

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 31st August, 2020.

+ **W.P. (C) 6949/2019 & CM APPL. 28894/2019 (for stay of termination order dated 22nd June, 2019 and show cause notice dated 21st May, 2019 and reinstating the petitioner in the service).**

SUBHASH CHANDER

.....Petitioner

Through: Mr.Divyanshu Kumar Srivastava and
Mr.Rajendra Beniwal, Advocates

Versus

GOVT OF INDIA & ORS.

.....Respondents

Through: Mr. Ajay Digpaul, CGSC and Mr.
Kamal R Digpaul, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 22nd June, 2019 of termination of employment of the petitioner with the respondents No. 1 & 2 Central Industrial Security Force (CISF) as well as the Revised Result dated 23rd April, 2019 of the Central Police Organisation (CPO) Examination, 2016 conducted by the respondent No. 3 Staff Selection Commission (SSC). Alternate relief, of shifting of the petitioner, earlier a Sub-Inspector (SI) with the respondents No. 1 & 2 CISF, to the post of SI in Delhi Police, in the Batch of 2016, and additional relief, of compensation, are also claimed.

2. The petition came up before this Court first on 1st July, 2019, when notice thereof was ordered to be issued. Pleadings in the petition were completed but the hearing of the petition was being deferred on account of the prevalent Covid-19 situation. The petitioner filed CM No.13813/2020 for early hearing and which came up before this Court on 1st July, 2020 and was allowed and the petition posted for final hearing, if necessary through video conferencing, for today.

3. It is the case of the petitioner, that (i) the petitioner, after completing his education till XIIth standard, on 27th January, 1999 joined the Indian Navy as a Metric Entry Recruit; (ii) the petitioner served the Indian Navy for 16 years, till his retirement therefrom as Chief Electrical Mechanic (Radio), In-charge of Radio & Communication Section, SRE Section and General Electrical Section in Indian Naval Submarines, on 31st January, 2015; (iii) the petitioner, at the time of his retirement from Indian Navy, was in the grade pay of Rs.4200/- which is the same as that of SI in respondents No. 1 & 2 CISF and in Delhi Police; (iv) the Government of India, to rehabilitate retired servicemen into the mainstream of civil life, granted to the petitioner, a deemed graduation certificate and also issued to the petitioner an Equivalent Trade Certificate dated 31st January, 2015, certifying that the petitioner is eligible for Grade-II/Class B Non Gazetted Officer in the Central Government/State Government; (v) the petitioner, in the year 2016, applied for the CPO Examination, 2016 conducted by the respondent No. 3 SSC and cleared the said examination and was allocated to the respondents No. 1 & 2 CISF as a Sub-Inspector/Exe. and was appointed as Sub Inspector/ Exe. in respondents No. 1 & 2 CISF on 10th February, 2018; (vi) the petitioner, after the twenty weeks training, reported

at the CISF Unit, ASG Aurangabad on 2nd Jul, 2018 and was thereafter transferred to ASG Indore on 6th October, 2018 and was serving as SI at Indore Airport, responsible for frisking of passengers and security check of hand luggage etc.; (vii) the petitioner cleared two mandatory examinations required to be cleared during the two year probation period and when only about six months out of the two year probation period were left, was served with a notice dated 21st May, 2019 to show cause why his services should not be terminated pursuant to revision of result of CPO Examination 2016 by the respondent No. 3 SSC; (viii) the lone ground mentioned in the notice to show cause was that the deemed graduation certificate holders were not eligible for appointment to Group 'B' post i.e. as SI in respondents No. 1 & 2 CISF and therefore the respondents No. 3 SSC had revised the 2016 result; it was also mentioned in the show cause notice that the petitioner, while applying for the CPO Examination 2016, had not opted for Assistant Sub Inspector (ASI) in respondents No. 1 & 2 CISF and could not qualify for one Group 'C' post which he had opted, owing to less marks; (ix) the petitioner submitted a reply dated 17th June, 2019 to the notice to show cause; and, (x) the respondents No. 1 & 2 CISF, vide order dated 22nd June, 2019 terminated the services of the petitioner.

