IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 14.07.2023
Pronounced on:26.07.2023

WP(C) No.1504/2020
CM No.4156/2020

BIJAY ORAON ...PETITIONER(S)

Through: - Mr. Ashok K. Pandey, Advocate, with
Mr. Lone Altaf, Advocate.

Vs.

UNION OF INDIA & ORS. …RESPONDENT(S)

Through: - Mr. Vikar-ul-Haq, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged notice No.D-V-1/2013-EC-II-73 dated 06.08.2013, whereby respondent No.4, while exercising powers under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the Rules of 1965), terminated services of the petitioner with effect from the date of expiry of period of one month from the service of the said notice.

2) Briefly stated, the case of the petitioner is that on 25.08.2011, he was appointed as a Constable in Central Reserve Police Force and was posted in the Unit of Commandant 73rd Bn. CRPF at Bemina Srinagar. It is averred that the petitioner proceeded for earned leave of 30 days with effect from 31.12.2012 to 29.01.2013 for visiting his native place in the State of Jharkhand. While the petitioner was on leave, he was arrested in a criminal case bearing No.34/2011 for offences under Sections 147, 148,

149, 341, 342, 323, 452, 307, 504, 302/34 of IPC registered with Police Station, Karra. Vide order dated 26th April, 2013, the petitioner was placed under suspension with effect from the date of his detention and the same was extended for a further period of 90 days with effect from 16.06.2013 till finalization of criminal case or departmental enquiry. This was done in terms of order dated 08.08.2013. On 06.08.2013, the impugned notice came to be issued by respondent No.4, whereby services of the petitioner came to be terminated with effect from the date of expiry of one month from the date of service of said notice.

3) According to the petitioner, he was not aware about the pendency of criminal case against him. It has been submitted that the petitioner after appointment joined his duties at Srinagar and when after almost two years, he visited his native village, he came know that a false and concocted case has been filed against him on the basis of which he was taken into custody. It is case of the petitioner that he has not suppressed this fact from the respondents as he was not aware about the same.

4) It seems that the petitioner had challenged the impugned order by filing a writ petition before the High Court of Jharkhand but in terms of order dated 06.07.2020, the same was dismissed as withdrawn with liberty to the petitioner to move the appropriate forum. It seems that during the intervening period, the petitioner has been acquitted of the charges in terms of judgment dated 29th July, 2015 passed by the Sessions Judge, Khunti.

5) The petitioner has challenged the impugned order of termination on the ground that the same has been issued without complying with the

principles of natural justice, inasmuch as no enquiry was conducted by the respondents prior to the issuance of the said order. It has been further contended that the punishment awarded to the petitioner is disproportionate to the alleged misconduct because the petitioner was not aware of the pendency of the criminal case against him.

6) The respondents have resisted the writ petition by filing a reply thereto. In their rely, the responders have reiterated the facts leading to the termination of services of the petitioner, but they have contended that the petitioner has deliberately concealed the facts relating to his involvement in the criminal case. It has been submitted that the petitioner has secured appointment in CRPF, which is a disciplined force, fraudulently and, as such, the respondents were justified in terminating his services. It has also been contended that because the petitioner had not completed the period of probation, as such, his services were liable to be terminated by taking resort to sub-rule (1) of Rule 5 of the Rules of 1965, without holding any enquiry. It has been contended that the petitioner did not make any representation against the impugned notice though he could have done so withing the notice period.

7) I have heard learned counsel for the parties and perused the record including the record produced by the respondents.

8) So far as the facts leading to termination of services of the petitioner are concerned, the same have been more or less admitted by the parties. The only fact which is disputed is with regard to the alleged concealment of pendency of criminal case against the petitioner. While

the petitioner claims that he was not aware about the pendency of the said case at the time when he was appointed as Constable in the CRPF, the respondents claim that the petitioner has willfully concealed the said fact from them and secured his appointment in the CRPF in a fraudulent manner.

9) The respondents have, while terminating services of the petitioner, exercised powers under sub-rule (1) of Rule 5 of the Rules of 1965, which reads as under:

> ***5.Termination of temporary service.***
> *(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;*
>
> *(b) the period of such notice shall be one month.*

10) The aforesaid provision clearly vests power with the appointing authority to terminate the services of a temporary Government servant with one month's notice. Admittedly, the petitioner at the time when the impugned order came to be passed, was on probation as in terms of Rule 108 of the CRPF Rules, the period of probation has been fixed as two years. Clause (d) of the said Rule, which is similar to sub-rule (1) of Rule 5 of the Rules of 1965, vests power with the appointing authority to discharge a probationer if, in its, opinion, the candidate is not fit for permanent appointment.

11) It is a settled law that a probationer can be discharged from service by giving one months' notice without holding any enquiry and without assigning any reason for his discharge. However, learned counsel for the petitioner has, while relying upon the ratio laid down in the judgment by

this Court in the case of **Altaf Ahmad Mir vs. Union of India & Ors.** (SWP No.1121/2017 decided on 25th October, 2016), contended that where the appointing authority has, in its counter affidavit, given the reasons for termination of services of a probationer, then notwithstanding the provisions contained in sub-rule (1) of Rule 5 of the Rules of 1965, the order of termination cannot be passed without holding an enquiry. This position has been disputed by the learned counsel appearing for the respondents.

12) The Supreme Court has, in the case of **Union of India vs. Bihari Lal Sidhana,** (1997) 4 SCC 385, in clear terms held that it would be open to the appropriate competent authority to take a decision whether the enquiry into conduct is required to be done before directing appropriate action as per law and in a case where a person is a temporary Government servant, in view of Rule 5(1) of the Rules of 1965, it is always open to the competent authority to invoke the said power and terminate the service of the employee instead of conducting the enquiry.

