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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3673/2017**

RASHI SONI

..... Petitioner

Through: Ms. Saahila Lamba and Mr. T. Dapar,
Advocates

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Jagjit Singh Sr. Standing Counsel
with Mr. Preet Singh and Mr. Vipin
Choudhary, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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04.12.2019

1. The Petitioner has challenged the orders dated 19th August, 2016 and 28th March, 2017 terminating the services of the Petitioner with immediate effect and as a consequence thereto she has prayed for reinstating her in service with full back wages and consequential benefits.

2. In brief case of the Petitioner is that she was recruited to Railway Protection Force as a Sub-Inspector vide appointment letter dated 21st November, 2013. She underwent requisite training and upon successful completion of the said training she was put on probation of two years. Accordingly, on 15th September, 2014 she was appointed SI (Exe) in Railway Protection Special Force ('RPSF'). Vide letter dated 21st October, 2014 she was posted to 12th Bn. RPSF at Thakurli. Subsequently, in May, 2016 she was deployed at the Reserve Lines, Ajni, Nagpur to supervise No.08 and 11 Platoons of Lady Constables.

3. On 28th June, 2016 a minor quarrel occurred between the Petitioner and one Ms. Goga Chopra, 8th Platoon. The confidential report regarding the said incident was submitted by the Senior DSC/RPSF to the ASC on 29th June, 2016 wherein Ms. Goga Chopra gave a statement alleging illicit relationship between the Petitioner and her and a quarrel having taken place as Ms. Goga Chopra refused to continue the alleged relationship with the Petitioner having got engaged. The said report recommended transfer/posting of Petitioner and Ms. Goga Chopra at different places. This report was not in the knowledge of the Petitioner at the relevant time and even her statement was not recorded. On 3rd July, 2016 Petitioner was repatriated to 12th Bn. RPSF/THK and was told to accept the movement/spare order which she accepted on 4th July, 2016 and reported to 12th Bn and assumed duties.

4. As per the Petitioner, it appeared that a fact-finding enquiry was recorded wherein she has denied any illicit relations with Ms. Goga Chopra and the reason as to why Ms. Goga Chopra fought with her was explained as Petitioner did not allow her to go out with her would be husband. Statements of 5-6 other persons, apart from Petitioner and Ms. Goga Chopra, were recorded and documentary evidence was relied upon which was not furnished to the Petitioner. No show-cause notice was issued to her prior to initiating the enquiry. Statements of the witnesses were not provided and no opportunity to cross-examine the witnesses was given to her. On 4th August, 2016 the IO made his report recommending that both the lady members of the force should be dealt with heavy hands to maintain the discipline and decorum of the force. Even copy of the said report was not provided to the Petitioner. The matter was forwarded to DIG/RPSF with the

recommendation that stringent action of termination of service of LSI Rashi Soni (Petitioner herein) should be ensured as she is under probation. However, no action was taken against Ms. Goga Chopra relying upon the fact-finding enquiry and Rules 146.4, 146.5(a) and 146.3 (i) of the RPF Rules 1987. The DIG/RPSF being the competent authority under Schedule 3 of the RPF Rules 1987 passed the termination order dated 19th August, 2016. Appeal against the termination order seeking her reinstatement was submitted by Petitioner. The IG/RPSF quashed the termination order on 27th September, 2016; reinstated the Petitioner and ordered a fresh enquiry observing that as termination of the services of the Petitioner is based on the ground of alleged mis-conduct and the same amounts to dismissal within the meaning of Article 311 of the Constitution of India, which mandates principle of natural justice are to be followed, which was not adhered to in the present case. It was also observed that the termination order was stigmatic and action was taken only against the Petitioner and other lady constable was let off scot free. Petitioner was reinstated in service and posted to 2Bn. RPSF/GKP and commanding Officer/No.2Bn/RPSF was nominated to conduct an enquiry.

