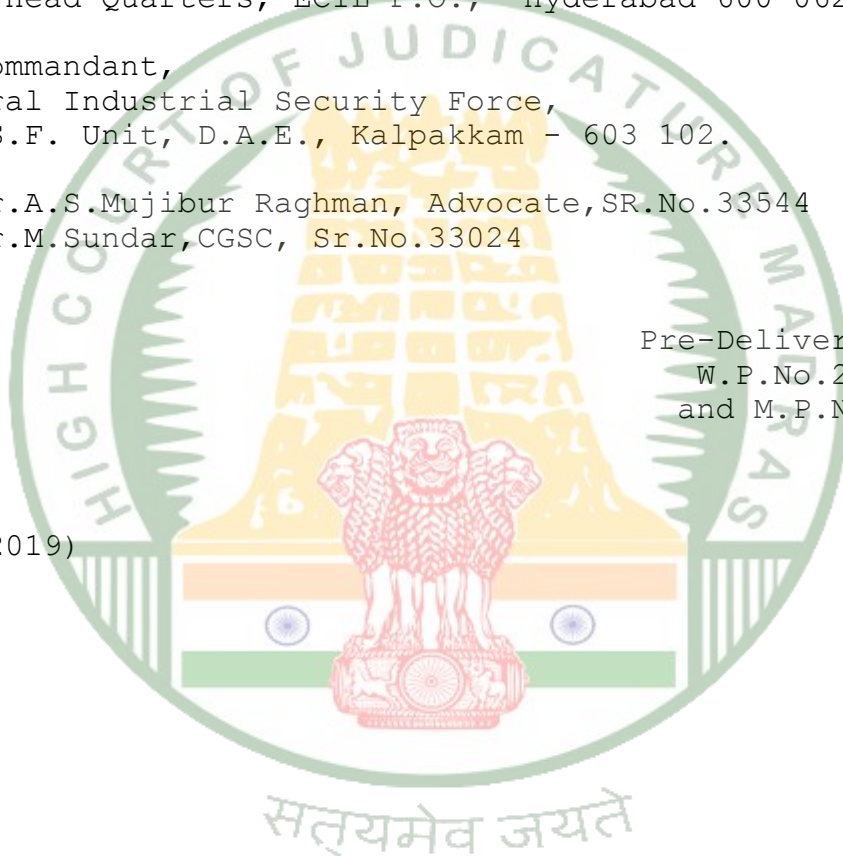
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+1cc to Mr.A.S.Mujibur Raghman, Advocate, SR.No.33544

+1cc to Mr.M.Sundar, CGSC, Sr.No.33024

Pre-Delivery order in
W.P.No.2993 of 2011
and M.P.No.1 of 2011

RSV(CO)
MP(28/05/2019)



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