

**232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.7493 of 2018

Date of Decision: 4.3.2020

Jogender

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Gurpreet Singh, Advocate and
Ms. Lovepreet Kaur, Advocate, for the petitioner.

Mr. Satish Singla, Advocate, for the respondents.

NIRMALJIT KAUR, J.

The petitioner herein was selected on the post of Constable in pursuance to the recruitment process for the year 2013-14 in Central Reserve Police Force and was issued appointment letter dated 13.12.2014.

The present writ petition is filed by the petitioner for setting aside the order dated 9.2.2016 passed by the Commandant, RTC-03 PGM, vide which, his services were terminated as well as the order dated 14.3.2017 dismissing the statutory appeal by the Appellate Authority as well as the order dated 22.5.2017 dismissing his revision by respondent No.5 as not maintainable with a further prayer to reinstate him with retrospective effect with all consequential benefits and continuity of service.

The petitioner No.155111096 Ex (RT/GD) Jogender was appointed as Constable (GD) in CRPF on 5.1.2015 against the vacancy of 29 Bn. at Group Centre, CRPF, Nagpur on temporary basis. The petitioner reported at Recruit Training Centre, Peringome, Kerala State on 27.3.2016 for basic training from Group Centre, CRPF, Pallipuram. The petitioner was to undergo 44 weeks of basic training w.e.f. 4.4.2016 with other recruits

who reported from various parts of the country. On completion of 23 weeks basic training, the petitioner was sent on 15 days midterm leave from 1.10.2016 to 14.10.2016 as a part of the training schedule and he reported from the midterm leave on 14.10.2016. The marriage of the petitioner was fixed by his parents for 11.11.2016. Resultantly, the petitioner requested competent authority for grant of 6 days of leave but the same was not sanctioned. Under the compelling circumstances, the petitioner left for home on 5.11.2016 and after getting married reported back to RTC-3 PGM Kerala on 7.12.2016 but was not allowed to complete the remaining training and the services were terminated on 9.12.2016 by Commandant, RTC-3 PGM Kerala vide impugned order dated 9.12.2016. The petitioner filed a statutory appeal to the Inspector General of India, Mumbai i.e. respondent No.3 explaining the circumstances in which the petitioner was compelled to leave for home for getting married. The appeal was dismissed by the Inspector General of Police, Mumbai i.e. respondent No.4 vide order dated 14.3.2017. It was mentioned in the said order that 'desertion' during the training in a serious disciplinary act and petitioner's services were wrongly terminated on 9.12.2016, as per provisions contained in Sub Rule (1) of Rule 5 of CCS (Temporary Services) Rules 1965 read with Rule 16 (a) of CRPF, Rules 1955. The petitioner filed revision under Section 29 of the CRPF Rule 1965 challenging his termination and the rejection of the appeal. Respondent No.5 passed order dated 22.5.2017 holding the revision as not maintainable.

While praying for the setting aside the impugned orders, learned counsel for the petitioner submitted that no show cause notice was

served upon the petitioner before inflicting the punishment of termination of service. Secondly, no charge-sheet was issued and nor any disciplinary proceedings were initiated before terminating the service of the petitioner. Third, the absence of the petitioner cannot be considered as a grave misconduct, which is made foundation of the termination of the services of the petitioner. Therefore, it was incumbent upon the Department to hold a departmental enquiry before inflicting major punishment. Fourth, the petitioner had successfully completed 26 weeks of training with flying colours and appreciation. Therefore, his services could not be terminated on the ground that he was not suitable for the service. Fifth, the punishment of termination is grossly unjust, harsh and disproportional.

