

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

SWP No. 1757/2002

Reserved on : 18.05.2022**Pronounced on : 18.07.2022**

Sanjeev Kumar age 23 yrs. S/O Sh. Mohan Lal R/O
Village Chowki Tehsil Nowshera District Rajouri.

...Petitioner(s)

Through :- Mrs. Surinder Kour, Sr. Advocate with
Mr. Sunil Kumar, Advocate

V/s

1. Union of India through Home Secretary
Ministry of Home Affairs, Government of India
New Delhi;
2. Director General of Police C.R.P.F. C.G.O.
Complex Lodhi Road New Delhi;
3. Inspector General of Police, C.R.P.F. Group
Centre Ban Talab Jammu;
4. Deputy Inspector General of Police C.R.P.F.
Group Centre Ban Talab Jammu;
5. Addl. Deputy Inspector General of Police
C.R.P.F. Group Centre Ban Talab Jammu.

...Respondent(s)

Through :- Mr. Sandeep Gupta, CGSC

Coram:- HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

J U D G M E N T

18 — 07 — 2022

- 1.** Petitioner is aggrieved and challenges order of respondent no.5 bearing No. D.II.1/2002-GC-EC.II dated 27th April 2002 whereby, services of petitioner have been terminated w.e.f. 27-04-2002. Before advertizing to grounds on which order impugned has been assailed, it would be apposite to refer to the brief resume of the factual antecedents leading to passing of order impugned by respondent No.5.
- 2.** Respondents vide order dated May 2001 selected and appointed petitioner as constable (GD) in CRPF after the petitioner qualified all the tests including the physical standard test. Petitioner was also checked by Board of Doctors and was found physically fit by the respondents and was sent for undergoing training at Group Centre CRPF Khatkhati Assam. Petitioner was allotted number 01507064, completed 16 weeks training and the 17th week was started, however, during the training period respondents vide

order impugned dated 27-04-2002 terminated services of petitioner under Sub-Rule (I) of Rule IV of CCS (Temporary Service) Rules 1965 without assigning any reason, reasonable cause, affording an opportunity being heard and without conducting proper enquiry. Petitioner has averred, that he has not done anything for which such a major, excessive and disproportionate punishment has been imposed, however, respondents have deprived the petitioner and have not given equal treatment to him. In the backdrop of the above narrated facts, petitioner by invoking the jurisdiction of this court in terms of Article 226 of the Constitution of India r/w Section 103 of the Constitution of the Jammu & Kashmir has sought issuance of the appropriate writ, order or direction of the following nature:-

- (i) **Certiorari** to quash Order No. D.II.1/2002-GC-EC.II dated 27th April 2002 issued by Addl. DIGP, Group Centre, CRPF Ban Talab, Jammu by which the services of petitioner has been terminated;
- (ii) **Mandamus**, commanding the respondents to consider the case of petitioner for reinstatement; to allow the petitioner to perform his duties on the post of Constable on which he was selected and appointed; to release the salary of petitioner and to give all consequential benefits to petitioner for which the petitioner is entitled to as also to treat the period of petitioner w.e.f 27.04.2002 to the date the petitioner rejoins the Unit as on 'duty';
- (iii) **Prohibition**, to issue directions to respondents restraining them to implement Order No. D.II.1/2002-GC-EC.II dated 27th April 2002; restraining them to fill up the post of petitioner and also restraining the respondents to treat the period w.e.f 27.04.2002 till the date of joining the petitioner on duty as 'break in service';
- (iv) to declare Order No. D.II.1/2002-GC-EC.II dated 27th April 2002 issued by the Addl. DIGP CRPF Ban Talab, Jammu as ultra vires, unconstitutional and contrary to the provisions of CRPF Act and Rules as also contrary to the provisions of law and the provisions of Temporary Services Rules, 1965 by issuance of Writ of Mandamus.

3. Petitioner in his writ petition has averred, that the respondents invited applications for the post of Constable and the petitioner applied for the said post; that the respondents thereafter issued letter No. R.II.2/2000-GC-EC.V dated 6th December 2000 by which the respondents directed the petitioner to appear with original documents on 2nd February 2001 for checking of eligibility and physical standard of the petitioner for the post of Constable (GD) in CRPF; that the petitioner qualified the physical standard test, thereafter the respondents issued letter No. R.II.2/2001-GC-EC.V dated April 2001 by which the respondents invited the petitioner to appear for written test on 28.04.2001 as the petitioner had qualified the physical test;

that the petitioner qualified all the tests, the petitioner was also checked by the Board of Doctors and he was found medically fit by the respondents, thereafter the respondents issued Order No. R.II.2/2000-GC-EC.V dated May 2001 by which the respondents offered appointment to the petitioner for the post of Constable (GD) in CRPF wherein it is specifically mentioned that the petitioner has been given offer of appointment as Constable (GD) in CRPF in the pay scale of Rs. 3050-4590 as admissible to the Central Government Employees from time to time by allotting No. 015070641; that the petitioner was sent for undergoing training at Group Centre CRPF Khatkhati Assam wherein he has completed 16 weeks training and the 17 week was started, however, during the training period the respondents issued Order No. D.II.1/2002-GC-EC.II dated 27th April 2002 by which the respondents (Addl. DIGP, CRPF, Group Centre, Ban Talab Jammu) have terminated the services of petitioner vide order dated 27.04.2002; that in the order the respondents have mentioned that the services of petitioner are being terminated under Sub Rule (1) of Rule 5 of CCS (Temporary Service) Rules, 1965; that the respondents have not assigned any reason in the order and without any reasonable cause and reasons, terminated the services of petitioner; that under Rule 5(1) of Temporary Service Rules, 1965 it is categorically mentioned that the services of 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 and the period of such notice shall be one month; in the present case the respondents have neither gave any notice to the petitioner nor afforded an opportunity of being heard to the petitioner and terminated the services of petitioner without any reasonable cause and reasons; that the respondents without assigning any reason and without issuing any notice terminated the services of the petitioner that too without following the provisions of law, without affording an opportunity of being heard and without conducting proper inquiry; the petitioner has not done anything for which such a major, excessive and disproportionate punishment has to be imposed; that the respondents have not issued any Discharge Certificate while under the provisions of Rule 17 of CRPF Rules any member of the force shall, at any time before he has completed three months service or after completion of full period of service to which he is engaged, be entitled to claim his discharge from the force by applying to his appointment authority, and under Rule 18 every member on leaving the