5. An enquiry was conducted by the commanding officer and he recorded statements of the Petitioner, Ms. Goga Chopra and other concerned witnesses and after considering the statements given in the earlier enquiry proceedings and the documentary evidence, IO concluded that there is no evidence to establish the allegations against the Petitioner and he submitted enquiry report dated 10th December, 2016. After considering enquiry report the IG/RPSF issued a warning to the Petitioner on 4th January, 2017 and

directed her to be kept under close watch for a period of six months by the concerned commanding officer. Working report of the Petitioner was directed to be submitted regularly. Thereafter, Petitioner was posted to No.6Bn/RPSF/DBSI where she assumed duties. All of a sudden impugned order dated 28th March, 2017 was issued by the Director General of RPSF/Respondent No. 3 terminating the services of the Petitioner, quashing the order dated 27th September, 2016 of the IG/RPSF vide which the Petitioner was reinstated. This order was passed relying upon Rule 212 holding that Petitioner was a recruit trainee and at the same time reliance was placed on Rule 57.3, which is applicable to probationers and it was held that consideration of appeal by IG/RPSF and order which reinstated her into service is an anomaly and in violation of the Rules. It was further directed to recover the payment of salary made to the Petitioner after the order dated 27th September, 2016.

6. Aggrieved by these actions of the Respondents the present petition has been filed on the ground that there is serious violation of principle of natural justice in the three enquiries held against the Petitioner without being issued a show-cause notice and without a charge-sheet; Petitioner was not supplied any document pertaining to any of the enquiries; impugned termination order dated 19th August, 2016 is passed on the enquiry report dated 4th August, 2016 rendering findings of allegations of mis-conduct and the order itself makes stigmatic remarks against the Petitioner; this action is in infraction of provision of Article 311 of the Constitution of India and the impugned orders are in violation of Section 9 of the RPF Act, 1957. The termination has been termed as punitive and it is not a termination

simpliciter in terms of the appointment letter or Rule 57.3 of RPF Rules, 1987. The impugned orders are impugning something over and above mere unsuitability for the job rendering the same a stigma upon the Petitioner. Rule 148.5(i) of RPF Rules is not applicable in the present case; no proper and fair enquiry was conducted which is violative of Rule 153 of the RPF Rules, 1987 and Article 14 and 16 of the Constitution of India and there is no power of review or otherwise available with Respondent No.3 for issuing the impugned order dated 28th March, 2017 and the order of reinstatement has been wrongly quashed by Respondent No.3.

7. Detailed counter affidavit has been filed on behalf of the Respondents mentioning therein that the Petitioner has not disclosed true facts of the case. An incident of scuffle between the Petitioner and lady constable Ms. Goga Chopra occurred on 28th June, 2016 and a written complaint was submitted by Ms. Goga Chopra mentioning therein that the Petitioner had manhandled her due to which she felt pain in body and requested to be admitted to Railway Hospital. Statement of Ms. Goga Chopra was recorded on 29th June, 2016 by ASC/RPF/Nagpur in which the allegations of solicited illicit physical relations was made against the Petitioner by Ms. Goga Chopra and when she refused to continue with the said relationship, a quarrel took place on 28th June, 2016. A confidential report was sent by ASC/RPF/Nagpur to Senior DSC/RPF/Nagpur on the same date. The concerned IG ordered for repatriation of the Petitioner to 12Bn on 30th June, 2016 but Petitioner refused to receive the said transfer order and even senior officials tried to convince her to acknowledge the said letter but she refused to do so. The letter for sparing the Petitioner was pasted on the door of the room of

Petitioner in the presence of the witness in the evening of 3rd July, 2016. A fact-finding enquiry was conducted by Assistant Commandant-II of 12Bn and a report was submitted on 2nd August, 2016. The report was forwarded to DIG/RPSF for taking stringent action against the Petitioner as she was under probation and accordingly the DIG/RPSF, Railway Board, New Delhi terminated the services of the Petitioner on 19th August, 2016. The Petitioner submitted a representation on 9th September, 2016 to IG/RPSF and on 27th September, 2016, IG/RPSF quashed termination order and further ordered reinstatement of Petitioner in the service. However, a fresh enquiry was ordered and as consequence of the said enquiry Petitioner was warned to be more careful towards lawful duties in the future. When the matter came in the notice of DG/RPSF, then it was thoroughly examined and the DG quashed the order of IF/RPSF in terms of Rule 212.1 of RPF Rules, 1987. Consideration of appeal by IF/RPSF and reinstatement of Petitioner was grave anomaly and violation of Rules, hence, the said order dated 27th September, 2016 was quashed and was declared null and void *ab-initio* by the Reviewing Authority and the service of Petitioner was terminated upholding the order issued by the appointing authority i.e. DIG/RPSF vide its letter dated 19th August, 2016. Hence, aggrieved by the said order the Petitioner has filed the present petition which may be dismissed with costs.

