

Sr. No.214

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.24254 of 2015 (O&M)

Date of Decision: 02.07.2019

Rakesh Yadav

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. S.S.Pathania, Advocate,
for the petitioner.

Mr. Deepak Malhotra, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

1. The instant writ petition has been filed, *inter alia*, seeking quashing of order dated 14.02.2012 (Annexure P-8) passed by respondent No. 4, terminating the services of the petitioner and assailing appellate order dated 04.08.2012 (Annexure P-10) whereby the termination order was upheld by the Appellate Authority and revision order dated 04.04.2013 (Annexure P-12, whereby revision petition against appeal was held as not maintainable.

2. Brief facts first. The petitioner was recruited as Constable-General Duty at Group Centre, Central Reserve Police Force (CRPF), Allahabad, Uttar Pradesh. He was sent for training to Training Centre, Neemuch (Madhya Pradesh). The petitioner sought leave for 3 days i.e. from 06.02.2011 to 08.02.2011 to attend to his mother who was seriously ill, which was sanctioned. However, due to a pending criminal case against

the petitioner and his family members under Sections 323 and 147 of Indian Penal Code, 1860, he could not return back on time. Having compromised the said case, the petitioner eventually reported back after a gap of 23 days.

3. Instead of letting the petitioner rejoin training, he was transferred to Group Centre, CRPF, Sindri, Dhanbad (Jharkand) on 23.03.2011, to be proceeded against for the un-sanctioned leave and also for not disclosing that a criminal case was pending against him in his application form at the time of recruitment. The Deputy Inspector General while looking into the matter passed a detailed order dated 30.06.2011 (Annexure P-5). Relevant part is reproduced hereinbelow :-

i) "Rt/GD Rakesh Kumar should be given written warning letter.

ii) His OSL period w.e.f. 09.02.2011 to 03.03.2011, total 23 days is regularized as Leave without pay."

4. Notwithstanding, vide show cause notice dated 13.12.2011 (Annexure P-6), Commandant(lower in rank than DIG), 114 Battalion, CRPF, Litharan Camp, Jalandhar, Punjab, disregarding the earlier order (Annexure P-5) passed by his superior(DIG), proposed termination of services of the petitioner due to non-disclosure of the pending criminal case against him and sought his reply on the same. The petitioner filed a detailed reply (Annexure P-7) to the show cause notice. However, impugned punishment order dated 14.02.2012 (Annexure P-8) was passed terminating the services of the petitioner.

5. Aggrieved, the petitioner filed a statutory appeal before the Inspector General, CRPF, Jharkhand which was rejected vide impugned order 04.08.2012 (Annexure P-10). A revision petition was then filed before

the Director General, CRPF, New Delhi. In response thereto, the petitioner received impugned order/ letter dated 04.04.2013 (Annexure P-12) from the office of Inspector General, Central Reserve Force written by Deputy Inspector General, Administration (North Western Sector), wherein the petitioner was informed that after rejection of his appeal by the Commandant, his representation(revision) for reinstatement into service cannot be considered because the rules do not provide for any further appeal or petition(revision).

6. A Writ Petition (Civil) No. 6364 of 2013 was earlier filed before Delhi High Court which was dismissed as withdrawn vide order dated 16.04.2014 (Annexure P-13), with liberty to approach Court of competent jurisdiction. Hence the instant writ petition.

7. Respondents, in their joint reply, state that the petitioner categorically filled 'NO' in the relevant column asking whether any criminal case was pending against him at the time of his recruitment as Constable-General Duty, CRPF. The said form was forwarded to District Authority for verification of the information provided by the candidate. Verification report dated 11.10.2011 was forwarded to the Commandant, 114 Battalion, CRPF, Litharan Camp, Jalandhar, Punjab. Verification report being in contravention to the information supplied by the petitioner, action was initiated against him and his services have been rightly terminated vide order dated 14.02.2012 (Annexure P-8).

8. Regarding the petitioner having once been earlier punished by the DIG, it is stated that the said DIG had passed order dated 30.06.2011 (Annexure P-5) only to consider the absence of the petitioner from duty for the period of 23 days after his sanctioned leave ended. The termination

order (Annexure P-8) was passed with regard to the completely different allegation of not disclosing pendency of criminal case by the petitioner.

9. In his rejoinder, the petitioner has refuted the stand of the respondents. It is stated that he did not remember whether he had filled 'yes' or 'no' to the question asking about pending criminal cases. It is reiterated that he has been awarded punishment twice for the same offence. No explanation has been given regarding the fact that how can a junior officer (Commandant) go against the orders passed by his superior officer (DIG). It is stated that a perusal of the order passed by the DIG shows that the same deals with the issue of absence from duty and also the verification report of the District Authority being relied on by the respondents.

10. I have heard learned counsel for the parties and have gone through the pleadings.

11. Learned counsel for the petitioner contends that the impugned orders have been passed without appreciating facts in entirety. The unexplained leave of absence was explained satisfactorily and was regularized as 'Leave without pay', as is reflected from the order dated 30.06.2011 (Annexure P-5), *ibid*. The matter regarding disclosure of the pending criminal case was also satisfactorily explained by the petitioner.

