

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 5627 of 2019

Pramod Kumar.

VS

Union of India & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Biswajit Basu,

Mr. Sumitava Chakraborty,

Mr. Sayan Chattopadhyay,

----- for the petitioner.

Ms. Chandreyi Alam,

Mr. Debu Chowdhury

----- for the Union of India.

Hearing concluded on :

07.03.2024

Judgment On :

02.04.2024

M.V. Muralidaran, J.:

Heard Mr.Biswajit Basu, learned counsel for the petitioner and Ms.Chandreyi Alam, learned counsel for the Union of India.

2. This writ petition has been filed by the petitioner to quash the impugned orders dated 29.8.2018 and 21.1.2019 passed by the respondent authorities and to direct the respondents to reinstate the petitioner into service with consequential benefits.

3. Brief facts are as follows:

The petitioner was appointed as Constable vide order dated 21.3.2017 and was directed to report before the CISF, RTC, Barwaha. Pursuant thereto, the petitioner has completed his basic training and pre-commando course and, thereafter, as per the direction, reported to CISF Unit, BRBNMPL, Salboni on 5.3.2018 and the petitioner was discharging his duty with utmost honesty and sincerely without any complaint. While

working at Salboni, the petitioner was served with a show cause notice dated 24.8.2018 by the Commandant calling upon him to show cause as to why his service shall not be terminated. In the show cause notice, it has been alleged that the petitioner during the written examination held on 4.10.2015, impersonated someone to be himself and, as such, he was proposed to be terminated from service. Upon receiving the show cause notice, on 25.8.2018, the petitioner submitted his reply denying the allegations levelled against him. However, the Commandant without considering the reply of the petitioner, vide order dated 29.8.2018, terminated the services of the petitioner with effect from 30.8.2018.

4. Challenging the order dated 29.8.2018, the petitioner has filed a writ petition before the Allahabad High Court and the same was dismissed for want of territorial jurisdiction vide order dated 7.9.2018. Thereafter, on 13.9.2018, the petitioner has submitted a representation to the second respondent for reconsidering the order of termination dated 29.8.2018. By the order dated 21.9.2019, the second respondent rejected the representation of the petitioner. Challenging both these orders, the petitioner has filed the writ petition.

5. The respondents have filed affidavit-in-opposition stating that in the appointment order it is stated that the petitioner will be probation for a period two years and if there is material evidence at a later date to prove that the petitioner had not met any of the criteria laid down for recruitment like domicile, category SC/ST/OBC, educational, physical and medical standards etc., his provisional call up notice will be cancelled and liable to be terminated in case of the mistake coming to the knowledge of the Department after joining the service.

6. It is stated that based on the complaints, an inter-office memorandum was issued to 11 candidates recruited through Staff Selection Commission during the year 2015 wherein the name of the petitioner found at Serial No.1 and it bears a remark "Grievance/Complaint" against each candidates. In respect of the petitioner, it contains that an anonymous complaint had been received against the petitioner that he had managed to get selected to the post by impersonating in the written examination and he was also medically unfit. The complainant requested to enquire into the matter to find out the fact and to take action.

7. It is further stated that a board was constituted to examine the allegations levelled against the petitioner after obtaining signature, handwriting and left thumb impression. Accordingly, the signatures of the petitioner was obtained for comparing his handwriting and signatures and found that the handwriting and signatures put on 4.10.2015 for written examination which are understood to be of Roll No.3206119671, it did not match with handwriting and signatures put on various documents on 8.7.2015 during PET/PS etc. The board recommended referring the case to Central Forensic Science Laboratory, Shimla for a report from the expert body. In this regard, the Deputy Inspector General, CISF, RTC Barwaha wrote a letter to the Assistant Director, Central Forensic Laboratory on 23.11.2017. After proper expertise verification, the Assistant Director forwarded a report dated 16.7.2018 to the RTC Barwaha stating that the person who wrote the writings and signatures in the blue enclosed portions stamped and marked S1 to S60 and A1 to A6 did not match the writings and signatures in the red enclosed portions similarly stamped and marked Q1, Q2 and Q3.

8. It is stated that on 10.8.2018, the Deputy Inspector General, CISF, RTC Barwaha wrote a letter to the Commander to take action against the petitioner. On 24.8.2018, the Commandant issued a show

cause notice proposing to terminate the services of the petitioner in exercise of the power conferred under Rule 25(2) of CISF Rules for his involvement in impersonation during the written examination. The reply submitted by the petitioner has been duly considered and found the same unsatisfactory. Thereafter, the appointing authority, in consonance with the provision of Rule 25(2) read with Rule 26(4) of CISF Rules, 2001 terminated the petitioner and directed that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for one month in lieu of one month notice at the same rate at which the petitioner was drawing immediately before the termination of his service. The said order was duly served upon the petitioner. An amount of Rs.25,939/- was also paid to the petitioner.