8. In para-wise reply same facts have been reiterated. It has been submitted that the appeal and revision as provided in Rule 212.1 of RPF Rules 1987 which is applicable only against the punishment provided in Rule 140, 149 of RPF Rules, 1987 but there is no statutory appeal provided against the order of termination of a recruit, whose services are terminated under Rule

57.3 of RPF Rules, 1987.

9. The Petitioner has filed rejoinder to the counter affidavit filed by the Respondent in which she has reiterated her earlier stand. We have heard arguments and have perused the record.

10. The contention of the Petitioner is that she was a probationer at the time of incident and this fact has not been denied by the Respondents. Her services were terminated vide impugned order dated 19th August, 2016. The contention of the Petitioner is that the said order is a stigmatic order whereas contentions of the Respondent is that since the petitioner was under probation, her services could be simply terminated. Rule 57.3 deals with the termination simpliciter of the services of the direct recruit and the same is reproduced hereunder:

“ If during the period of probation any extension thereof, as the case may be, the appointment authority is of the opinion that the member of the Force is not fit for permanent appointment, the appointing authority may terminate the services fit for permanent appointment, the appointing authority may terminate the services of a direct recruit or revert the member of the Force to the post held by him prior to such appointment:

Provided that in case of termination of service a probationer shall be given a notice of one month to that effect or pay in lieu thereof:

Provided further that a notice or pay in lieu thereof shall not be required where the termination of service results as a consequence of the failure of the probationer to pass the initial training course or a repeat course, if any.”

11. The only condition which required to be specified for issuing an order of termination simpliciter is that the Respondents have reached to a conclusion

that the probationer is not fit for permanent appointment. A one month's notice or pay in lieu thereof is to be given to the probationer. This condition of one month's notice and pay in lieu thereof can be waived off only when the probationer had failed to pass the initial training course or the repeat course. That is not the situation here. The Petitioner has already successfully completed her initial training and she was undergoing her probation. Now on the bench mark of Rule 57.3, we have to test the termination order dated 19th August, 2016 to reach to a reasoned conclusion as to whether the same is a termination simpliciter or a stigmatic order. The said termination order dated 19th August, 2016 is reproduced hereinbelow:

“GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)
2016/Sec(ABE)/Comp/3/14 New Delhi, dated 19.8.2016
TERMINATION ORDER”

Ms. Rashi Soni lady Sub Inspector of 12BN/RPSF/THK was appointed as Sub-Inspector (Exe) in RPSF on 15.09.2014, Ms. Rashi Soni was deployed in May 2016 in Reserve Lines, Ajni, NGP to supervise No.08 & 11 Platoons of Lady Constables.

The matter of scuffle was reported to Rly Board through Sr. DSC/RPF/NGP on 05.07.2016 and it was ordered that Ms. Rashi Soni may be repatriated to 12BN/RPSF/THK for further duties. As per the Rly Board's instructions, IPF/RPF/Reserve Lines, Ajni, Nagpur asked Ms. Rashi Soni to take relieving orders which she refused to take on 03.07.2016. On being informed this, Sr.DSC/RPF/NGP who was taking the Suraksha Sammelan of Ladies Platoons in the Reserve Lines, Ajni itself, ordered to call Ms. Rashi Soni. Ms. Rashi Soni appeared before the Sr. DSC and refused to take the spare letter on 03.07.2016. As such Sr. DSC/RPF/NGP ordered to paste the spare letter at the door of LSI's room and treated as relieved on 03.07.2016.

Sr. DSC/RPF/NGP forwarded the report of indiscipline and disobedience of lawful order and recommended stem departmental action against LSI Rashi Soni vide letter No. Sr. DSC/RPF/Confidential/Nag/2016-4322 dated 05.07.2016. Consequent upon receipt of the report from Sr. DSC/RPF/NGP, Sr. SC No. 12BN/RPSF/THK directed Assistant Commandant-II to conduct "fact finding" Enquiry into the above incident vide letter No.12BN/Sr.CO/Instruction/2016-2347 dated 18.07.2016.