Reply has been filed. As per the said reply, the petitioner had submitted an application for sanction of 6 days leave w.e.f. 10.11.2016 to 15.11.2016 on the grounds of his marriage fixed on 11.11.2016 but the leave was not sanctioned on the ground that it was not emergency in nature and hence, he was asked to postpone his marriage till completion of the basic training. On 5.11.2016, at about 0400 hours, it was noticed that the petitioner had left the camp without any information and accordingly a search was carried out in and around the camp, nearby area, bus stand, railway station etc. but he could not be traced out. Hence, his missing report was lodged at Peringome Police Station, Kannur District on 5.11.2016. Though, the petitioner completed more than half of the training i.e. 26 weeks training and the petitioner is reasonably acquainted with the rules and regulation of the Force, but he chose to desert the camp willfully. The petitioner report at his own on 7.12.2016, after remaining absent from

duty/training for 33 days. On his arrival, he was not permitted to continue the training as his case was under scrutiny and it was found that the petitioner had committed a serious misconduct of deserting the camp without permission and remaining absent willfully for 33 days. Such type of indisciplined person is not fit to be retained in the elite Force like CRPF, which required high order of discipline. Accordingly, his services were terminated forthwith by Commandant, RTC, CRPF, Peringome, Kannur vide office order No.TV .1/2016 GC.111, dated 9.12.2016 by allowing him to claim a sum equivalent to the amount of his pay plus allowances for the period of one month, at the same rates at which he was drawing immediately before the termination of his services or, as the case may be for the period by which such notice fall short of one month under the provision contained in Sub Rule (1) of the Rule 5 of CCS Temporary Services Rules, 1965 read with Rule 16 (a) of CRPF Rules 1955. The desertion of the petitioner and his unauthorised absence from the training for 33 days without any information explains his disrespect towards the instructions and his tendency to violate the established system of governmental orders. It was further submitted that the competent authority had correctly evaluated the action of the petitioner and found him unsuitable for serving in the force. It was further stated that as per Rule 5 of Central Civil Services (Temporary Service) Rules 1965, temporary Government servant can be terminated from service without assigning any reasons and in such cases departmental enquiry is not required.

No doubt, in the present case, the services were terminated as per the provisions contained in Sub Rule (1) of the Rule 5 of CCS

Temporary Services Rules, 1965 read with Rule 16 (a) of CRPF Rules 1955, which permits the discharge from services at any time on one month's notice by the appointing authority during the first three years of enrollment and those, who are temporary too shall be liable for discharge on one month's notice but the fact remains that his discharge was on account of allegation.

Rule 16A of the Central Reserve Police Force Rules 1955 and Sub Rule (1) of the Rule 5 of CCS (Temporary Service) Rules 1965 read as under:-

“16. Period of service.

(a) All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing authority . At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three month's notice in accordance with the said rules, as amended from time to time.

5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;
(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the

Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.”

After hearing learned counsel for the parties, following facts have emerged:-

(a) Admittedly, the petitioner was at the stage of temporary Government servant.

(b) The petitioner's marriage was fixed for 11.11.2016.

(c) He submitted application for sanctioning of 6 days leave from 10.11.2016 to 15.11.2016 on the ground of marriage.

(d) The leave was not sanctioned. The petitioner left without information on 5.11.2016 and reported at his own on 7.12.2016 after remaining absent for 33 days.

(e) Termination order was passed by Commandant, RTC-3 on 09.12.2016.

(f) The appeal against the order of termination was dismissed by holding him as 'deserter'.

(g) He was held 'deserter' without issuing any show cause notice or enquiry.

The first question therefore that arises before this Court is as to whether the services of the petitioner can be terminated without show cause notice/enquiry in case of a temporary Government service.

The petitioner has been terminated after holding him 'deserter'

and for having committed grave misconduct. The Appellate Authority has specifically charged the petitioner as 'deserter' with grave misconduct. The relevant Rule 31 of the CRPF Rules 1965 describes the word 'deserter' and a person will be treated as a deserter when he does not return on his own free will or is not apprehended in 60 days of the commencement of desertion, absence or overstay of leave. Thereafter, the commandant shall assemble the court of enquiry consisting of at least one gazetted officer and two other members, who shall be either supervisor or subordinate officer to enquire into the desertion, absence or overstay of leave of officer. The said Rule also states that the commandant shall publish the matter with findings of court of enquiry and declare him a 'deserter'.

