

IN THE HIGH COURT AT CALCUTTA

Appellate Side

Present:

The Hon'ble Justice Krishna Rao

WPA 11750 of 2019

Gujjdi Varaprasad

Versus

Union of India & Ors.

For the petitioner : Mr. Phatick Chandra Das
Ms. Soma Chowdhury
Ms. Rima Mishra
..... Advocates

For the Union of India : Mr. Madan Murari Verma
Mr. Uttam Basak
.....Advocates

Heard lastly on : 30.11.2021

Judgment on : 09.12.2021

Krishna Rao, J.:

The petitioner was selected for appointment as constable/GD in Central Industrial Security Force (hereinafter referred as 'CISF ') through Staff Selection Commission. After the

appointment, the petitioner was directed to report his duty at Principal/ Deputy Inspector General CISF RTC Behror, post- Anantapura, District- Alwar, State- Rajasthan. The appointment of the petitioner was on probation for two years. At the time of appointment, the petitioner has submitted his attestation form on 26.09.2014. After receipt of the attestation form, the authorities have sent the same to the Collector and District Magistrate, Srikakulam District for verification of antecedent of the petitioner along with 19 other persons. The Collector and District Magistrate, Srikakulam District had submitted report vide NLDIS. 111/2015 C 4, dated January 2016 wherein it is mentioned that:

“It is also reported that the verification of Character and Antecedents of Sri Gujjidi Varaprasad S/o Satyanarayana, Kelavalasa Village, Saravakota Mandal of Srikakulam District reveals that he was involved in the following (02) criminal cases and he suppressed the facts (involvement in cases) in Col.No. 12 of the attestation form.

1. A case in Cr.No. 70/2013 U/s 324, 323 IPC r/w 34 IPC of Saravakota PS, Srikakulam District was registered against him with his nick name (Gujjidi Ramakrishna S/o Satyam) as A-18. The case was charged on 19.02.2014. However, it was ended in acquittal U/s 248(1) Cr.P.C in the court of JFCM, Pathapatnam vide C.C.No 44/2014 on 20.08.2015.
2. Another case in Cr.No 5/2014 U/s 147, 148, 324, 506, 448, 427 r/w 149 IPC of Saravakota PS, Srikakulam District was registered against his nickname (Gujjidi Rama Krishna S/o Satyanarayana) as A-8. He was arrested and remanded to judicial custody on 15.01.2014 and charged on 19.03.2014. The case was ended in acquittal U/s 248(1) Cr.P.C in the court of JFCM, Pathapatnam, Srikakulam vide C.C.No. 49/2014 on 21.09.2015.

The contents of this letter are for information of the Appointing Authority only and should not be disclosed to anyone. This should be kept in the personal custody of the appointing authority and should not be quoted as a reference in any of the proceedings and should not be deposed as evidence in any court of law.”

After the receipt of the report from District Revenue Officer and Additional District Magistrate, Srikakulam District, the Commandant CISF Unit, ECL Seetalpur had issued an order dated 18.10.2016 terminating the service of the petitioner. The Order of termination reads as follows:

“The Service of No. 140608416 Const./GD Gujjidi Varaprasad who has appointed in CISF on 01.10.2014 vide Commandant, CISF MPRTC Behror, Rajasthan Service Order Part- 1 No. 01/2015 dated 05.01.2015 and on probation, is terminated with immediate effect as per Sub-Rule (2) of Rule 25 & Sub-Rule (4) of Rule 26 of the Central Industrial Security Force Rules. 2001. One month of his pay in lieu of one month notice has been deposited into his SBI A/C No. 20263679548.

Receipt of this order should be acknowledge by No. 140608416 Const./GD Gujjidi Varaprasad.”

Being aggrieved and dissatisfied with the Order of termination, the petitioner has filed an appeal before the Appellate Authority on 03.11.2016. After filling of the appeal the petitioner has also requested for his personal hearing. At the time of the disposal of the appeal by the Appellate Authority, personal hearing was also given to the petitioner. After hearing the petitioner and after considering the appeal filed by the petitioner, the Appellate Authority had rejected the appeal. Being aggrieved with the Order of termination dated

18.10.2016 and order of Appellate Authority dated 23/12/2016; the petitioner had preferred the instant writ application. The Counsel for the petitioner has contended that before the Order of termination no notice is given to the petitioner and no opportunity of hearing was given to the petitioner. The counsel for the petitioner further submitted that the petitioner is not involved in any criminal case and he has not suppressed any material facts while submitting the attestation form. The Counsel for the petitioner further contended that in the criminal Cases the name is mentioned as Gujjidi Ramakrishna and not Gujjidi Varaprasad. The Counsel for the petitioner further contended that Gujjidi Ramakrishna and Gujjidi Varaprasad are two different persons and the said case is not against the petitioner and the petitioner is not connected with the said case. The Counsel for the petitioner further contended that in both the cases, the Learned Court of Judicial First Class, Magistrate of Srikakulam District; Andhra Pradesh had acquitted the persons involved in the said matter. The Counsel for the petitioner had submitted that the Disciplinary Authority as well as the Appellate Authority has not considered the grievance of the petitioner and on the basis of a false report the service of the petitioner has been terminated. The petitioner prayed for setting aside the order of the Disciplinary Authority as well as the Appellate Authority.