force shall be entitled to Discharge Certificate; that it is a settled law, that the respondents have to assign the reason of termination and a person could not be thrown out of service without any reasonable cause and reasons; that the respondents have deprived the petitioner and his family from the source of livelihood and have not given equal treatment to petitioner, so the order is not sustainable as it violates the provisions of Articles 14 and 16 of the Constitution of India.

4. Respondents have filed the objections wherein it has been stated, that the petitioner was offered appointment as Constable (GD) vide order No. R.II.2/2000-GC-EC.V dated 05.07.2001 passed by the respondent No.5 purely on temporary basis, the extract of the terms and conditions imposed in the appointment order read as under:-

“.....the following personnel have been finally selected and are hereby appointed against the over-all vacancies of the Force in the pay scale of Rs. 3050-75-3950-80-4550 plus usual allowances as admissible to the Central Government Employees from time to time w.e.f the dates as indicated against each. Their appointment in the force is purely temporary basis and liable to be terminated at any time without assigning any reasons. Their service carry all India liability and they are required to serve any wherein India or abroad. They will be governed under the CRPF Act, 1949 and CRPF Rules, 1955, and other Central Government Employees Rules and Instructions as applicable to other Central Government Employees/CRPF personnel. In case of seeking discharge from service after accepting the appointment before completion of 10 (ten) years service, they shall be required to refund to the Government a sum equal to 3 months pay and allowances received by them prior to the registration, or discharge or cost of training imparted whichever is higher under rule 17(A) of CRPF Rules, 1955. The appointment is provisional subject to the costs/education certificate being verified through proper channel. If the verification reveals that the claim of the candidates to belong to OBC/SC/ST/etc, if false, the services of such candidates will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian penal Code for production of false certificate....”

It is contended, that the services of the petitioner were purely temporary and were liable to be terminated at any time without assigning any reason; these conditions have been voluntarily accepted by the petitioner before joining the Force; these conditions were also incorporated the letter addressed to the petitioner under the subject “offer of appointment for the post of Constable (GD) in CRPF, issued by the respondent No.5; in these circumstances the respondents are not bound to assign any reasons of his discharge from service; surplus Force in the CRPF is generally reduced after passing discharge orders and the petitioner is one of them; so in lieu of the termination of the service of the petitioner, he was paid one month’s pay alongwith the allowances to the tune of Rs. 4,545/- drawn and paid to him

vide BD No. 1006-052457 dated 09.08.2002. It is moreso contended, that the order of termination is according to law and is sustainable and is not liable to be quashed; no doubt the petitioner has qualified to be enrolled in the Force as CT (GD), yet he is governed by the rules aforesaid and there is no violation of Articles 14 and 16 of the Constitution; no opportunity of being heard to the petitioner before the termination of his services and reasons assigned to him is the requirement of law, this is because the petitioner is governed by the terms and conditions of his appointment order. Lastly, respondents have sought the dismissal of writ petition with costs on the grounds, that the petition is not legally maintainable.

- 5.** In the rejoinder filed by the petitioner, it has been categorically stated, that that the petitioner was not surplus and was appointed against a clear vacant post after due selection, and in the appointment order, it is specifically mentioned the petitioner is governed by the CRPF Act 1949 and CRPF Rules 1955, Section 5 & Rule 5 reads as under:-

Section 05, Enrolment:- Before a person is appointed to be a member of the force, the statement contained in the recruiting roll set out in the Schedule shall be read out and if necessary, explained to him in the presence of an officer appointed under sub-section (1) of section 4 and shall be signed by such person in acknowledgement of its having been so read out to him; Provided that any person who has for a period of six months served with the force, shall on appointment to the force thereafter, be deemed to be a member of the force notwithstanding that the provisions of this section have not been complied with in his case.

Under the provisions of the Central Reserve Police Force Rules 1955, Rule 5 reads as under:-

Rule 5 of the Central Reserve Police Force Rules, 1955, there is composition of the Force i.e. Superior Officer, Rank and file for Battalion of company i.e. Subedar, Sub-Inspector, Head Constable, Mechanic, Naik, Lance Naik and Constables and Commandant is appointment authority of constables.