However, in the case of the petitioner, he returned back to duty at his own free will and he has been declared a 'deserter' without holding any enquiry. Being a 'deserter' is a serious allegation, which cannot be proved without any enquiry. The situation would have been different, in case, the impugned order of termination was an order of simplicitor.

It is evident from the order of the Appellate Authority as well as the written statement that reason behind the termination order was the allegation of misconduct. In these circumstances, it was necessary and incumbent as well as mandatory for the respondents to hold an enquiry. It is a well settled proposition of law that even a probationer has protection against the arbitrary termination and probationer is also entitled to certain protection. The service of temporary employee cannot be terminated arbitrarily or punitively without applying the principle of natural justice.

The Hon'ble Apex Court in the case of V.P. Ahula vs. State of

Punjab and others, (2000) 3 SCC 239 held in no uncertain terms that the services having been terminated during probation period by invoking the terms and conditions of the appointment which permitted termination even without notice by stating the employee had failed in performing his duty, is stigmatic and punitive on the face of it in view of the written statement filed in the High Court and the Supreme Court indicating the background in which the appellant in the said case was terminated. Para Nos.6, 7, 8 & 9 of the aforesaid judgment read as under:-

“6. Learned counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of the conditions set out in the Appointment Order. This plea cannot be accepted.

7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

8. The affidavit filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.

9. The entire case law with respect to a "probationer" was

reviewed by this Court in a recent decision in *Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic Sciences*. This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it.”

In the present case also, although, the termination order has been passed in terms of the appointment by giving one month's notice but the order dated 14.3.2017 passed by the Appellate Authority makes it clear that his termination was on account of desertion. As per the order of the Appellate Authority “it was 'desertion' by a trainee is a serious disciplinary act, so, his services were terminated w.e.f. 9.12.2016, as per provision contained in Sub Rule (1) of Rule 5 of CCS (Temporary Services) Rules, 1965.” While dismissing the appeal, it was held that deserting from the Force like CRPF is a grave misconduct and therefore action by the Commandant, RTC, CRPF Peringome against the appellant for termination from the service was correct. This shows that the termination order cannot be termed as order 'simplicitor'. It is evident that the termination was on account of allegation. Enquiry is must in case of termination due to an allegation even if an employee is on probation or is a temporary employee.

The judgment rendered in the case of V.P. Ahuja's (supra), is a complete answer to the question above. As submitted earlier, 'desertion' is a serious allegation. Therefore, in the present set of circumstances and taking into account the allegation of misconduct and desertion, termination order even of a temporary employee without enquiry cannot be sustained.

The second question is whether the punishment of termination was justified in the facts of the present case.

The Division Bench of Rajasthan High Court in case of The State vs. Rawat Singh, 1957 RLW 139 while dealing with the meaning of 'desertion' and upholding the decision of Sessions Judge acquitted the accused in the said case by observing as under:-

“3. The learned Sessions Judge has acquitted the accused of both the offences under sec. 6(e) of the Act as well as under sc. 409 I.P.C. Sec. 6 (e) provides for punishment for deserting the service, and the question that was raised before the learned Sessions Judge was about the meaning of the word 'desertion'. He was of the view that 'desertion' implied abandonment of one's post coupled with the intention not to return at all. Learned Deputy Government Advocate does not contest this meaning of the word 'desertion'. There can be no doubt that the word 'desertion' does not simply mean leaving the post or mere departure from the post without permission. It means something more, and that something more is the intention never to return to the post, or to go away with the idea of avoiding hazardous duty, or shirking any important service. It is not the prosecution's case that the accused left with the idea of avoiding any hazardous duty or shirking any important service. Nor has it been satisfactory proved that the accused had not intention of returning to duty at all. All that the prosecution has been able to prove in this case is that the accused left his post without leave. The accused has admitted that. The Sessions Judge was, therefore, right in acquitting the accused of an offence under sec. 6(e) of the Act.”