9. It is stated that an FIR was also lodged against the petitioner before the Salboni Police Station vide Case No.00/2018 dated 29.8.2018 under Sections 419, 420, 465, 467, 471 and 120B IPC. Dissatisfied with the order of termination, the petitioner filed W.P.No.19008 of 2018 before the Allahabad High Court and the same was dismissed by the Court on 7.9.2018. Thereafter, the petitioner has submitted a representation and on examination, the Inspector General held that it was a clear case of impersonation, cheating and forgery during the selection test conducted

for the appointment. The representation of the petitioner was considered and rejected by the second respondent under order dated 21.1.2019. Hence, prayed for dismissal of the writ petition.

10. Mr. Biswajit Basu, learned counsel for the petitioner submitted that the purported action on the part of the respondent authorities are bad in law and, therefore, the order of termination dated 29.8.2018 and the order rejecting the representation of the petitioner dated 21.1.2019 are liable to be set aside. The respondent authorities have acted in gross violation of principle of natural justice.

11. The learned counsel for the petitioner would submit that the termination of the petitioner from service without conducting a disciplinary enquiry is harsh and unreasonable. A show cause notice was issued with a predetermined mind set with an intention to terminate the petitioner under any circumstances.

12. The learned counsel for the petitioner submitted that though the petitioner was given an opportunity of show cause, however, the same was rendered meaningless in view of the predetermined mind set of the respondent authorities. The order dated 21.1.2019 clearly states that

the enquiry as to the allegations as against the petitioner was already conducted behind the back of the petitioner and the show cause was nothing but a plot to executive the opinion of the respondent authorities. The respondent authorities ought not to have resorted to drastic steps including termination of the petitioner without granting an opportunity to him to put forth his case.

13. The learned counsel for the petitioner urged that a probationer is also entitled to certain protection and his services cannot be terminated arbitrarily nor can the services be terminated in a punitive manner without complying with the principles of natural justice. The impugned order of termination is not a simplisiter rather the said order is stigmatic and punitive one and even the petitioner who was on probation during the relevant time is entitled to be protected by providing opportunity of hearing before infliction of major punishment.

14. The learned counsel for the petitioner urged that the action of the respondent authorities terminating the services of the petitioner by following Rule 25(2) is not tenable in the eye of law. The respondent authorities are creature of statute and their power and duties are circumscribe by the statute itself and they cannot deviate from the same

at their will and pleasure. As the impugned orders are patently bad in law, the learned counsel for the petitioner prayed for setting aside the impugned orders and a direction be issued to reinstate the petitioner into the post of Constable with all consequential benefits. Thus, a prayer has been made to allow the writ petition.

15. Ms.Chandreyi Alam, learned counsel for the respondents submitted that the petitioner impersonated in the written examination and obtained the assistance of someone else for writing for him. It is transpired from the comparison of the handwriting of the petitioner and the handwriting in the written examination that the writings did not match with the handwritings of the petitioner. The respondent authorities, after obtaining opinion of the expert confirmed that the handwriting in the answer book in the written examination is not the handwriting of the petitioner. In fact, the comparison of the handwritings in the written examination of the answer book of the petitioner with his admitted handwritings and verified by the Forensic Science Laboratory. For any doubt, the petitioner had not written the answer book in the written examination.

16. The learned counsel further submitted that the petitioner ought not to have been selected and should have been immediately proceeded against for impersonation and cheating but the offence committed by the petitioner and the person impersonating him was detected afterwards during his probation period. The action taken against the petitioner cannot be termed as unjust when such terms and conditions have been accepted by the petitioner. The act of appointment of the petitioner on probation does not prevent or deter the respondents from taking any action against the petitioner, if it is detected that petitioner has cheated and impersonated during the written examination which has vitiated the petitioner's appointment on probation. Thus, a prayer has been made to dismiss the writ petition.

17. This Court considered the rival submissions and also perused the materials available on record.

18. The petitioner appeared for the Central Armed Police Force Entrance Test for the year 2014-2015, which is being conducted for recruitment and filling up vacancies in various armed forces, namely BSF/CISF/CRPF/SSB/ITBP. The petitioner had participated in such examination held on 4.10.2015. Upon appearing in such examination,

the petitioner was declared as a successful candidate. After the final merit list was prepared, the petitioner was selected for the CISF in the post of Constable. The Principal, RTC, Barwaha appointed the petitioner as Constable/GD and allotted CISF No.170814591 vide order dated 21.3.2017 and he had undergone basic training from 8.5.2017 to 3.2.2018 and pre-Commando course from 5.2.2018 to 3.3.2018 at RTC Barwaha. After completion of the basic training and pre-Commando course, the petitioner physically reported to CISF Unit BRBNMPS Salboni on 5.3.2018.