- 6.** Mrs. Surinder Kour, Ld. senior counsel while supporting the claim of petitioner, has vehemently articulated arguments, that the respondents offered appointment to the petitioner for the post of Constable (GD) in CRPF vide Order No. R.II.2/2000-GC-EC.V dated May 2001 in the pay scale of Rs. 3050-4590 as admissible to the Central Government Employees from time to time by allotting No. 015070641, petitioner was sent for undergoing training at Group Centre CRPF, Khatkhati Assam wherein he has completed 16 weeks training, however, during the training period the respondent No.5 issued Order No. D.II.1/2002-GC-EC.II dated 27th April

2002 by which the respondents (Addl. DIGP, CRPF, Group Centre, Ban Talab Jammu) terminated the services of petitioner vide order dated 27.04.2002 under Sub Rule (1) of Rule 5 of CCS (Temporary Service) Rules, 1965. It is argued, that respondents have not served any notice on the petitioner and without issuing the notice have directly issued the termination order thereby depriving the petitioner from right of service, respondents have not conducted any enquiry and no reason has been assigned for terminating the services of the petitioner while the petitioner as duly selected and appointed by the competent authority against the clear vacant post advertised by the respondents. It is moreso argued, that the petitioner could not be terminated as opportunity of being heard was not afforded to him which is not an ideal formality, the words opportunity of being heard do not have any constructive meaning, but it encompass all such requirements which are required to be followed by observing the rules of natural justice, petitioner was not heard as is revealed from the impugned order, no notice was served upon the petitioner before his termination, dismissal/termination from service without holding disciplinary proceeding is illegal, the words mentioned in the termination order that the petitioner was found surplus amounts to stigma for which enquiry has to be initiated and without enquiry the order of termination vitiates. It is further argued, that merely saying that the service of petitioner are not required are not sufficient unless it is stated as to why his services are not required, no enquiry has been held against the petitioner in regard to his termination, the termination order is vitiates. To support her arguments, Ld. Senior Counsel for the petitioner has relied upon the judgments reported in, (i) **(2008) 2 Supreme Court Cases 479** (Nehru Yuva Kendra Sangathan VS Mehbub Alam Laskar), (ii) **AIR 2016 (SC) 467** (Ratnesh Kumar Choudhary VS Indira Gandhi Institute of Medical Sciences, Patna, Bihar), (iii) **2003 (II) SLJ 331** (State Of J. &K. VS Firdous Ahmad Sheikh), (iv) **2009 (1) JKJ 38 (HC)** [Raj Kumar **Versus** Union of India & Ors.], (v) **2019 (3) JKJ-1 (HC)** [Bina Devi **Versus** National Hydroelectric Project & Ors].

- 7.** Mr. Sandeep Gupta, Ld. CGSC has strenuously argued, that the petitioner was offered appointment as Constable (GD) vide order No. R.II.2/2000-GC-EC.V dated 05.07.2001 passed by the respondent No.5 purely on temporary basis in the pay scale of Rs. 3050-75-3950-80-4550, appointment of the petitioner in the force was purely temporary basis and liable to be terminated at any time without assigning any reasons, these conditions

were voluntarily accepted by the petitioner before joining the force and these conditions were also incorporated in the letter addressed to the petitioner under the subject “offer of appointment for the post of Constable (GD) in CRPF issued by the respondent No.5. It is argued, that the order of termination is according to law and is sustainable and is not liable to be quashed, no doubt the petitioner has qualified to be enrolled in the force as CT(GD), yet he is governed by the rules aforesaid and there is no violation of Articles 14 and 16 of the Constitution, petitioner has just completed 16 weeks of his training, and as per Rule 16 of CRPF Rule it is clearly mentioned that member of the force shall be enrolled for a period of 3 years and during this period he shall be discharged at any time on one months notice by the appointing authority. It is moreso argued, that a temporary member of the force would be liable to be terminated/ discharged with one months notice both under rule 16 of CRPF Rules of 1955 as well as Rule 5 of the CCS Temporary Rules of 1965, and in view of Rule 4 & 5 of Central Civil Service (Temporary Service) Rule 1965, to terminate service of the temporary employee the order of termination passed by appointing authority should not mention the reason for such termination. To support his arguments, Ld. CGSC has relied upon the judgments reported in (i) **2014 (3) JKJ 100** [Ravi Kumar **versus** Union of India & Ors.] & (ii) **2008 (17) SCC 125** [Union of India & Ors **versus** Sukhen Chandra Dass].

- 8.** I have heard Ld. Counsel for the parties at length, have gone through the record meticulously and have also scanned the ratios of the judgments relied upon by Ld. Counsel for the parties.
- 9.** The substantial questions of law which arises for consideration of this court in the writ petition is:-
 - (i) Whether the petitioner who was put on probation could be terminated from services by the respondents without conducting the enquiry as envisaged under Article 311 of Constitution of India?
 - (ii) Whether the court is empowered to go beyond the order and to see whether the order is made as camouflage for an order of dismissal for reasons other than what appears on the face of the record?
- 10.** Dealing with the 1st substantial question of law, “whether the petitioner who was put on probation could be terminated from services by the respondents without conducting the enquiry as envisaged under Article 311 of Constitution of India”?