Applying the test in the case of Rawat Singh's case (supra) to this case in hand, the petitioner was denied leave for his own marriage, forcing him to go without leave being sanctioned but he returned on his own after performing his marriage. However, he was not allowed to join. These facts are not disputed. If it is so, the misconduct, if at all, is of absence from

duty and cannot be termed as 'desertion'. Hence, the very punishment is harsh. The Hon'ble Apex Court in the case of Malkiat Singh vs. State of Punjab and others, 1996(2) SCT 758 in almost similar circumstances set aside the charge-sheet order and directed the State to take back the appellant in the said case into service by holding in para No.3 that:-

“3. The appellant was appointed on April 20, 1990 and was discharged from service on July 22, 1992 on the ground that he remained absent from duty for more than 1 month 9 days. Another ground was that he was irregular in attending to the duty. So he could not prove himself to be an efficient Constable. We had sent for the records which disclose that he was absent on three occasions. On the first occasions when he was called upon to report for duty at 12 noon, he reported on September 10, 1990 and was late by six hours. On the second occasion, he was absent, on June 30, 1991, from night duty. The third occasion was on April 24, 1995. The explanation offered for the absence on third occasion was that since in his wife's delivery certain complication had arisen, he had to attend to his wife and so he could not be present. The Medical Certificate in that behalf was produced. In view of the Medical certificate, it cannot be said that he had deliberately absented himself from duty. On the previous two occasions, the absence for one day and in another year for one night cannot be considered to be regular absence so as to reach the conclusion that he had not proved his efficiency. It is true that discipline is required to be maintained, However, absence may sometimes be inevitable. In the facts and circumstances of this case, an opportunity may be given to the appellant to work efficiently to prove his excellence. The order of discharge is set aside. The respondents are directed to take the appellant into service forthwith. If the appellant absents himself again for two consecutive days within

one year without prior permission, appropriate action may be taken by dismissing him from service. The appellant, however, is not entitled to back-wages.”

Further, the Hon'ble Apex Court in the case of Rajit Thakur vs. Union of India (UOI) and others, (1987) 4 SCC 611 too while looking into the doctrine of proportionality held that the question of choice and quantum of punishment are no doubt with the jurisdiction and discretion of Court-Martial but sentence should suit offence and offender, sentence should not be vindictive or unduly harsh and should not be so disproportionate to offence as to shock conscience.

In the present case, the petitioner had applied for leave for his own marriage. The fact that the petitioner was getting married is not disputed. In his grounds of appeal, the petitioner has specifically mentioned that it was due to compelling circumstances that the petitioner left the training centre for undergoing the marriage ceremony. The date of marriage had already been fixed by his parents and it would have been embarrassment not only for the relatives of the petitioners but more so for the girl side and all the people, who were attending the marriage ceremony. Rejection of his leave in these circumstances left no choice with the petitioner but to leave as he did. Since, the petitioner did return to join back, the punishment of termination in the present situation is nothing but 'harsh' and therefore deserves to be set aside.

At this stage, the judgment of Hon'ble the Apex Court relied upon by learned counsel for the respondents rendered in Civil Appeal No.5015 of 2008 titled as Union of India and others vs. Manoj Deswal and others, decided on 28.10.2015, does not help. In the said case, the enquiry

was held and in the said enquiry, the appellant was declared 'deserter' and held that the appellant would never be a good soldier. Here, the petitioner was held 'deserter' without holding enquiry. Moreover, the petitioner had completed 26 weeks of training and his periodical report was found to be very good and satisfactory. The said periodical report dated 11.6.2016 as placed on record as Annexure P-2 is reproduced below:-

“(i) AFTER SECOND MONTH: Employees character/conduct is good. He actively takes interest in training. His work is satisfactory.”

In these circumstances, it cannot be said that he will not be a good officer on account of one incident. Accordingly, a lenient view should have been taken.

In view of the above, the orders dated 9.12.2016, 14.3.2017 and 22.5.2017 are set aside. The respondents are directed to take back the petitioner into service forthwith. However, the petitioner shall not be entitled to the back wages.

Allowed as above.

(NIRMALJIT KAUR)
JUDGE

4.3.2020
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No