

08.09.2023
Item No.05
RP
Ct. No.7

WPA 4090 of 2019
Anil Oraon
Vs.
Union of India & Ors.

Mr. Debjyoti Basu
Mr. Chandan Kr. Lal
Mr. P. Baidya
... for Petitioner

Mr. Debu Chowdhury
Mr. Dipanjan Karmakar
... for Respondents

1. The writ petitioner has challenged the order dated 25th October, 2018 passed by the Inspector General, Central Industrial Security Force (for short "CISF") SES Head Quarter, Kolkata. By the said order the representation of the petitioner dated April 3, 2018 praying for an opportunity to participate in the enquiry proceedings was rejected.
2. Petitioner was provisionally selected to the post of Constable/GD in CISF in terms of the Combined Recruitment of Constable /GD in CAPFs 2011-12 conducted by the Staff Selection Commission. An appointment letter was issued to the petitioner on February 5, 2012 with a direction to report at CISF RTC, Arakkonam in the State of Taminnadu to undergo basic training commencing from January 14, 2013. The petitioner duly reported at CISF RTC Arakkonam on 12.01.2013. The petitioner

was thereafter appointed as temporary Constable/GD vide letter dated 20/21.02.2013. Petitioner underwent basic training thereafter.

3. A Board of Officers of CISF after checking initial documents, handwritings/signatures of the petitioner and others and the signatures made by the petitioner on admission certification for written examination held on June 5, 2011 found that there was a mismatch with other signatures made by him on other documents for recruitment. Thereafter, the signatures were sent before the Central Forensic Science Laboratory (for short "CFSL"), Shimla for examination. Upon examination CFSL, Shimla vide letter dated August 13, 2013 observed that the person who wrote the red enclosed signatures stamped and marked S1 to S5, S11 to S16 and A1 to A5 did not write the red enclosed signature similarly stamped and marked Q1 (Admission Certificate). It was further observed by such authority that the red enclosed signatures stamped and marked Q2, Q3, S1 to S5, S11 to S16 and A1 to A5 have been written by one and the same person. Upon finding that there was a mismatch in the signatures, the Commandant, CISF, Headquarter at Kolkata issued a show cause notice dated February 17, 2014 thereby proposing to terminate the service of the petitioner in exercise

of power under Rule 25(2) of CISF Rules, 2001 for his alleged involvement in impersonating during the written examination for the post of Constable/GD held on June 5, 2011. The petitioner after receiving the said show cause notice submitted a representation dated February 20, 2014 requesting the authorities to provide certain documents. Upon such documents being supplied the petitioner submitted a further representation dated March 3, 2014 in reply to the show cause notice dated February 17, 2014. The Group Commandant, CISF Group Headquarter at Kolkata passed an order dated March 6, 2014 thereby confirming the proposal of termination of services of the petitioner forthwith. Pursuant to liberty granted by the Hon'ble High Court of Jharkhand in Ranchi in WP(S) No.1786 of 2014 by order dated March 19, 2018 the petitioner submitted a representation before the Inspector General, CISF on April 3, 2018 and the Inspector General by the impugned order dated October 25, 2018 rejected the said representation of the petitioner.

4. Mr. Basu, learned advocate representing the petitioner submits that the principles of natural justice has been violated in the instant case as the petitioner was not provided with the copy of the report of CFSL, Shimla for which the petitioner

could not effectively controvert the opinion of such expert. He further submitted that the petitioner had put his signature as well as thumb impression on the admission certificate and the authorities before arriving at a finding in regard to impersonation ought to have sent the thumb impression for examination by an expert. Mr. Basu further submits that the authorities have also discriminated against the petitioner as one Anil Kumar, who was appointed as Constable/GD, and terminated during his probation was also given an opportunity to defend his case in a properly constituted disciplinary enquiry.

5. Learned Advocate representing the respondent authority draws the attention of the Court to the provisions laid down in Section 26(4) of the Central Industrial Security Forces Act & Rules 2001 (for short "2001 Rules") and contended that a member of the force can be terminated during his period of probation on the ground of furnishing false or incorrect information at the time of appointment without assigning any reason. He submits that the Inspector General after taking into consideration the materials on record passed the order impugned and this Court in exercise of its power of judicial review should not interfere with the findings of the Inspector General.

6. Heard the learned advocates for the parties and perused the materials on record. It appears from the materials on record that the show cause notice dated February 17, 2014 was issued under the provisions of Rule 25(2) of 2001 Rules. Rule 25(2) empowers the authority to discharge or terminate a member of the force from service, 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. A probationer can be discharged or terminated from service after issuing a notice of one month or after giving him one month's pay in lieu of such notice.
7. The ground for issuance of the show cause notice was that the authorities found that the signature of the petitioner in some documents submitted by him did not tally with the signature of the petitioner in the admission certificate. Though the report of the CFSL, Shimla forms the basis of the order of termination but the learned advocate for the respondent authority in course of hearing of this writ petition could not satisfy this Court that the report of CFSL, Shimla was supplied to the petitioner. The petitioner was thus deprived of the opportunity to controvert the findings contained in the report of CFSL, Shimla. This, in the considered view of this Court, amounts to gross violation of the

principles of natural justice. That apart, it appears from the order of the Inspector General dated September 19, 2014 in the case of one Anil Kumar, the Inspector General was of the view that as per the principles of natural justice a member of the Force against whom an allegation of impersonation during written examination has been levelled such member ought to have been given a reasonable opportunity to defend his case by conducting a proper departmental enquiry. A probationer can be discharged or terminated from service under Rule 25(2) of the 2001 Rules if the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment. Rule 25(2) contemplates termination of a probationer simpliciter without assigning any reason. The allegation of impersonation is nothing but a stigmatic one. Thus, the termination of the petitioner cannot be said to be a simpliciter termination of a probationer. In view thereof, it was incumbent upon the authority to initiate a proper departmental enquiry before terminating the petitioner from service. Petitioner stands on a similar footing with that of Anil Kumar. The Inspector General ought to have granted relief similar to that of Anil Kumar (*supra*).

8. In view of the above, the impugned order dated October 25, 2018 is set aside and quashed. A copy of the report of CFSL, Shimla, which was relied on by such authority while passing the order of termination shall be supplied to the petitioner and after giving an opportunity to the petitioner to submit a representation against such report, the Inspector General is directed to pass a reasoned order on the representation of the petitioner dated April 3, 2018 and the representation to be submitted by the petitioner in terms of this order in accordance with law after taking into consideration the order dated September 19, 2014 passed by the Inspector General in the case of Anil Kumar (supra. The writ petition, accordingly, stands disposed of with the aforesaid observation. The entire exercise in terms of this order shall be concluded within a period of six weeks from the date of receipt of the server copy of this order. No costs.
9. Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)