On conclusion of inquiry, the degree of action required was beyond the capacity of Sr. CO under RPF rules, the matter has been forwarded to the undersigned with recommendation for stringent action of termination of service against LSI Rashi Soni as she is under probation vide letter No.12BN/PF/Con/HQ-LSI-rs/2016-515 dated 04.08.2016.

I have carefully gone through the fact-finding enquiry report. On 28.06.2016 Ms. Rashi Soni Lady SI & Ms. Goga Chopra Lady Constable scuffled on some matter, at reserve the Ajni, Nagpur and manhandled with each other. Following which Ms. Goga Chopra got admitted in Railway Hospital, Nagpur. On 29.06.2016, Ms. Goga Chopra gave statement in which it was revealed that LSI Rashi Soni had physical relationship with Ms. Goga Chopra. After LCT Goga Chopra got engaged, she refused to continue the illicit relation with LSI Rashi Soni which led to frequent spat between them. It has been established during fact finding enquiry that the activity of LSI Rashi Soni who is under probation has tarnished the image of the force and brought down the morale of the force and felt a very shabby impression which amounts to violation of code of conduct of the member of the force, breach of discipline and willful disobedience of the lawful orders of the superior officer of the force vide Rule 146.4, 146.5 (a) & 146.3(1) of RPF Rules, 1987.

Ms. Rashi Soni has started her service as lady sub-Inspector in RPSF from 15.09.2014. The above-mentioned activity in

beginning of her job as sub inspector gives ample reason to believe the quantum of activities, she can resort to in future. It is expected that sub Inspector of the force should not only maintain the discipline of the force herself but also lead its force by exemplary behavior but the misconduct of Ms. Rashi Soni is totally against such instincts and is entirely unwarranted and unacceptable at all in the force.

In view of the above, the service of Ms. Rashi Soni lady SI is hereby terminated with immediate effect, in exercise of power conferred upon the undersigned under Rule 57.3 read with Rule 25 and schedule III of RPF Rules, 1987 with payment of one month salary.

Ms. Rashi Soni Lady SI of 12BN/RPSF/THK may be informed accordingly.”

12. It is quite clear that the impugned order is not only stigmatic rather it goes on to impute serious allegations against the present Petitioner of having illicit relations with Ms. Goga Chopra and Enquiry Officer reached to conclusion that *“It has been established during fact finding enquiry that the activity of LSI Rashi Soni who is under probation has tarnished the image of the force and brought down the morale of the force and felt a very shabby impression which amounts to violation of code of conduct of the member of the force, breach of discipline and willful disobedience of the lawful orders of the superior officer of the force vide Rule 146.4, 146.5 (a) & 146.3(1) of R P F Rules, 1987.”*

13. It is an admitted fact that no show-cause notice was given to the Petitioner; no documents were provided to her; she was not allowed to cross-examine the so-called witnesses; rather none of the principle of natural justice was followed before passing the impugned order dated 19th August,

2016. This termination order is casting a serious stigma on the character and future prospects of the Petitioner and is violative of provision of Article 311 of the Constitution of India. The said Article reproduced hereunder:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply.

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

(3) If, in respect of any such person as aforesaid, a question

arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final”

14. It is not in doubt that the Respondents have a right to take action against its employees including the Petitioner but for the said purpose compliance of the provisions of Constitution of India, Railway Protection Force Act, 1957 and the Railway Protection Force Rules, 1987 is to be made. In the present case, neither the provision of the Constitution of India, nor the provision of Railway Protection Force Act, 1957 nor the Railway Protection Force Rules, 1987 have been followed.

15. The only conclusion which can be arrived on the basis of the facts and circumstances of the present case is to set aside the termination order on the ground that it is stigmatic to the Petitioner and we hereby order that the impugned termination order dated 19th August, 2016 is hereby set aside and consequently the order dated 28th March, 2017 passed by Respondent No. 3 is also set aside. The Petitioner is directed to be reinstated in service within four weeks from today. However, the right of the Respondents to proceed against the Petitioner thereafter in accordance with law is reserved. It is made clear that the period between 19th August, 2016 till date will not be counted as spent on service except the period for which she was taken back on duty in compliance of the order dated 27th September, 2017 till the date on which she was again terminated in compliance of the order dated 28th March, 2017.

16. The writ petition is disposed of accordingly.

S. MURALIDHAR, J

TALWANT SINGH, J

DECEMBER 04, 2019

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