

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 12093 OF 2018

Satish Shivaji Pawar (M848IL)

... Petitioner

V/s.

1. The Union of India and Ors.

... Respondents

Mr. Vinod N. Tayade for the Petitioner

Mr. Dashrath A. Dube with Mr. Rupesh Dubey for the Respondent -
UOI

***CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.***

DATE : 10 NOVEMBER 2023

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioner has challenged the judgment and order passed by the Central Administrative Tribunal, Mumbai, dated 11 April 2017, dismissing the Original Application No. 210 of 114 of 2014 and the order dated 25 August 2017, rejecting Review Application No. 15 of 2017.

3. The Petitioner had prayed to set aside its termination order dated 8 April 2013 issued by the Respondents and reinstate the

Petitioner in service. This application is dismissed by the impugned order.

4. The Petitioner was appointed as Safaiwala on 22 October 2008 from the OBC Category. He was posted at Naval Barracks, Mumbai. He was under probation for two years. Thereafter, on 18 February 2010, the Petitioner was selected for the post of Peon, and he submitted his technical resignation from the post of Safaiwala on 18 February 2010. After that, from 3 March 2010, the Petitioner was appointed as a Peon on probation for two years from the date of his joining duty. It was also mentioned that his services are liable for termination without any notice and without assigning any reason during the period of probation, and upon satisfactory completion of the probation period, he was to continue on this post. The Petitioner's probation was extended by a period of six months by an order dated 31 December 2012. Thereafter, it was extended by six months up to 2 March 2013 by an order dated 29 October 2012. Later, on 8 April 2013, the order of termination was passed. The Petitioner challenged this order by filing the Original Application No. 210 of 114 of 2014. The main contention of the Petitioner is that he is physically disabled, and he could not carry out the duties of packing mail bags, distributing mail to various sections and lifting heavy mailbags. This has not been the reason for terminating the services. It was stated that no show cause notice is

given to the Petitioner nor any opportunity to defend. It was also contended that the representations were rejected without considering the Petitioner's contentions. The Respondents opposed the application, stating that the work of the Petitioner was not satisfactory. His behaviour was arrogant and disrespected. It was stated that the Petitioner had to be attached to 13 different sections. There was unsatisfactory performance and complaints from the Section Officers from different departments. After hearing the learned Counsel for the parties, the Tribunal dismissed the Original Application. Thereafter, the Petitioner filed Review Application No. 15 of 2017, which was also dismissed by order dated 25 August 2017.

5. The learned Counsel for the Petitioner has stressed the fact that the Petitioner, being physically disabled, has to be treated on a different footing. Being conscious of this position, even though this is a case of a probationer whose services are discontinued on the grounds of lack of satisfactory performance, we have carefully examined the record.

6. In the impugned order, the Tribunal has reproduced the material that the Respondents have placed with respect to the performance of the Petitioner. On 10 January 2013, The Petitioner was counselled because of his non-cooperative attitude. The Staff Officer (Training) returned Petitioner due to unsatisfactory progress in his conduct and approach towards work. Again, the department

where the Petitioner was assigned returned the Petitioner to be posted elsewhere with a comment that the Petitioner is neither cooperative nor has a cordial relation with the staff of CR Section. His arguing act is creating admin problems in CR Section. Sr. staff officer (training) reported misconduct Petitioner of training as under.

STAFF MINUTE SHEET

Originator : Subject :	<u>Sr. STAFF OFFICER (TRAINING)</u> <u>MISCONDUCT BY SATISH PAWAR OF</u> <u>TRAINING SECTION WITH R RAJU SPO</u> <u>AND DISOBEY THE ORDER OF RP SINGH</u> <u>CPOAF SECTION I/C</u>
Referred to:-	1. Satish Pawar PEON joined training section on 04 May 12. His total tenure in training section is one month three days. On 05 June 2012 at about 1400 Hrs. Satish Pawar PEON misbehaved with R Raju SPO and disobeyed the order of RP Singh CPO AF of this section. Statement related to this matter has been taken from RP Singh CPOAF, R Raju SPO and Satish Pawar PEON is enclosed to this SMS
SO(Civ)	In view of the above it is requested that necessary action to be taken under intimation to this office. (A. Chaudhary) Commander File : TR/0501/SMS/Gen Date : 06 Jun 12

Statement of R Raju, SPO, 118977 - B

On 05 June 2012 around 1400 hours I requested Mr. Satish to bring a water for me I was busy on phone (BOCA quari). Again after 05 minutes I request the same he listen and ignore me and seat on his chair. After coming from HRMS I ask him that you had not filled the bottle. He came and started

shouting on me saying that I am not your father servant in front of all staff this is not my job. I simply tell him that what is your job let me know I will tell accordingly. Again he spoke loudly and say go and ask to establishment and who are you and what is your position and he throw the water bottle to ground from my table in front of RP Singh and all training staff.

*R. Raju
SPO*

Statement of R P Singh CPOAF 171184-F

R. Raju SPO told Satish Peon to bring water from Aqua guard. He ignore Raju. Same thing Raju told Satish two times but Satish not listen then Raju loudly call to Raju he throw water bottle and he telling to Raju I am not your father servant. I am telling to Satish to cool down I will solve your problem come with me. Satish not listen at all he disobey my order. He telling me I want to meet SSO(Trg). He is telling if you not coming I will go directly. Satish talking like a dada.

14. The applicant had received repeated warnings and he had been repeatedly counselled. On 08.11.2012, the senior staff officer (Civ) had written a note to S.O. (Establishment) which reads as follows.

"Staff minute sheet

From : Sr. Staff Officer (Civ)

File No : BOS/EST/O4D

Date : 08 NOV 2012

Sub : Extension of probation period

Shri SS Pawar, Peon

1. It has been intimated by HQWNC(MB) vide letter CS/I/1331/M dated 29 Oct 2012 that the probation period of Shri SS Pawar, Peon has been extended for six months i.e. 03 Sep 2012 to 02 Mar 2013.

2. It is therefore requested that the individual may be informed accordingly.

3. It is also requested that the individual may be warned of the consequences i.e. Termination of service" in case of next review of the performance is found adverse.

*VC Wadkar
AO-II
SO(Estab)"*

This record, which the Tribunal examined, clearly shows that there were repeated complaints about the Petitioner's attitude to work.

7. Even assuming it could be that the Petitioner was not able to carry out some of the work which required substantial physical effort due to his disability, that is not the ground on which the Petitioner's services have been discontinued. Respondents have asserted in the Reply that the Petitioner was not assigned any hard work to carry out goods, but in the light work, he had shown disinclination. The Petitioner refused to carry out the work of pasting, stapling and stamping of various types of mail/letters, collecting stationery from Naval Stores, ensuring cleaning of the Section and wrapping of old records in a proper place. Neither of these works given to the Petitioner were heavy or required physical strength. The Petitioner was transferred to various departments. The Petitioner was warned repeatedly, but he did not show any improvement. He refused to undertake the duties allotted to the Petitioner, including stapling of documents. The Petitioner's probation period was extended twice to improve. However, there was no improvement in his performance.

8. The material on record showed that the attitude of the Petitioner was not conducive to discipline, which is an essential factor, mainly when the Petitioner was working in a Naval Establishment. Therefore, we find no error in the view taken by the Tribunal that non-confirmation of the Petitioner as a probationer and terminating the services of the Petitioner as a probationer was justified, is perverse or illegal. The Tribunal has examined the material on record and has arrived at a considered finding. We find that no case is made out for interference.

9. The Writ Petition is rejected.

MANJUSHA DESHPANDE, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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