19. The allegation against the petitioner is that he had managed to get selected to the post of CT/GD by impersonating in the written examination and further he was also medically unfit to hold the post. On 24.8.2018, the petitioner was served with a show cause notice directing him to show cause as to why his services should not be terminated. The show cause notice reads thus:

"WHEREAS, Roll No.3206119671 Pramod Kumar S/O Sahajanand Singh has been provisionally selected to the post of Constable /GD in CISF in combined recruitment of Constable /GD in CAPF's 2015 conducted by Staff Selection Commission.

WHEREAS, consequent upon of his selection, the Commandant/Chairman CISF Unit BSL Bokaro, Jharkhand issued offer of appointment to the post of constable /GD to him vide letter No.E-31034/BSL(B)/ADM-III(DSR)/Rectt/CT-15)/OOA/2017-131 dated 21.03.2017 with a direction to report at CISF RTC Barwaha, Dist-Kharghun, (MP) to undergo basic training commencing from 08.05.2017. Accordingly, he reported at CISF RTC Barwaha on 03.05.2017. The Principal, RTC Barwaha appointed him as temporary Constable /GD and allotted CISF No.170814591 vide S.O. Part-I No. 35/2017 issued under letter No.E-37028/CISF/RTC(B)/Adm-II/55th batch(BN-2)/CT/GD/BASICTRG/2017/2925 DATED 16.05.2017.

WHEREAS, the initial documents of CISF No. 1708114591 Constable /GD Pramod Kumar have been checked by a board of officers and found that the signature on the admission certificate issued by the Staff Selection Commission for the written examination held on 04.10.2014 differs from the signature of the said individual in other connected documents. The matter was taken up with Central Forensic Science Laboratory (CFSL), Shimla (HP) for verification/examination of the documents and the CFSL Shimla confirmed that the signatures are different. From the above, it becomes conclusive that during the written examination held on 04.10.2015, there was impersonation on the part of

No.170814591 Constable /GD Pramod Kumar of CISF Unit BRBNMPL Salboni (WB).

NOW, THEREFORE, in exercise of powers conferred under Rule 25 (2) of CISF Rules-2001, I proposed to "Terminate the Service" of CISF No. 170814591 Constable /GD Pramod Kumar of CISF Unit BRBNMPL Salboni (WB). He is hereby given an opportunity to submit a representation in writing, if he so desires, against the proposed action within 03 (three) days of receipt of this show cause notice, failing which, it will be presumed that he has nothing to submit against this proposal and decision will be taken ex-parte.

The receipt of this show cause notice be acknowledged."

20. On 25.8.2018, the petitioner has submitted reply to the said show cause notice denying the allegations levelled against him. According to the petitioner, the Commandant, CISF Unit, BRBNMPL, Salboni, without considering the reply of the petitioner and on the contrary holding the same to be unsatisfactory, vide order dated 29.8.2018, terminated the services of the petitioner with effect from 30.8.2018. The same is not sustainable in the eye of law.

21. The impugned termination order dated 29.8.2018 reads thus:

"ORDER

WHEREAS, CISF No. 170814591(Roll No.3206119671) Constable/GD Pramod Kumar of CISF Unit BRBNMPL Salboni was issued a Show Cause Notice issued under letter No. V-15014/CISF/BRB(S)/Show Cause/PK/2018/7292 dated 24.08.2018 proposing, therein to terminate his service in exercise of power conferred under Rule-25 (2) of CISF Rules, 2001 for his having involvement in impersonation during the written examination for the post of Constable/GD in CAPFs held on 04.10.2015.

2. AND WHEREAS, CISF No. 170814591 Constable/GD Pramod Kumar, was given 03 days time to submit his representation, if any, against the Show Cause Notice.

3. AND WHEREAS, CISF No. 170814591 Constable/GD Pramod Kumar received the Show Cause Notice on 24.08.2018 and submitted his representation dated 25.08.2018 against the Show Cause Notice wherein he denied the involvement in any impersonation. He has stated that he himself had attended all the selection processes for recruitment of Constable/GD-2015. He has also stated that he himself appeared in the written examination held on 04.10.2015. Further, he has stated that somebody having jealous intention might have done manipulation. Lastly, he has requested to conduct full-fledged enquiry about difference in his signatures.