It is apt to reiterate here, that undisputedly, petitioner was selected and appointed as constable (GD) in CRPF vide order dated May 2001 after he qualified all the tests including physical test and checkup by Board of Doctors where he was found physically fit, whereafter, petitioner was provided offer of appointment for the post of Constable (GD) in CRPF vide letter No. R.II. 2/200-GC.EC.5 dated May 2001 (Annexure-C to the petition) and was sent for training at Group Centre CRPF Khatkhati Assam after having been allotted No. as 01507064 and completed 16 weeks of his training, but on 17th week of his training period, respondents vide their order dated 27-04-2002 terminated services of the petitioner under Sub-Rule 1 of Rule 4 of CCS (Temporary Services Rules 1965) without assigning any reason and conducting any enquiry. In terms of office order of respondent No.5 bearing No. R.II.2/200.GC.ECV dated June 2001 (Annexure R-A) as many as 158 candidates including the petitioner figuring at S. No. 62 of the merit list have been selected by Board of Officers and the appointment of all the candidates in the CRPF Force was purely temporary basis and liable to be terminated at any time without assigning any reason. The selection order dated June 2001 (Annexure-RA to the petition) for the sake of clarity is reproduced hereunder:-

**OFFICE OF THE ADDITIONAL DIGP GC CRPF BANTLAB
JAMMU (J&K)**

No. R.II.2/2000..GC.EC.V DATED TGE JUNE 2001

OFFICE ORDER

Consequent on their selection by the board of officers consisting of presiding officer Shri Nagendra Singh, Commandant 132 Bn CRPF, Member Shri Karma Bhutia D/C -(%) BN CRPF, Member-II Dr. Jagdish Joshi MO Comp. Hospital GC BTB. Member-III SHri S.M. Khan A/C 8 BN. CRPF, Inspector (M) Bhatnagar 132 Bn CRPF Associated member Doctor Renu Gangal, Psychologist during the recruitment held at GC CRPF BTB jammu from 17-04-2001 to 07-05-2001 and presiding officer Shri K.R. Bangra Commandant 79 BN CRPF Member Shri Sarabjeet Singh 2IC, 74 Bn CRPF Member-II SHri M.K. Muttan A/C 41 Bn CRPF, Member-III Dr. B.K Basumatary MO 71 Bn CRPF, Member-IV Insp(M) Y.P. Bahal GC BTB during the recruitment held at 82 Bn CRPF Srinagar from 26-04-2001 to 30-04-2001 for the post of Constable(GD) male the following personnel have been finally selected and are hereby appointed against overall vacancies of the force in the pay Scale of Rs. 3050-75-3950-80-4590 plus usual allowances as admissible to the Central Govt. employees from time to time w.e.f the dates as indicated against each. Their appointment in the force is purely temporary basis and liable to be terminated at any time without assigning any reasons. Their service carry all India liability and they are required to serve anywhere in India or abroad. They will be governed under the CRPF Act

1949 and CRPF Rules 1955 and other central Govt. employees Rules and instructions as applicable to other Central Govt. Employees ?CRPF personnel. In case of seeking discharge from service after accepting the appointment and before completion of 10 (ten) years service, they shall be required to refund to the Govt. a sum equal to 3 months pay and allowance received by them prior to the resignation or discharge or cost of training imparted which even is higher under Rule-17(A) of CRPF Rules 1955. This appointment is provisional subject to the caste/education certificate being verified through proper channels. If the verification reveals that claim of the candidates to belong to OBC/SC.ST etc is false the service of such candidates will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate. The particulars of selected candidates are as under. They are posted in the strength if GC CRPF BTB till further order:

S. No.	Name of the Candidate	Parentage	Category	Residential Address
1.	Ravinder Kumar	Babu Ram	Hindu/OBC	Villagae Bazar Haryana
2.	Gopal Singh	Ram Rakha	Hindu General	Chack Manga Rakwal Samba
3.	Swaran Singh	Shiv Ram	Hindu General	Raipur Camp Bhangdour Samba
4.	Manjit Singh	Tirbat Singh	Hindu General	Balouri Rehian Samba
5.	Bakesh Kumar	Lekh Raj	Hindu/OBC	Rajpura Hiranagar Kathua
6.	Satish Kumar Isher	Labha Ram	Hindu/OBC	Sai Bureyal Rajpura Jammu
7.	Mushtaq Ahmed	Abdul Aziz	ST	Dharana Mendhar Poonch
8.	Pavan Kumar Isher	Labh Ram	Hindu/OBC	Sai Kalan Jammu
9.	Mohd Kabir	Munir Hussain	ST	Kiran Road Bantlab Jammu
10.	Mohd Farook	Munir Hussain	ST	Kiran Road Bantlab Jammu
11.	Vijay Kumar	Nand Lal	Hindu/OBC	Sawla Hatli Kathua
12.	Vipin Sharma	Manohar Lal	Hindu/General	Chhapaki Mori Hiranagar Kathua J&K
13.	Sohan Lal	Tilak Raj	Hindu/General	Rajpur Hiranagar Kathua
14.	Surinder Kumar	Gian Chand	Hindu/SC	Arozi Samba Jammu
15.	Raghbnadan Singh	Talab Singh	Hindu/General	Mandilama Samba
16.	Vinod Kumar	Jawahar Lal	Hindu/General	Sanyal Hiranagar Kathua
17.	Ravinder Kumar	Tara Chand	Hindu/General	Rajpura Hiranagar Kathua
18.	Narinder Kumar	Girdhari Lal	Hindu/SC	Phallapur Jandi Hiranagar Kathua
19.	Sunil Kumar	Desh Raj	Hindu/General	Patti Rahya Samba
20.	Ravi Kumar	Jallu Ram	Hindu/SC	Pathwal Dayala Chak Hiranagar Kathua
21.	Surinder Kumar	Puran Chand	Hindu/General	Kishanpur Muhjani Billawar Kathua
22.	Mohinder Kumar	Baonan Lal	Hindu/SC	Refuge Camp Dharni Sambalpur Bari Brahmana Jammu +
23.	Kamal Segar	Harurdial Singh	Sikh/General	Jalari Kangra Himachal Pradesh
24.	Sukhdeep Singh	Shyam Singh	Hindu/General	Sadwan Kangar HP