12. Per contra, learned counsel for respondents contends that Appellate Authority rightly rejected the appeal of the petitioner vide order dated 04.08.2012 (Annexure P-10). Termination from service is in tune with judgment of the Apex Court in '**Daya Shankar Yadav vs. Union of India and other' bearing SLP No. 9913 of 2010**', wherein it has been held that if a person knowingly makes a false statement in his application form, he can be removed from service. In view of Rule 5 of the Central Civil Services

(Temporary Service) Rules, 1965, the termination order passed by the Commandant, 114 Battalion does not suffer from any infirmity.

13. Perusal of record shows that the criminal case under Sections 323 and 147 of IPC was filed by persons having enmity against the petitioner's family members. Same is evident from the fact that all the family members including petitioner were made accused in the said case. Even otherwise, the case was compromised and the petitioner was acquitted of all the charges by the learned Chief Judicial Magistrate, District Mau, Uttar Pradesh vide order dated 17.03.2011. Sheer pendency of criminal proceedings in a petty offence cannot be made ground of termination of services of the petitioner. Particularly, keeping in view that when the case was registered the petitioner was only aged 20 years. In this context, reliance may be had on a judgment rendered by Hon'ble the Supreme Court in case titled as '**Commissioner of Police and others Vs. Sandeep Kumar**' in Civil Appeal No. 1430 of 2007, wherein it has been held as under:-

“We respectfully agree with Delhi High Court that cancellation of his candidature was illegal but we wish to give our opinion in the matter. When the incident happened the respondent must have been of 20 years of age. At that age young people often commit indiscretions and such indiscretions can often be condoned. After all youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for rest of their lives.”

14. With respect to the allegation that the petitioner failed to disclose the pendency of criminal case at the time of filling up his application form for recruitment as per CRPF Form 25, given the young age

of 20 years of petitioner at the relevant time, there is some force in the contention of learned counsel for the petitioner that it was *bonafide*. The petitioner was under the false impression that being a co-accused and a petty family feud and also having been granted bail in the criminal case there was no case pending in the Court against him and he did not disclose the same under a genuine mistake.

15. The explanation rendered in normal course would lack the credence so as to be believable enough, however, as already stated the petitioner was about 20 years boy at the relevant time and, therefore, in all likelihood would have perceived non-disclosure of the requisite information to be innocuous in nature. In somewhat similar circumstances, in a case titled **Naresh Baliram Ingle Vs. Commandant CISF NLC Neyveli Tamil Nadu, 2012(11) SCT 800**, learned Brother B. Rajendran, J. of Madras High Court observed thus:-

“10. When the incident happened, the respondent must have been about 20 years of age. At that age, young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.”

I see no reason why nature of indiscretion committed by the petitioner be not treated with a little lenient view. However, a word of caution would not be out of place here, so as not to treat this as a precedent. It is made clear that each case has to be seen in its own peculiar facts and circumstances and, therefore, by no stretch of imagination, it should be

perceived that indiscretions committed at the young age ought to be condoned merely because youth deserves certain leniency.

16. There is another serious aspect of the matter. It has come on record that when once the Deputy Inspector General, Group Centre, CRPF, Sindri, Dhanbad vide order dated 30.06.2011 (Annexure P-5) had punished the petitioner, he could not have been punished for the second time by the Commandant, 114 Battalion, CRPF, Litharan Camp, Jalandhar, Punjab vide order dated 14.02.2012 (Annexure P-8). Also, Commandant being junior to the post of DIG, could not have gone against the orders passed by the superior officer.

17. Awarding of major punishment of dismissal from service is akin to economic death penalty for a delinquent employee and it has to be resorted with extra caution. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury and made to suffer consequences for rest of their lives. Learned Brother Kalyan Jyoti Sengupta, J. of Calcutta High Court in **Union of India & Ors. Vs. Sri Sankar Prosad Ghosh & Anr. 2008(5) SLR 170**, speaking for the Division Bench, rightly observed as below:-

“13. It would be naive to say as on today, that livelihood is not a part of right to life. By this time, by a large number of decisions, it has been held by the Hon'ble Supreme Court as well as High Courts in this country that livelihood is an integral facet of right to life. In this connection, a decision of the Hon'ble Supreme Court rendered in the case of State of Himachal Pradesh v. Raja Mahendra, reported in AIR 1999 SC 1786. may be remembered.

14. Dismissal from services undoubtedly is taking away the livelihood of a person at an advanced stage because at that stage, it is impossible for a person to get any employment elsewhere as the order of dismissal will be treated as a disqualification. Loosing a job in an establishment amounts to a civil death, as the concerned

person will not be in a position to earn livelihood at the advanced stage, when all his energies and endeavours have almost come to a diminishing stage.”

18. As a result of the above discussion and the reasons contained therein, the impugned punishment order dated 14.02.2012 (Annexure P-8) as also the appellate order as well as revisional order dated 04.08.2012 (Annexure P-10) and 04.04.2013(Annexure P-12) respectively are hereby set aside. Respondents are consequently directed to reinstate the petitioner with continuity of service and other ancillary benefits. However, the petitioner shall not be entitled for back wages during the period he remained out of service.

02.07.2019
vandana/Jiten

(ARUN MONGA)
JUDGE

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| 1. Whether speaking/reasoned | Yes/No |
| 2. Whether Reportable | Yes/No |