

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

&

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

*** * * ***

WA Nos.813 & 804 of 2018

Between:

AMIT KUMAR

...Appellant

&

CENTRAL INDUSTRIAL SECURITY FORCE, MINISTRY OF HOME
AFFAIRS, GOVERNMENT OF INDIA, HAKIMPET, HYDERABAD,
REP. BY INSPECTOR GENERAL (TRAINING SECTOR) & ANOTHER

...Respondents

DATE OF JUDGMENT PRONOUNCED: 26-03-2019

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to
see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

***THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B.
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< **GIST:**

> **HEAD NOTE:**

! **Counsel for Appellant: Mrs.S. Nanda**

^**Counsel for Respondents: Learned Asst. Solicitor General**

? **Cases referred**

1. 1961 (1) SCR 606
2. (1974) 2 SCC 831
3. (2011) 4 SCC 644

**THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

WRIT APPEAL Nos.813 & 804 of 2018

JUDGMENT :: (*per the Hon'ble Sri Justice A. Rajasheker Reddy*)

These writ appeals are filed against the order dated 10-04-2018 passed by the learned single Judge in WP Nos.12918 & 12939 of 2010 respectively whereby and whereunder the relief sought by the writ petitioners-appellants herein to set aside the order of termination passed by the disciplinary authority and as confirmed by the appellate authority was upheld.

02. The appellants were provisionally selected and appointed as Sub-Inspectors (Executive) in Central Industrial Security Force, (CISF) and were deployed to the 2nd respondent-Academy to undergo training. The charge against them seems to be that they while undergoing training in the Academy during their probation, found that their performance was not upto the mark and also indulged in arguing with the instructors and been aggressive with them. Advises to improve their performance and mend ways yielded no results, the services of the appellants were terminated by following

Rule 25 of the Central Industrial Security Force Rules, 2001.

Aggrieved by the said order of the disciplinary authority, the matter was unsuccessful carried in appeal before appellate authority. Writ petitions filed against the affirming order passed by the appellate authority were dismissed by order impugned in these appeals.

03. Learned counsel for the appellants strenuously contended that no time was given to the appellants to improve their deficient performance and the decision to terminate their services is not preceded by any notice or opportunity of hearing and the decision which had the deleterious affect is not only punitive but also stigmatic and all these aspects were not considered in the proper perspective by the learned single Judge.

04. On the other hand, the learned Asst. Solicitor General for the respondents submitted that the learned single Judge has rightly held that the services of the appellants could be terminated as the order discharging their services is not by way of punishment, but by applying Rule 25 of the CISF Rules which applies to the recruits under training. Since the

appellants were orally informed, on more than one occasion to improve their performance itself was ample opportunity given to them to improve their performance but they put such advises on deaf ears, they were discharged from services on being found not suitable to hold the said posts which is in supervisory capacity.

05. We have heard the learned counsel on both sides and considered the decisions relied on by them.

06. Now, the question that arises for consideration is whether the order of termination of the services of the appellants is due to deficiency of their performance in the training and in spite of the proper instructions they failed to improve their performance; the action taken is punitive and stigmatic in nature; and the order of the learned single Judge in confirming the punishment so imposed by the disciplinary authority as confirmed by the appellate authority is liable to be interfered with.

07. Admittedly the appellants at the time of their discharge from services were on probation and they were posted to undergo training in the 2nd respondent-Academy. Their

appointment order dated 07-09-2009, among other things, refers to their probation. The relevant portion reads as under:-

“On your joining the post, you will be on probation for a period of two years in the first instance subject to the provision that the appointing authority may extend the same if felt necessary. If during the period of probation the appointing authority is of the opinion that a member of the Force is not fit for permanent of appointment, the appointing authority may discharge him from the Force after issue of notice of one month or after giving one months pay in lieu of notice.”

08. It is worthwhile to refer to the fortnightly assessment reports dated 24-10-2009 and 07-11-2009 assessed by the Deputy Commandant of the 2nd respondent-Academy which in fact are referred to in the impugned order, and a perusal of the same goes to show that the performance of the appellants is assessed as “poor” and as against the conduct and behaviour also it is noted as “aggressive, argumentative, short temper and indiscipline”. It has come on record that the appellants were not only advised to improve their performance but also informed orally of their shortcomings, and despite the same there was no improvement. The fact that they were orally informed to improve their performance by the instructors

during the course of their training is not specifically denied by the appellants nor they attributed any mala-fides. It is not their case that the training officers were inimical to them or they were victimized. The contention of the learned counsel for the appellants that they are entitled to the protection of Article 311 of the Constitution of India cannot be appreciated, for where the services of a probationer is terminated in accordance with the rules for deficient performance and not by way of punishment, and during the period of probation, he has no right to the post held by him, and is liable to be discharged at any time during the period of his probation subject to the rules governing the case. (see **STATE OF ORISSA vs. RAM NARAYAN DAS¹**). It is to be seen that in the appointment order itself it was mentioned that during the period of probation of two years, in the first instance, if 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 from the Force. The plain meaning of the words “*if during the period of probation*” means during the probation period if the performance and conduct of the appellants is not up to the

¹ 1961 (1) SCR 606

satisfaction, they will not be fit for permanent appointment, and they can be discharged from the Force. Rules of principles of natural justice of affording opportunity or issuance of any notice to the appellants is not provided for during their period of probation and the appointing authority reserved its liberty to discharge them from service if the recruits found not fit for permanent appointment, therefore observance of principles of natural justice cannot be read into in this given case. In **SAMSHER SINGH vs. STATE OF PUNJAB**², a seven Judge Bench of the Supreme Court held that the services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. The decision relied on by the learned counsel for the appellants in **COMMISSIONER OF POLICE vs. SANDEEP KUMAR**³ is a case where the respondent therein was selected to the post of Head Constable had concealed his involvement in a criminal case registered against him for an offence

² (1974) 2 SCC 831

³ (2011) 4 SCC 644)

punishable under Section 325 r/w.34 IPC when he was aged around 20 years and in those circumstances Supreme Court held that young people often commit indiscretions and, therefore, the approach should be to condone such indiscretions rather than branding them as criminals for the rest of their lives more particularly when the offence was not a serious offence and hence, more lenient view should be taken.

In the case on hand, the facts are distinguishable. In this case the appellants are found to be deficient in their performance and advises to improve their performance also yielded no results, besides their conduct was also aggressive in nature with the instructors. A reference to their conduct to be aggressive with their instructor cannot be branded as stigmatic and the decision to discharge them from service as punitive. It would not be out of place to mention that to be disciplined more particularly during the period of training is also part of performance appraisal. The appellants cannot plead ignorance of their aggressive behaviour. Discipline is the very foundation on which the entire superstructure of a uniformed para-military force is built. It cannot also be said

that they were not given reasonable opportunity. Therefore, in the given facts and circumstances of the case, the discharge of services of the appellants during the period of probation is just and proper and any premium allowed would be misplaced sympathy and would not only undermine the security but also the interest and discipline of 1st respondent-CISF. Hence, we are of the view that the order of the single Judge warrants no interference by this Court. In the result, the appeals are devoid of merits and accordingly dismissed. As a sequel to the disposal of appeals, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Dated: 26-03-2019
NRG

**THE HON'BLE THE CHIEF JUSTICE
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