	Pathania	Pathania		
25.	Vijay Singh Jambal	Jagdev Singh	Hindu/General	Khara Madana Vijaypur
26.	Chander Vicky	Babu Ram	Hindu/SC	Ranjitpura Gole Gujaral Punichak Jammu
27.	Sohan Lal	Rattan Lal	Hindu/SC	Mandi Sangwal Samba
28.	Ram Lal	Chaina Ram	Hindu/SC	Magloor Rajbag Kathua
29.	Sunil Singh	Shankar Singh	Hindu/General	Patel Nagar Kathua
30.	Raj Kumar	Mohan Lal	Hindu/SC	Shama Chak Kanachak Jammu
31.	Sukhdev Singh	Sewa Singh	Hindu/General	Magloor Rajbagh Kathua
32.	Balbir Choudhary	Kherati Lal	Hindu/General	Nai Basti Satwari Jammu
33.	Ashok Kumar	Gnajju Ram	Hindu/SC	Kookinyal Nagriparole Kathua
34.	Ranjit Singh	Jagdish Raj	Hindu/General	Sujana Hiranagar kathua
35.	Ranjeev Singh	Raval Singh	Hindu/General	Bari Brahmana Jammu
36.	Subash Singh	Risab Singh	Hindu/General	Dogra Colony bari Brahmana Jammu
37.	Suresh Kumar	Lt. Tara Chand	Hindu/OBC	Garhi-Harssru Gurgaon Haryana
38.	Omparpash yadav	Aga Nath Yudav	Hindu/OBC	Narayanpur Harajna
39.	Rakesh Kumar	Kamar Singh	Hindu/OBC	Khatripur Diblana Haryana
40.	Hariom	Surat Singh	Hindu/OBC	Khandora Dayal Haryana
41.	Parvan Singh	Sardari Lal	Hindu/General	Tandyare Rajbagh Kathua
42.	Shub Kumar	Gopal Dutt	Hindu/General	Dera Baba Reasi
43.	Vijay Kumar	Gandhi Ram	Hindu/General	Bagwana Bassi Hamirpur HP
44.	Manoj Kumar Yadev	Ram Narain Yudav	Hindu/OBC	Manikpur Shosi UP
45.	Jatinder Kumar	Charan Dass	Hindu/OBC	Dhaani Surah Kalyal Kathua
46.	Gandharb Singh	Sardar Singh	Hindu/General	Dergarh Nud Samba
47.	Satish Kumar	Hans Raj	Hindu/SC	Pallanwala Jammu
48.	Ranjit Kumar Dogra	Puran Chand	Hindu/SC	Dogra Hall Pacca Danga Jammu Tawi
49.	Balwant Singh	Raghubir Singh	Hindu/General	Rattanpur Jourian Akhnoor Jammu
50.	Somdutt	Bishan Dass	Hindu/OBC	Ghang Swankha Ramgarh Jammu
51.	Rajesh Kumar	Harbans Lal	Hindu/SC	Sarora Akalpur Domana Jammu
52.	Adalat Hussain	Mohd Hussain	Muslim/General	Saj Thana Mandi Rajouri
53.	Bhushan Kumar	Gomraj	Hindu/General	Kanah Kootah Hiranagar Kathua
54.	Som Raj	Gian Chand	Hindu/General	Nichla Rattanpur Hiranagar kathua
55.	Rakesh Singh	Suram Singh	Hindu/General	Pattaku Kamrail Gharota Jammu
56.	Puran Kumar	Darshan Lal	Hindu/SC	Janarail Kanachak Jammu
57.	Romesh Kumar	Mani Ram	Hindu/SC	Nardibals Akhnoor Jammu
58.	Ajay Kumar Sharma	Shambu Ram	Hindu/General	Rattanpur Surara Hiranagar Kathua
59.	Ashwani Sharma	Bishan Dass	Hindu/General	Panjore Kanachak Jammu