Per contra the Counsel for the respondent has submitted that the petitioner wilfully and deliberately suppressed the material fact with regard to his involvement in the criminal cases and while submitting the attestation form this petitioner has mentioned that he is not involved in any criminal case. The Counsel for the respondent has relied upon clause 12 of attestation form submitted by the petitioner.

Clause 12 of the attestation form reads as follows:

12.

- | | |
|---|----------|
| (a) Have you ever been arrested? | Yes/No✓ |
| (b) Have you ever been prosecuted? | Yes/No ✓ |
| (c) Have you ever been kept under detention? | Yes/No✓ |
| (d) Have you ever been bound down? | Yes/No✓ |
| (e) Have you ever been fined by Court of Law? | Yes/No✓ |
| (f) Have you ever been convicted by a Court of Law for any offence? | Yes/No✓ |
| (g) Have you ever been debarred from any examination or rusticated by any University or any other Education Authority/Institution? | Yes/No✓ |
| (h) Have you ever been debarred/disqualified by any Public Service Commission for any of its examinations/selections? | Yes/No✓ |
| (i) Is any case pending against you in any Court of law at the time of filling up this Attestation Form? | Yes/No✓ |
| (j) Is any case pending against you in any University or any other Educational Authority/Institution at the time of filling up this Attestation form? | Yes/No✓ |
| (k) Whether discharged/expelled/withdrawn from any Training Institution under the Government or otherwise? | Yes/No✓ |

The Counsel for the respondent has further relied upon the report submitted by the District Revenue Officer and Additional District Magistrate, Srikakulam wherein it is informed that the petitioner is involved in two criminal cases, i.e. Crime no 70/2013 under Section 324/323 IPC read with Section 34 IPC of Saravakota P.S, Srikakulam District and Crime No. 5/2014 under Section 147, 148, 324, 506, 448, 427 read with Section 149 IPC of Saravakota P.S, Srikakulam District. The Counsel for the respondent has contended that the petitioner deliberately and wilfully suppressed the fact while submitting attestation form regarding pendency of criminal cases against him and prayed for dismissal of writ application.

The petitioner was selected as constable/GD in the CISF through Staff Selection Commission and thereafter he was posted at CISF RTC Behror, Post- Anantapura, District- Alwar, State- Rajasthan. The service of the petitioner was on probation for two years. To verify the antecedent of the petitioner whether he is involved in any criminal cases, the petitioner has to submit attestation form and accordingly, the petitioner had submitted attestation form but at the time of submitting the attestation form the petitioner has mentioned that he has never been arrested, he has never been prosecuted, he was never kept under detention, he has never been bound down, he has never been fined by the Court of law, he has never been convicted by the Court of law for any offence and no case is pending against him in any Court of law at the time of filling up attestation form.

On receipt of the attestation form the authorities have sent to the same to the concern District Magistrate at Srikakulam District to verify the antecedent of the petitioner and on receipt of the same the District Revenue Officer and the Additional District Magistrate Srikakulam had submitted a report which reads as follows:

1. "A case in Cr.No. 70/2013 U/s 324, 323 IPC r/w 34 IPC of Saravakota PS, Srikakulam District was registered against him with his nick name (Gujjidi Ramakrishna S/o Satyam) as A-18. The case was charged on 19.02.2014. However, it was ended in acquittal U/s 248(1) Cr.P.C in the court of JFCM, Pathapatnam vide C.C.No 44/2014 on 20.08.2015.
2. Another case in Cr.No 5/2014 U/s 147, 148, 324, 506, 448, 427 r/w 149 IPC of Saravakota PS, Srikakulam District was registered against his nickname (Gujjidi Rama Krishna S/o Satyanarayana) as A-8. He was arrested and remanded to judicial custody on 15.01.2014 and charged on 19.03.2014. The case was ended in acquittal U/s 248(1) Cr.P.C in the court of JFCM, Pathapatnam, Srikakulam vide C.C.No. 49/2014 on 21.09.2015."

On receipt of report from the Additional District Magistrate, the Disciplinary Authority had issued an order of termination. The main contention of the petitioner that no notice was given to the petitioner and no opportunity of hearing was given to the petitioner. As per the Order of termination dated 18.10.2016, the petitioner was terminated by the Disciplinary Authority by invoking the provision of Sub Rule (2) of Rule 25 and Sub Rule (4) of Rule 26 of Central Industrial Security Force Rules, 2001. As per the Order of termination one month of the pay of the petitioner in lieu of one month notice has been deposited in the account of the petitioner.

Sub Rule (2) of Rule 25 and Sub Rule (4) of Rule 26 of CISF Rule 2001. Reads as follows:

(2) If during the period of probation 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 [or terminated the services] from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his parent department, as the case may be.

(4) During the period of probation or its extension thereof, as the case may be, the appointing authority may without assigning any reason terminate the services of a member of the Force on the grounds of furnishing false or incorrect information at the time of appointment of that member of the Force or for his failure to pass the basic training or repeat course, by tendering a notice of one month to that effect or one month's pay in lieu thereof.