4 AND WHEREAS, CISF No. 170814591 Constable/GD Pramod Kumar vide his representation dated 25.08.2018

has failed to bring any substantial fact in his defence and has rather insisted for enquiry.

5 AND WHEREAS, the signatures on the Admission Certificate issued by SSC Allahabad, of written examination held on 04.10.2015, have already been verified/compared by CFSL, Shimla and according to the report of CFSL Shimla, it reveals that the signatures on the Admission Certificate are different from the signatures on other documents. Thus, it clearly shows that Constable/GD, Promad Kumar did not actually attend the written examination held on 04.10.2015. Hence, there was impersonation in the above written examination on the part of CISF No. 170814591 Constable/GD Pramod Kumar. Therefore, request of the individual for conducting further enquiry, does not have any merit.

6 Now, therefore, in pursuance of the proviso of Sub-Rule(2) of Rule-25 of Central Industrial Security Force Rules 2001, 1, the undersigned, hereby terminate forthwith the service of CISF No. 170814591 Constable/GD Pramod Kumar of CISF Unit BRBNMPL Salboni and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for one month in lieu of one month's notice at the same rate at which he was drawing them immediately before the termination of his service.

7. The receipt of this order be acknowledged."

22. Challenging the termination order dated 29.8.2018, the petitioner has filed Writ A.No.19008 of 2018 before the Allahabad High Court. By the order dated 7.9.2018, the Allahabad High Court, held that the said writ petition is not maintainable before the Allahabad High Court, as no part of cause of action has arisen within the territorial limits of the Allahabad High Court. In the said order, the Allahabad High Court observed that *"leaving it open for the petitioner to pursue his remedy before the appropriate forum, this writ petition is consigned to records"*.

23. On 13.9.2018, the petitioner has made a representation to the second respondent to reconsider the order of termination and, by the impugned order dated 21.1.2019, the said representation was rejected by the second respondent.

24. At this juncture, it is to be noted that the show cause notice issued to the petitioner speaks about the signature on the admission certificate issued by the Staff Selection Commission and the other connected documents. When the said documents were taken to Central Forensic Laboratory, it has confirmed that the signatures are different.

The show cause notice does not speak about the handwritings of the petitioner connected with the written examination. Further, the source of information qua the impersonation alleged by the respondents has not been clearly stated in the show cause notice.

25. According to the petitioner, the respondent authorities acted illegally in terminating the services of the petitioner just after receiving the reply to the show cause notice without initiating any formal disciplinary proceedings and that the respondent authorities, in any event, were liable to initiate disciplinary enquiry, so as to allow the petitioner to place his case and to discredit the case made by the respondent authorities thereby resulting in termination of the petitioner.

26. Drawing the attention of this Court to Para 2(xii) of the terms and conditions of the appointment order dated 21.3.2017, the learned counsel for the respondents contended that in Para 2(xii), it has been clearly stated that *"if there is material evidence at a later date to prove that you had not met any of the criteria laid down for recruitment like domicile, category (SC/ST/OBSC), educational, physical and medical standards etc., your provisional call up notice will be cancelled. You will*

further be liable to be terminated in case of the mistake coming to the knowledge of the department after your joining in the service".

27. According to learned counsel for the respondents, the action taken against the petitioner as provided under Rule 25(2) of Central Industrial Security Force Rule, 2001 cannot be termed as unjust when such terms and conditions have been accepted by the petitioner. The act of appointment of the petitioner on probation does not prevent or deter the respondents from taking any action against him, if it is detected that the petitioner has cheated and impersonated during the written examination, which has vitiated his appointment on probation.

28. According to learned counsel for the respondents, a board was constituted under the Chairmanship of Sri S.N.Sukla, the Commandant, Shri S.Pryadarshi, Deputy Commandant as Member-I and Shri M.Ali, Assistant Commandant as Member-II to examine the allegations after obtaining the signatures, handwritings and left thumb impression and in relation to his signatures on the admit card. The Board of Officers conducted enquiry and obtained the signatures and handwritings of the petitioner and arrived at a finding that the handwriting and signatures put on 4.10.2015 for the written examination, which are understood to be of

Roll No.3206119671, did not match with handwriting and signatures put on various documents on 8.7.2015 during PET/PS on 23.5.2016 and during medical examination on 3.5.2017. The board also referred the matter to Central Forensic Science Laboratory, Shimla for a report from the expert body. By the report dated 16.7.2018, the Forensic Science Laboratory confirmed the findings of the board on circumspective examination of the handwritings of the petitioner. Therefore, there is no question of pre-determination to terminate the petitioner as alleged by him. According to the learned counsel for the respondents, the petitioner being a probationer, the respondent authorities have right to terminate the services of the petitioner.