		Sharma		
60.	Sanjeev Kumar	Bahadur Singh	Hindu/General	Naryana Khour Jammu
61.	Zaffer Iqbal	Mohd Aslal	Muslim/General	Jugal Mendhar Poonch
62.	Sanjeev Kumar	Mohan Lal	Hindu/General	Chowki Nowshere Rajouri
63.	Satish Kumar	Lal Chand	Hindu/General	Bhawani Rajouri
64.	Romesh Chand	Jamna Dass	Hindu/OBC	Rattanpur Rajbagh Kathua
65.	Ravi Kumar	Gowa Ram	Hindu/SC	Aittan Nagrota Jammu
66.	Rakesh Kumar	Karan Chand	Hindu/OBC	Daalore Lakhanpur Kathua
67.	Sohan Singh	Ramditta Singh	Hindu/General	Danore Lakhanpur Kathua
68.	Kuldeep Singh	Kaka Ram	Hindu/General	Sangam Kathua J&K
69.	Mohinder Singh	Bhag Singh	Hindu/General	Kandosu Bhaderwah Doda
70.	Vikram Singh	Raj Singh	Hindu/General	Seethal Kaijiriwas Bhiwary Alwar Rajasthan
71.	Ram Lal	Chajju Ram	Hindu/SC	Katmira Pallanwala Khour Jammu
72.	Ganeshu Maharaj	Jagdish Raj	Hindu/General	Bannore kathua J&K
73.	Ashok Kumar	Jathua Ram	Hindu/SC	Gial Wand Rajbagh kathua
74.	Mohd Aslam	Noor Mohd	Muslim/ST	Ponda Darkeri Kalakote Rajouri
75.	Ankush Singh	Sarwan Singh	Hindu/General	Suba Chak Jandi Hiranagar Kathua
76.	Anil Kumar	Sant Ram	Hindu/General	Kakkar Hamirpur HP
77.	Bodh Raj	Tara Chand	Hindu/SC	Haripur Rajbagh Kathua
78.	Ajay Suman	Krishan Dutt	Hindu/OBC	Malti Billawar Kathua
79.	Kuldeep Singh	Pritam Singh	Hindu/General	Tilla Billawar Kathua
80.	Kuldeep Raj	Mela Ram	Hindu/General	Dhack Khalsa Akhnoor Jammu
81.	Charan Dass	Moni Ram	Hindu/SC	Ghagwal Samba Jammu
82.	Rakesh Kumar	Sewa Ram	Hindu/SC	Batnal Khari Bishnah Jammu
83.	Karnail Singh	Dayakrishan	Hindu/General	Chournary Gandoh Doda
84.	Surinder Kumar	Mool Raj	Hindu/OBC	Gho Rakwala Ramgarh Jammu
85.	Inderjeet Singh	Dhani Ram	Hindu/SC	Dhok Khalsa Jourian Jammu
86.	Naveen Kumar	Babu Ram	Hindu/OBC	Makal Shashan Ramgarh Jammu
87.	Jagdish Kumar	Bishambar Nath	Hindu/SC	Bharbarwan Ambarram Akhnoor Jammu
88.	Rishi Kumar	Buti Ram	Hindu/OBC	Kalyana Arnia Jammu
89.	Inderjeet Sharma	Bodh Raj Sharma	Hindu/General	Batinera Kana Chak Jammu
90.	Rajesh Singh	Mohinder Singh	Hindu/General	Barwal Kathua
91.	Ravi Dutta	Amar Singh	Hindu/General	Nanjleclnudhary Haryana
92.	Vijay Yaduv	Abti Lal Yaduv	Hindu/General	Kadipur Harnool Haryana
93.	Amit Kumar Pandita	Hardas Singh Pandita	Hindu/General	Patel Nagar Kathua

94.	Ravi Kumar	Babu Ram	Hindu/General	Kalibari Kathua
95.	Snam Paul	Santok Singh	Hindu/General	Logate Morh Mini Secretariat Kathua
96.	Surjeet Singh	Arjun Singh	Hindu/General	Kana Chak Jammu
97.	Rakesh Kumar	Girdhari Lal	Hindu/SC	Nud Nailkali Samba
98.	Kuldeep Singh	Babu Ram	Hindu/General	Mandi Billawar Kathua
99.	Surinder Singh	Sansar Singh	Hindu/General	Paramalla Billawar Kathua
100.	Shalinder Kumar	Ram Laxman Podwal	Hindu/OBC	Deoli Tonk Rajasthan
101.	Rohit Khajuria	Yash Pal	Hindu/General	Tarf Brahmana Pandorian Bishnah Jammu
102.	Karnail Singh	Kedar Nath	Hindu/General	Dhamlar Basoti Kathua
103.	Jyoti Parkash	Krishan Lal	Hindu/SC	Rattanpur Jourian Jammu
104.	Sunil Kumar	Omkar Chand	Hindu/General	Ghagwal Hiranagar Kathua
105.	Krishan Lal	Sewa Ram	Hindu/SC	R.S. Pura Jammu
106.	Jagdev Singh	Ranjir Singh	Sikh/General	Kotli R.S. Pura Jammu
107.	Mandeep Singh	Beant Singh	Sikh/General	Pouni Udampur
108.	Harvinder Singh	Awtar SINGh	Sikh/General	Pouni Udampur
109.	Sanjay Kumar	Romesh Chander	Hindu/General	Ghovattal Akhnoor Jammu
110.	Bhagwan Dass	Jaipaul	Hindu/General	Kalaspur Lakhanpur Kathua
111.	Jagdev	Khushi Ram	Hindu/General	Hiranagar Kathua
112.	Suilnder Kumar	Kartar Chand	Hindu/General	Gara Satura Hiranagar Kathua
113.	Sunil Sharma	Krishan Kumar	Hindu/General	Satara Hiranagar Kathua
114.	Sham Kumar	Subash Chander	Hindu/General	Hamirpur Sidhara Khour Jammu
115.	Majeet Singh	Rawail Singh	Sikh/General	Raika Lahana Ramgarh Jammu
116.	Hari Singh Maana	Guru Ram Manna	Hindu/ST	Jahajpur Bhilwara Rajasthan
117.	Raghubir Singh	Kaka SINGh	Hindu/General	Mahtaspur Kathua
118.	Ashwani Kumar	Chaman Lal	Hindu/General	Magoli Mahstpur Kathua
119.	Ashwani Kumar	Ram Dass	Hindu/SC	Dablehar Jammu
120.	Naresh Kumar	Jia Lal	Hindu/General	Dayalachak Rajbagh Kathua
121.	Chanchal Kumar	Toru Ram	Hindu/SC	Gigriak Khour Jammu
122.	Parveen Kumar	Ram Dayal	Hindu/SC	Mula Chak Arnia jammu
123.	Sunil Sumbria	Kalyan Singh	Hindu/General	Samilpur Bari Brahmana
124.	Mashum Ali	Sharief Din	Muslim/ST	Lahore Dasantpur Kathua
125.	Surendra Kr Yaduv	Hemkumar Yaduv	Hindu/OBC	Pathatghat Bara Bazar Ghazipur UP
126.	Mohd Farooq	Lal Hussain	Muslim/ST	Pukharni Pam Rajouri
127.	Mohd Amin	Mohd Tazeem	Muslim/General	Bhattian Thana Mandi Rajouri
128.	Parveen Kumar	Bodh Raj	Hindu/OBC	Chhapaki Rajbagh Kathua`
129.	Jagannath	Bodh Raj	Hindu/General	Mawa Brahmina Akhnoor