As per the Sub Rule (2) of Rule 25 and Sub Rule (4) of Rule 26, one month pay is to be paid to the employee and accordingly, the same was paid by the Disciplinary Authority to the petitioner by depositing the said amount in the account of the petitioner. In view of the above contention raised by the petitioner that no opportunity of hearing was given to the petitioner has no leg to stand as the authorities have complied with all the provisions.

At the time of hearing of the appeal, the Appellate Authority had issued notice upon the petitioner for his personal hearing and accordingly, the petitioner had appeared before the Appellate Authority had submitted his grievances and thus the contention made by the petitioner that no opportunity of hearing is given to the petitioner can't be sustained.

As regard the identification of the petitioner in the criminal case as the petitioner has raised an issue that in both the criminal cases the name of petitioner is not appearing as the name of the petitioner is Gujjidi Varaprasad son of Gujjidi Satyanarayana but in Crime No. 70/2013 the name is mentioned as Gujjidi Ramakrishna son of Satyam and in Crime No. 5/2014 the name is mentioned as Gujjidi Ramakrishna son of Satyanaraya.

In the reports submitted by District Revenue Officer and Additional District Magistrate Srikakulam, it is mentioned that cases have been registered against the petitioner against his nick name (Gujjidi Rama Krishna S/o Satyam & Gujjidi Rama Krishna S/o Satyanarayana).

In the last paragraph of the report it is mentioned that; the above individual has suppressed the above facts in column no. 12 of the attestation form.

"The contents of this letter are of information of the Appointing Authority only and should not be disclosed to anyone. This should be kept in personal custody of the

Appointing Authority and should not be quoted as reference in any of the proceedings and should not be deposed as evidence in any Court of law.”

From the said paragraph this Court failed to understand why the District Revenue Officer and Additional District Magistrate Srikakulam District who has submitted the report has mentioned that the contents of the said letter is only for the information of the Appointing Authority and shall not disclosed to anyone, the said District Revenue Officer has also mentioned that the said letter should not be quoted as reference in any of the proceedings and should not be deposed as evidence and if the same is to be taken into consideration then neither the Disciplinary Authority nor the Appellate Authority can take cognizance of the report of the Additional District Magistrate in which the details of the criminal case pending against the petitioner was informed.

The last paragraph of the report of Additional District Magistrate creates some doubts whether the report is at all genuine. From the forgoing circumstances this Court find that the submission made by the Counsel for the petitioner is having force that there is no evidence brought on record whether the criminal case referred by the Additional District Magistrate is at all related with the petitioner. The counsel for the respondent had submitted that the petitioner has relied upon the judgement of the Learned Judicial Magistrate 1st Class Pathapatnam, Srikakulam District, Andhra Pradesh wherein the Learned Magistrate had acquitted all the persons involved in the matter and the Learned Counsel for the respondent has submitted that if the petitioner is relied upon the said judgement, the same amounts to admission that the petitioner was involved in the said criminal cases.

After going through the pleadings and materials on record it reveals that since the filling of the appeal by the petitioner, the petitioner is denying that the petitioner is involved in any of the criminal case and the name appearing in the criminal cases is not related to the petitioner. The counsel for the respondent has not submitted any document or brought any material on record to prove that Gujjidi Ramakrishna & Gujjidi Varaprasad are one and the same person and thus this court can't relied that Gujjidi Ramakrishna & Gujjidi Varaprasad are one person and the same person.

The disciplinary Authority had terminated the service of the petitioner on the basis of the report received from the Additional District Magistrate but in the said report the name of the petitioner is not appearing but one name as Gujjidi Ramakrishna son of Satyam and Gujjidi Ramakrishna son of Satyanarayana is appearing and as per the contention of the Additional District Magistrate the said name is the nick name of the petitioner but there is no evidence brought on record that the said name is nick name of the petitioner.

The respondents have filed their Affidavit-in-opposition but the respondents have not filed any document or produced any evidence to establish that the name appearing in the criminal case as Gujjidi Ramakrishna son of Satyam and Gujjidi Ramakrishna son of Satyanarayana is the name of the petitioner only. The respondents failed to prove that the said case referred by the Additional District Magistrate on the basis of which the service of the petitioner is terminated is actually connected with the petitioner. In the report it is also mentioned that the report should not be quoted as a reference in any of the proceedings and should not be deposed as evidence in any court of law and thus the report cannot be relied upon.

As the respondents failed to establish that Gujjidi Ramakrishna and Gujjidi Varaprasad is the one and the same person and the case registered by the police of P.S Saravakota was against the petitioner.

In view of the facts and circumstances this Court failed to accept the contention raised by the respondents hence the Order of termination passed by the Disciplinary Authority dated 18.10.2016 and the order passed by the Appellate Authority on 23.12.2016 is thereby set aside and quashed.

The respondents are directed to reinstate the petitioner in his service forthwith and to release all the consequential benefits in favour of the petitioner.

The WPA No. 11750 of 2019 is allowed, there will be no order as to costs.

(Krishna Rao, J.)