29. According to learned counsel for the petitioner, the petitioner is entitled to certain protection of his services and his services cannot be terminated arbitrarily.

30. As could be seen from the records, before issuance of the termination order, no regular disciplinary proceedings was conducted. Merely, citing the report of the expert from the Forensic Sciences, the termination order has been issued. It is not the case of the respondents that the report of the Forensic Sciences has been duly served upon the

petitioner. It is the specific plea of the petitioner that the expert opinion was not provided to the petitioner to contradict the same. Since the report of the Forensic Sciences has not been served upon the petitioner, the petitioner's civil right has been affected. As such, it can be safely concluded that the impugned termination is passed arbitrarily without following the principles of natural justice.

31. Thus, the argument of the learned counsel for the respondents that based on the report of the experts to the effect that the actual writings did not tally with the original answer sheet given at the time of recruitment the order of termination was issued cannot be accepted.

32. The Apex Court in the case of V.P.Ahuja v. State of Punjab and others, (2000) 3 SCC 239 held as under:

"7. A probationer, like a temporary servant, is also entitle 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."

33. The law regarding the termination of service of a probationer is no more *res integra*. The Apex Court in the case of *State of Punjab v. Sukhraj Bahadur*, (1968) 3 SCR 234, laid down the propositions to be

taken into consideration while determining the issue with regard to the termination of a probationer. The said propositions are as follows:

- "1. The services, of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.*
- 2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.*
- 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.*
- 4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.*
- 5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a chargesheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."*

34. The Apex Court in the case of *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831, clarified that *"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it may in a given case amount of removal from service within the meaning of Article 311 of the Constitution."*

35. In the present case, as stated supra, though a preliminary enquiry was conducted by the Commandant, no departmental enquiry for imposition of major penalty has been conducted. Had the departmental enquiry been conducted, the petitioner would have got an opportunity to put forth his defence and that opportunity has not been given in the case of the petitioner. Thus, the principles of natural justice has been violated.

36. It is to be pointed out that the allegations made against the petitioner had certain degree of stigma associated with it and it is trite

that in such circumstances, it was incumbent upon the respondent authorities to at least give an opportunity to the petitioner to place his case and/or deal with the evidence put forward by the respondent authorities, even if the petitioner is a probationary period.

37. Though the learned counsel for the respondents argued that as per Rule 25 of the CISF Rule 2001, there are three clauses for which the services of a probationer can be terminated by the appointing authority without assigning any reason on tendering one month's notice or after giving one month's pay in lieu of such notice, in view of the finding arrived at by this Court that the impugned termination order is vitiated on ground of the principles of natural justice, the said argument of the learned counsel for the respondents cannot be countenanced.

38. From the facts of the instant case, it is clear that the respondent authorities conducted the enquiry not to determine whether the petitioner should be retained in service, but to determine the alleged misconduct. Even though the termination order was made under the camouflage or cloak of an order of termination simpliciter as per the terms of the appointment letter, it was actually a punishment on the ground of alleged misconduct. Therefore, this Court is of the view that

the real circumstances as well as the basis and foundation of the termination order was the alleged misconduct committed by the petitioner.

39. As stated supra, the impugned termination order was issued without affording an opportunity of hearing to the petitioner and without providing the copy of the report/opinion of the handwriting expert, which is the basis for the respondent to come to a conclusion that the petitioner had impersonated during the written examination. That apart, the allegations levelled against the petitioner in the show cause notice and the termination order differ from each other. The same has not been properly explained by the respondent authorities. Thus, for all the reasons, the impugned termination order cannot stand in the eye of law. Therefore, this Court is of the view that the same is liable to be set aside. Consequently, the impugned rejection order dated 21.1.2019 also cannot stand in the eye of law and the same is also liable to be set aside. Resultantly, the matter is remanded back to the respondent authorities.

40. In the result,

- (i) The writ petition is allowed.

- (ii) The impugned termination order dated 29.8.2018 and the impugned order dated 21.1.2019 thereby rejecting the representation of the petitioner dated 13.9.2018 are quashed.
- (iii) The respondent authorities are directed to reinstate the petitioner into service without any consequential benefits.
- (iv) The matter is remanded to the respondent authorities to initiate disciplinary proceedings against the petitioner in accordance with law, if so advised.
- (v) No costs.

(M. V. Muralidaran, J.)