130.	Davubder Singh	Sehu Singh	Hindu/General	Loundi Sherpure Hiranagar Kathua
131.	Rakesh Kumar Sharma	Darshan Lal	Hindu/General	Gurha Brahmana Akhnoor Jammu
132.	Ashwani Kumar Sharma	Ramdas Sharma	Hindu/General	Sohal Akhnoor Jammu
133.	Mahender Bhadur	Dhan Bhadur	Hindu/General	CRPF Housuing Society Rampur
134.	Avtar Lal	Kuoldeep Singh	Hindu/SC	Shama Chak Jammu
135.	Pramod Kumar Sharma	Dinesh Kr. Sharma	Hindu/General	Nandpur Manjhi Chhapra Bihar
136.	Anil Mohan	R.C. Khandwal	Hindu/General	Jhondajkal Uttaranchal
137.	Yash Pal	Puran Chandh	Hindu/SC	Gehar Chappaki Rajbagh Kathua
138.	Ami Chand	Sunder Singh	Hindu/General	Gopal Anjalag Joginder Nagar Mandi HP
139.	Sunil Dutt	Rattan Lal	Hindu/General	Bari Akhnoor Jammu
140.	Rigraj Singh	Chaggar Singh	Hindu/General	Ghou Manhasan Dumana Jammu
141.	Shiv Dayal	Chiru Ram	Hindu/SC	Sangwal Rajenderpura Vijay Nagar Jammu
142.	Mohd Qayoom	Abdul Majid	Muslim/ST	Kartarmal Ghumbir Drainna Rajouri
143.	Raghubir Singh	Rattan Singh	Hindu/General	Tikka Matti Billawar Kathua
144.	Sikandar Paul	Chaman Lal	Hindu/SC	Mirpur Jaganoo Parokle Kathua
145.	Mahesh Kumar	Subash Chand	Hindu/OBC	Sihma Nornoul Mahindeergarn Haryana
146.	Bal Kishore	Omparkash	Hindu/General	Malhari Khellani Doda
147.	Vinod Singh	Kuldeep Singh	Hindu/General	Peoni MAjatta Udhampur
148.	Anil Kumar Dubey	Harbans Lal	Hindu/General	Jakh Ramgarh Jammu
149.	Vinod Raj	Lt. Rattanlal	Hindu/General	Arina Jammu
150.	Raj Kumar	Girdhari Lal	Hindu/SC	Maralia Miran Sabh Jammu
151.	Krishan Chand	Mahinder Paul	Hindu/SC	Talli Marhan Ragbagh Kathua
152.	Mahesh Chand	Shiv Dutt	Hindu/General	Barknote Laughat Champawat Himachal
153.	Gugendra Singh	Chandan Singh	Hindu/SC	Kandole Agra/UP
154.	Ravinder Kumar	Bansi Lal	Hindu/General	Miran Sahab Jammu
155.	Vikrant Kumar	Kartar Singh	Hindu/General	Geggal Kangra HP
156.	Joginder Singh	Hoshyar Singh	Hindu/General	Kothotran Doda
157.	Inder Kumar	Diwan Chand	Hindu/SC	Seri Bhaderwah
158.	Kartar Singh	Fateh Singh	Hindu/General	Dharamshalla Rajouri

It is not in dispute that the character and antecedents of the petitioner were got duly verified after he was selected for appointment as at that time nothing adverse was found or reported against him. Enrolment of the petitioner in CRPF department was made only after his character and

antecedents were found thoroughly verified. It is not the case of the respondents that there was any lapse on the part of concerned agencies in verifying the character and antecedents of the petitioner before he was appointed in the force. It is not the stand of the respondents that it appears to be not a case where the petitioner could be said to be not fit for enrolment in the CRPF organization on account of any adverse report even during the period when the petitioner was undergoing training. The order of termination issued by respondents (respondent No.5) (Annexure-D to the petition) for the sake of clarity reads as under:-

**OFFICE OF THE ADDL. DIGP GROUP CENTRE CRPF
BANTLAB JAMMU J&K.**

No. D.II.1/2002-CC—EC.II dated the 2 April 02

OFFICE ORDER

In pursuance to the proviso to Sub-rule(1) of Rule 5 of CCS (Temporary Service) Rules, 1965, **I, R.S. Virk ADIGP GC CRPF Bantlab hereby terminate the services of No. 015070641 Rt. Sanjeev Kumar of this GC forthwith** and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of one month.

Place: Bantlab Jammu

Sd/-
(R.S. Virk)
Addl. DIGP

To,

No. 015070641 Rt.
Sanjeev Kumar
Trough OC HQR
GC CRPF Bantlab.

No. D.II.1/2002-GC EC.II dated the 27 April 02

Copy forwarded to the DC(Store), AC HQ/Arm Coys. EC.I PBC GC 9in duplicate), SRC-GC II, FOC GC, EC V, VI, SM & SI (Ajit) GC BTB for info and N/action.