4. The respondents No. 1 & 2 CISF, in their counter affidavit have pleaded, that (i) the respondent No. 3 SSC, vide its letters dated 11th February, 2019 and 20th February, 2019 informed the respondents No. 1 & 2 CISF of the revision carried out by it of the result of the CPO Examination 2016, of ex-servicemen allocated to the respondents No. 1 & 2 CISF possessing deemed graduation certificate from Army, Air Force, Navy, owing to their being not eligible for appointment to Group 'B' post

i.e. SI in respondents No. 1 & 2 CISF; (ii) the respondents No. 1 & 2 CISF decided to implement the said revised result of the respondent No. 3 SSC and issued show cause notice to the petitioner as well as to others whose result had been so revised and to which show cause notice the petitioner submitted a reply; (iii) thereafter termination order was issued on the basis of revision of result by the respondent No. 3 SSC, as the petitioner had not given any option to be appointed in the post of ASI in respondents No. 1 & 2 CISF and which is a Group 'C' post and his deemed graduation certificate from Indian Navy did not entitle him to the post of SI in respondents No. 1 & 2 CISF; and, (iv) in the revised result, the petitioner had been declared "Not Qualified".

5. The respondent No. 3 SSC has also filed a counter affidavit stating, that (i) as per extant guidelines of the Government of India, all the matriculate ex-servicemen who have put in not less than 15 years of service in the Armed Forces of the Union, are eligible only for reserved Group 'C' posts i.e. of SI in Delhi Police and of ASI in CISF; (ii) they are not eligible for Group 'B' post i.e. of SI (GD) in Central Armed Police Forces (CAPFs); for Group 'B' posts, educational qualification is Bachelor Degree from a recognised University or equivalent; (iii) inadvertently, in the recruitment years 2014, 2015 and 2016, a few matriculate ex-servicemen who had put in more than 15 years of service in Armed Forces of the Union, were selected for Group 'B' posts i.e. of SI in various CAPFs; (iv) this discrepancy came to the notice of the respondent No. 3 SSC through W.P.(C) No.18990/2017 before the High Court of Kerala, filed by Shijith P, an ex-serviceman candidate for SI in Delhi Police, CAPFs and ASI, in CISF Examination 2015; (v) when this issue came to the notice of the respondent

No. 3 SSC, results of eleven such candidates including the petitioner herein, who were selected as SI in CAPFs through recruitment examination of the year 2016, were immediately revised and the respondent No. 3 SSC filed a counter affidavit before the High Court of Kerala that similar action would also be taken in respect of candidates who were erroneously selected as SI in CAPFs through the recruitment examinations of the years 2014 and 2015; (vi) the petitioner, an ex-serviceman, is the holder of a deemed graduation certificate and hence not eligible for appointment to the Group 'B' post i.e. SI in CAPFs; (vii) the result of the petitioner was also revised in consonance with educational qualification for the post of SI in Delhi Police and ASI in CISF which are Group 'C' posts; (viii) the petitioner had opted only for one Group 'C' post i.e. of SI in Delhi Police but for which he, as per his marks, could not qualify; and, (ix) the decision of the respondent No. 3 SSC in all matters relating to eligibility, acceptance or rejection of the applications, penalty for false information, mode of selection, conduct of examination(s) etc. is final and binding on the candidates appearing in the examination.

6. We have heard the counsel for the petitioner and the counsel for the respondents No. 1 & 2 CISF. None has appeared for the respondent No. 3 SSC.

7. Being *prima facie* of the view that the re-employment of the petitioner, an ex-servicemen, in respondents No. 1 & 2 CISF could not be terminated on the ground of error in the result of the examination, unless such error was attributable to the petitioner himself and being further of the view that the petitioner, once so selected and appointed, could not be

deprived of his employment, especially since the entire process of selection itself had taken two years and the petitioner, after near four years of the commencement of the selection process, if dismissed from employment, may not even be eligible for any other employment and may have missed the bus, we have at the outset only called upon the counsel for the respondents No. 1 & 2 CISF to explain.

8. The counsel for the respondents No. 1 & 2 CISF, on enquiry, though very fairly has stated that the petitioner is not guilty of any non-disclosure or misrepresentation and the error is inadvertent and on the part of the respondent No. 3 SSC, has drawn our attention to Notice dated 9th January, 2016 of the respondent No. 3 SSC for “Recruitment of SIs in Delhi Police, CAPFs and Assistant Sub Inspectors in CISF Examination, 2016”, which in Note V to Clause 4 thereof *inter alia* provided as under:-

“NOTE-V: A Matriculate Ex-Serviceman (which term includes an Ex-Serviceman, who has obtained the Indian Army Special Certificate of education or corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service as on closing date with Armed Forces of the Union shall be considered eligible for appointment to the Group-C posts of SI in Delhi Police and ASI in CISF only. Thus, those Non-Graduate Ex-Servicemen who have not completed 15 years of service as on the last date for receipt of applications as stated in Note-III under Para 4 (B) are not eligible for these posts. Further, as per extant guidelines of Department of Personnel & Training, deemed graduation of Indian Army Special Certificate of education or corresponding certificate in the Navy or the Air Force, on completion of 15 years in Armed Forces is not applicable for Group-B posts.”