13) In the instant case, the respondents have decided not to conduct enquiry against the petitioner and they have exercised their powers under sub-rule (1) of Rule of the Rules of 1965 read with Rule 108 of the CRPF Rules and decided to terminate the services of the petitioner by giving one months' notice to him. However, the Supreme Court has, in the case of **Avtar Singh vs. Union of India,** (2016) 8 SCC 471, in clear terms laid down that even in the case of a probationer, the employer has to act on due consideration of rules/instructions, if any, in exercise of powers in

order to terminate the services of the employee. The Court further held that though a person who has suppressed the material information cannot claim unfettered right for continuing in service, but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to the facts of the cases.

14) In **Daya Shankar Yadav vs. Union of India,** (2010) 14 SCC 103, which was a where a CRPF official, upon suppression of material facts, was terminated from service, the Supreme Court after referring to its previous decision summarized the position in the following manner:

> ***14.....****The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service.*
>
> ***15.*** *When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:*
>
> *(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.*
>
> *(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.*
>
> *(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is*

acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

***16.** Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:*

(i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college, etc.; and

(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case).

This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.

15) Again, in **Avtar Singh's** case (supra), the Supreme Court held that an objective criterion must be applied while terminating an employee who has suppressed the material facts. The Court, while discussing the objective yardsticks that are to be applied, held as under:

"***38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:*

***38.1.** Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.*

38.2. *While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.*

38.3. *The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. *In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:--*

> ***38.4.1.*** *In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.*
>
> ***38.4.2.*** *Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.*
>
> ***38.4.3.*** *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

38.5. *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

38.6. *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.*

38.7. *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have*

adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

38.10. *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*

38.11. *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.*

16) From the foregoing analysis of the law on the subject, it is clear that non-disclosure of material information or submission of false information by a person who has been employed in Government service, particularly in a belt force, is good enough reason for discontinuing his services without holding an enquiry if he is a probationer. It is also clear that even if the employer comes to know about the adverse antecedents of an employee during probation period, it shall be open to the employer to exercise his powers under sub-rule (1) of Rule 5 of the Rules of 1965 and discharge the probationer without assigning any reason. However, before doing so, the appointing authority has to take into account the nature of information that has been withheld by the employee and the nature of false information that has been furnished by him. It has also to take into account the fact whether the exoneration of the employee from the criminal case that was pending against him, either before his appointment or during his service, is on account of technical grounds or is an

honourable acquittal/discharge. All these factors will have to be weighed by the appointing authority before exercising its powers under sub-rule (1) of Rule 5 of the Rules of 1965. Ultimately, it would be the decision of the appointing authority as to whether or not it desires to continue with the services of the probationer having regard to the facts and circumstances of each case and the Court would not interfere in such a decision of the competent authority.

17) Now coming to the facts of the instant case, as already stated, the petitioner claims that he was not aware about the pendency of the criminal case against him but the respondents claim that he has suppressed this fact from them. From a perusal of the record produced by the respondents, it appears that the petitioner, at the time of his appointment, has filled up the form prescribed under Rule 12 of the CRPF Rules. There is no column in the said form which obliges a candidate to state anything about his antecedents regarding his involvement in any criminal case. The verification form No.25, which is prescribed under Rule 14 of the CRPF Rules, could not be traced from the record produced by the respondents. It is this form which obliges a candidate to make a declaration with regard to his antecedents regarding his involvement in a criminal case. So, the question whether the petitioner had given a false declaration about his non-involvement in a criminal case can be ascertained only from form 25 which he may have filled up at the time of his appointment and if that is not available with the respondents, then it can't be a case of non-declaration of information.

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18) Even if it is assumed that no false information was made by the petitioner, still then it was open to the respondents to discharge him from service once they came to know about his involvement in a heinous offence of murder, which certainly can be considered as an impediment in continuance of the petitioner in a belt force. In view of the ratio laid down by the Supreme Court in **Daya Shanker's** case (supra), the respondents were well within their jurisdiction to terminate the services of the petitioner, who, admittedly, had been booked for a serious offence like murder. Therefore, no fault can be found in the action of the respondents is passing the impugned order.

19) However, another event has taken place after the passing of the impugned termination order. The petitioner has been acquitted of the charges by the competent criminal court. The respondents even after acquittal of the petitioner in the criminal case would be well within their jurisdiction to discharge him from service if they find that the acquittal of the petitioner is on technical grounds or that he has been given benefit of doubt or the same is not a clear and honourable acquittal. So, all these aspects will have to be considered by the competent authority if the petitioner makes a representation against the impugned order of termination.

20) The respondents have taken a stand that the petitioner did not make any representation after receiving the impugned notice of termination. Having regard to the factual aspects narrated in the preceding paras as regards the dispute relating to non-disclosure of information by the

petitioner and the subsequent event of his acquittal from the criminal charge, the ends of justice would be met if the petitioner is given an opportunity to make a representation before respondent No.4 bringing all these facts to his notice for consideration, whereafter the said respondent shall be free to pass an appropriate order on the representation on the petitioner.

21) For what has been discussed hereinabove, while upholding the legality of the impugned order, the writ petition is **disposed** of with liberty to the petitioner to make a representation before respondent No.4 for reviewing his decision regarding impugned order of termination, whereafter the said respondent shall pass an appropriate order in accordance with law, preferably within a period of one month from the date the petitioner makes a representation before him.

22) The record be returned to the learned counsel for the respondents.

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(Sanjay Dhar)
Judge

Srinagar,
26.07.2023
"Bhat Altaf, PS"

Whether the order is speaking: ***Yes/No***
Whether the order is reportable: ***Yes/No***