9. The counsel for the respondents No. 1 & 2 CISF has contended that the petitioner, from the aforesaid notice itself knew that he was eligible only for Group 'C' posts of SI in Delhi Police and ASI in respondents No. 1 & 2 CISF but was inadvertently selected and posted as SI in CISF, which is a Group 'B' post. It is further informed that the petitioner, in his application form, though correctly applied for the post of SI in Delhi Police, for which he was eligible but incorrectly applied for the post of SI in the respondents No. 1 & 2 CISF, for which he was not eligible. It is yet further informed that the petitioner, as per his marks, did not make it to the post of SI in Delhi Police. The reason, why it is stated that the petitioner did not do anything to conceal or mislead is, because the petitioner, in his application form did not claim to be a graduate but claimed to be a deemed graduate of the Indian Navy and as per which qualification, he was eligible only for Group 'C' posts i.e. of SI in Delhi Police and ASI in CISF.

10. We have asked the counsels, whether the appointment of the petitioner was/is under challenge in the Kerala High Court in the petition in which the error in appointment is claimed to have been detected by the respondent No. 3 SSC.

11. The counsel for the respondents No. 1 & 2 CISF states that he has no instructions. The counsel for the petitioner states that the petitioner has no notice of any such challenge in any Court whatsoever.

12. Though the counsel for the respondents No. 1 & 2 CISF has stated that besides the petitioner, at least ten others were found to have been wrongly selected and posted, but on enquiry states that as far as he knows

there are some other petitions besides this petition also but states that he has no instructions in this regard also.

13. The counsel for the petitioner confirms that there are other petitions before this Court itself, by others against whom also, pursuant to revision of result by the respondent No. 3 SSC, action was initiated; it is however stated that the petitioner is the only case of termination and all others are cases of demotion and which demotion has been stayed by this Court.

14. Though ideally all the petitions should have been heard together but the counsels having not informed of the same on 1st July, 2020 when the petition was ordered to be listed today for final hearing and after having substantially heard the counsels, we do not deem it apposite at this stage to defer the hearing, to be continued along with other petitions.

15. We have asked the counsel for the petitioner that when the petitioner, as per the recruitment notice aforesaid was not eligible for the post of SI in the respondents No. 1 & 2 CISF, why did he apply for the same.

16. The counsel for the petitioner draws attention to the “Equivalent of Naval Trade Certificate” issued by the Indian Navy, certifying that the petitioner was having the qualification *inter alia* of “Grade-II/Class B Non Gazetted Officer, Central/State Government” and equivalent to that of “Sub Inspector Police”. The counsel for the petitioner has next drawn attention to the “Equation of Educational Qualification Graduation Certificate” of the Indian Navy certifying that the petitioner, a pensioner and ex-serviceman, was eligible for appointment where essential educational qualification is “GRADUATION”. Attention is also invited to Clause 2 of the said certificate *inter alia* providing as under:-

“2 In Rule 6 of the Ex-Servicemen (Re-employment in the Central Civil Services & Posts) Rules, 1979 (hereinafter referred to as the said rules), after Sub-rule (3), the following sub-rules shall be inserted, namely:-

(a) For appointment to any reserved vacancy in Group 'C' posts, a matriculate ex-serviceman (which term includes an ex-serviceman who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to the posts for which the essential educational qualification prescribed is graduation and where:-

(i) Work experience of technical or professional nature is not essential; or

(ii) Though non-technical professional work experience is prescribed as essential, yet the appointing authority is satisfied that Ex-Serviceman is expected to perform the duties of the post by undergoing on the job training for a short duration.”

17. It is argued that the petitioner, on the basis of the aforesaid documents issued by the Indian Navy, considered himself a graduate and having experience equivalent to that of an SI and/or a Class 'B' Non Gazetted Officer and thus while filling up the examination form, also applied for the post of SI in CISF which was described as a Group 'B' post and eligibility wherefor was graduation.

18. The counsels are unable to explain the anomaly and apparent contradiction in the clauses aforesaid of the certificates issued by the Indian Navy and in the recruitment notice of the respondent No. 3 SSC.

19. On the basis of the aforesaid certificates of the Indian Navy, we are left with no doubt whatsoever that the error, even if any in the result earlier announced by the respondent No. 3 SSC of the CPO Examination, 2016, is not attributable to the petitioner and that the petitioner has throughout acted *bona fide*.

20. The counsel for the petitioner however has also drawn our attention to CM No.44245/2019 to bring on record additional documents and the documents filed thereunder.

21. Some controversy has arisen with respect to the additional documents, with the counsel for the respondents No. 1 & 2 CISF contending that he has not taken instructions with respect thereto and seeking time to obtain instructions. The counsel for the petitioner has however drawn attention to the order dated 1st October, 2019, when the aforesaid CM No.44245/2019 came up before this Court in the presence of the counsel for the respondents No. 1 & 2 CISF, allowing the said application and taking the additional documents filed therewith on record.

22. We may in this context notice that, (i) the petition as aforesaid had come up first before this Court on 1st July, 2019 when notice thereof was issued and the petition posted before the Registrar on 25th September, 2019 and before the Court on 15th January, 2020; (ii) the order dated 25th September, 2019 of the Registrar granted further time to the respondents to file counter affidavit and re-notified the petition on 10th December, 2019;

(iii) before the next date of hearing i.e. 10th December, 2019, CM No.44245/2019 came up before the Court on 1st October, 2019, when the additional documents filed therewith were ordered to be taken on record; and, (vi) thereafter, the order dated 10th December, 2019 again records that the counter affidavit had not been filed and grants further time for filing the counter affidavit.

23. In these circumstances, if the respondents, in their counter affidavit or thereafter have not dealt with the additional documents and/or if the respondents have not instructed their counsels qua additional documents, the respondents are themselves to blame. The additional documents as aforesaid were brought on record in the presence of the counsel for the respondents; the respondents, since 1st July, 2020 are aware of the petition being posted today for final hearing and had plenty of time to respond to the additional documents, even if had not done so earlier.

24. The petitioner, along with CM No. 44245/2019 has placed before this Court his degree of January, 2012 of Bachelor of Science in Radio Technology issued by the Cochin University of Science and Technology, along with mark sheet and other related documents. The counsel for the petitioner states that under the policy of the Government of rehabilitation of ex-servicemen who as per the exigency of service are retired at a young age, the Ministry of Defence has a tie up with the Cochin University of Science and Technology for awarding graduation degree to ex-servicemen on the basis of qualification acquired by them and on undertaking further education and examination. It is thus contended that the petitioner, besides having the deemed graduation certificate of the Indian Navy, is also a

graduate from a recognised University. Attention is drawn to the notice of recruitment prescribing the essential qualification of “bachelor degree from a recognised university or equivalent” and it is contended that Cochin University of Science and Technology is a recognised university.

25. We have enquired from the counsel for the petitioner that since the petitioner had a graduation degree of January, 2012 of Cochin University of Science and Technology, did the petitioner, in his application pursuant to the recruitment notice refer to the said qualification and if not, whether the petitioner, in reply to the show cause notice referred to the said qualification.

26. The counsel for the petitioner has drawn attention to the date of issuance of the degree of the Cochin University of Science and Technology and other related documents to show that the same, though of the year 2012, were issued only on 29th April, 2016. It is thus contended that the petitioner, at the time of applying for the CPO Examination 2016, did not have the said documents. In reply to our further question, it is stated that the petitioner, in CM No.44245/2019 has stated that though the said documents were issued in 2016 but the petitioner never felt the requirement therefor and did not collect the same and collected the same only post termination of his employment with the respondents No. 1 & 2 CISF; attention is drawn to the documents in this regard. It is however fairly stated that the petitioner erred in, neither at the time of applying for the CPO Examination 2016 nor in reply to show cause notice, mentioning the said fact.

27. The counsel for the petitioner thus states that the petitioner, even as per the provisions of the recruitment notice, is eligible for the post of SI in respondents No. 1 & 2 CISF and termination of his services is bad.

28. It is also argued that issuance of a show cause notice by the respondents No. 1 & 2 CISF to the petitioner was a formality as evident from the counter affidavit of the respondents No. 1 & 2 CISF also, where the respondents No. 1 & 2 CISF has admitted that the decision was already taken, on receipt of revised result from the respondent No. 3 SSC, to implement the revised result. It is thus contended that no purpose would have been served even if the petitioner, in the reply to the show cause notice had mentioned the factum of his graduation degree from Cochin University of Science and Technology.

29. The counsel for the petitioner has lastly drawn attention to the impugned termination order, which terminates the services of the petitioner under Rule 26(4) of the Central Industrial Security Force Rules, 2001. It is argued that under Rule 26(4), during the period of probation, services can be terminated without assigning any reason on the grounds of furnishing false or incorrect information at the time of appointment or for failure to pass the basic training or for failure to repeat the course. It is contended that it was not the case of the respondents No. 1 & 2 CISF in the notice to show cause issued preceding the termination, that the petitioner had either furnished any false or incorrect information at the time of appointment or that the petitioner had failed to pass basic training or to repeat the course and thus the action of termination is wrong for this reason also.

30. Having bestowed our consideration to the matter, we are of the view that this petition is entitled to succeed only on the ground of the petitioner, indeed, on the date of his appointment, fulfilling the eligibility criteria of being a graduate from a recognised University. However since the counsel for the respondents No. 1 & 2 CISF has contended that he has not obtained instructions with respect thereto, we have clarified to the counsel for the petitioner that the respondents No. 1 & 2 CISF, notwithstanding this order, shall be entitled to, if so desires, verify the authenticity and genuineness of the graduation degree of the petitioner of Cochin University of Science and Technology and if the said degree is found to be not authentic or genuine, initiate appropriate action against the petitioner. The counsel for the petitioner has stated that the said degree has been issued to the petitioner and the petitioner has no hesitation in agreeing to the said course of action.

31. Since other petitions entailing similar controversy are also pending, we are refraining from going into the other aspects of the matter, for the fear of prejudicing the decision of the other petitions as per their own facts and on their own merit.

32. For the same reasons, we do not deem it appropriate to deal with the challenge to the action of the respondent No. 3 SSC of revising the result, as we are of the opinion that this petition deserves to be allowed for the reason of the petitioner having the requisite qualification for Group 'B' post according to the recruitment notice also.

33. We have also enquired from the counsels, whether on setting aside of the termination order dated 22nd June, 2019, the petitioner will be relegated

to the same position as he was at the time of termination i.e. of being on probation.

34. The counsel for the petitioner states that the petitioner had cleared both the examinations which he was required to clear during the probation and that the services of the other batch mates of the petitioner have been regularised and if the petitioner is relegated to the same position, the petitioner, inspite of succeeding in this petition and without any fault of his, would become junior to his contemporaries /batch mates and suffer throughout his employment with the respondents No. 1 & 2 CISF.

35. The counsel for the respondents No. 1 & 2 CISF has not made any submissions in this respect.

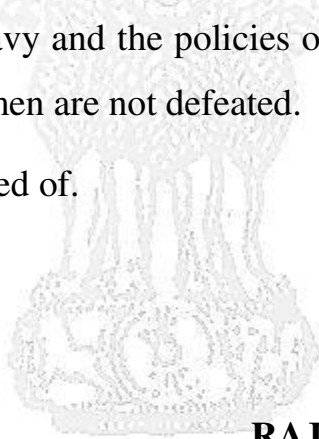
36. Having again bestowed thought to the matter, we find merit in the contention of the counsel for the petitioner. Once we have found the petition to be deserving to be allowed, the petitioner ought not to be burdened with any other consequence of the order of termination of his employment, which is being set aside and has to be restored to the same position in which he would have been had the impugned action been not taken.

37. We accordingly allow the petition. Resultantly, (i) the termination order dated 22nd June, 2019 is set aside; (ii) the services of the petitioner are deemed to have been never terminated and the petitioner is restored to the position in which he would have been if his services had not been terminated; (iii) the petitioner is ordered to be restored to the same position as his batch mates, with the seniority of the petitioner intact and the period from which the services of the petitioner remained terminated to be counted

in the period of service of the petitioner; (iv) the respondents No. 1 & 2 CISF are directed to pay all arrears of emoluments/dues of the petitioner within eight weeks, failing which the same will also incur interest @ 9% per annum; and, (v) subject to the petitioner reporting for duty at Indore within six weeks, the petitioner be permitted to rejoin his services.

38. Before parting with the matter we also direct the respondent no.3 SSC to look into the contradictions pointed out hereinabove in its recruitment notice for CPO Examination, 2016 and to in consultation with the Indian Navy and Ministry of Defence ensure that the recruitment notices are in harmony with the certificates issued by the Indian Army/ Indian Air Force/ Indian Navy and the policies of Government of India for rehabilitation of ex-servicemen are not defeated.

39. The petition is disposed of.



RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

AUGUST 31, 2020

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