Sd/-
(R.S. Virk)
Addl. DIGP

The services of petitioner are governed under the CRPF Act 1949 and CRPF Rules 1955. Rule 5(1) of Temporary Service Rules 1965 which govern the discharge of service of the petitioner specifically mentions that the services of temporary government servant shall be liable to be termination at any point by a notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the govt. servant and the period of such notice shall be one month. The order of termination passed in case of the petitioner does not indicate that he was terminated from service because he was not likely to prove efficient officer or any

satisfaction to that effect was recorded by the appointing authority. The order of termination only state that the services of petitioner are terminative forthwith. Why is not the service of petitioner required in the department of respondents/CRPF is not disclosed or spoken out in the order of termination. The case of petitioner is, that he has been terminated from services without holding any enquiry against him and he was given no opportunity of being heard. The law relating to discharge/termination of temporary employees has been well settled by catena of the judgments decided by their Lordships of Supreme Court of India and various High Courts of the country.

In (2008) 2 SCC 479 (Nehru Yuva Kendra Sangathan VS Mehbub Alam Laskar), relied by Ld. Counsel for petitioner, Hon'ble Supreme Court while observing that the termination of probation by non-speaking order vitiates the termination, in para 16 of the judgment held as under:-

16. The respondent was appointed on a temporary basis. He was put on probation. Indisputably, the period of probation was required to be completed upon rendition of satisfactory service. Only in the event of unsatisfactory performance by the employee, the termination of probation would have been held to be justified. It is, however, well known that when the foundation for such an order is not an unsatisfactory performance on the part of the employee but overt acts amounting to misconduct, an opportunity of hearing to the employee concerned is imperative. In other words, if the employee is found to have committed a misconduct, although an order terminating probation would appear to be innocuous on its face, the same would be vitiated, if in effect and substance it is found to be stigmatic in nature.

In AIR 2016 (SC) 467 (Ratnesh Kumar Choudhary V. Indira Gandhi Institute of Medical Sciences, Patna, Bihar) relied by Ld. Counsel for Petitioner, Hon'ble Supreme Court while observing that a dismissal made without holding disciplinary proceedings is illegal, in paras 27 & 28 of the judgment held as under:-

27. In the facts of the case, the Court proceeded to state that there is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehavior or misdemeanour. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanor

constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct.

*28. In the case at hand, it is clear as crystal that on the basis of a complaint made by a member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter affidavit indicates about the behaviour of the appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. **It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive.** Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. **The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative.** It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance*

Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench.

In 2003 (II) SLJ 331 (State Of J&K & Ors. Versus Firdous Ahmad Sheikh & Ors.), relied by Ld. Counsel for petitioner, Hon'ble Mr. Justice V.K. Jhanji (His Lordships the then was the Acting Chief Justice of J&K High Court) while appreciating the proposition of law regarding termination of a probation and while observing that merely saying that services of probationer are not required are not sufficient unless it is stated as to why his services are not required, in para 9 of the judgment observed as under:-

*9. The orders of discharge passed in the case of the plaintiff-respondents do not indicate that they were discharged from service because they were not likely to prove efficient police officers or any satisfaction to that effect was recorded by the appointing authority. The orders of discharge only state that their services are not required in the police department. **Why is not their service required in the department is not disclosed or spoken out in the orders of discharge. J&K Police Manual does not recognize or envisage any such ground as the basis for discharging duly recruited police personnel.***

Facts of the case law (Supra) are, that the respondents were appointed as constables in IRP 1st Bn. Zewan Srinagar and put on 3 years probation and deputed for training at Armed Police Training at Kathua Jammu. They continued to receive the training till March 1996 when on 15th March 1996 they were served with order discharging them from services on the ground that their services are not required by the state/appellant. The respondents (plaintiffs) filed a civil suit in the court of Ld. Judge Small Causes Srinagar which was decreed in their favour, whereby, impugned order dated 15 March 1996 passed by Commandant IRP 1st Bn. Zewan Srinagar discharging them from services was declared illegal and bad in law, whereby, the respondents/plaintiffs were directed to be treated in service. The 1st appellate court of 1st Addl. District Judge Srinagar on 16 June 1998 upheld the judgment and decree of the trial court. In Civil 2nd Appeal before the High Court of J&K both the decrees/judgments passed by the trial court

and 1st appellate court were challenged by State of J&K as appellant. The Hon'ble J&K High Court vide its order dated 06-06-2003 (in the case law Supra) while dismissing the appeal filed by the State and confirming both the decrees passed by the trial court and 1st appellate court observed that no case is made out for interference with the judgments and decrees passed by the courts below and held, that as the respondents were not put to notice & were not heard in the matter and as no opportunity was granted to them before passing order of dismissal against them, the order of dismissal becomes vitiated and cannot be sustained. **In 2009 (1) JKJ 38 (HC) [Raj Kumar Versus Union of India & Ors.]**, relied by Ld. Counsel for petitioner, Hon'ble Mr. Justice Sunil Hali (His Lordships the then was) while quashing the order of discharge dated 19 September 1988 passed by Union of India (CRPF) against the petitioner who was member of CRPF on account of his absence from duty, held, that the opportunity of being heard which is not an idle formality was not provided to the petitioner before his discharge from the services, the rule of natural justice was violated, respondents were directed to reinstate the petitioner from the date he was discharged and provide all the emoluments to him for which he was entitled under rules. **In 2019 (3) JKJ-1 [HC] [Bina Devi Versus National Hydroelectric Project & Ors]**, also relied by Ld. Counsel for petitioner, a Coordinate Bench of this court headed by His Lordships Hon'ble Mr. Justice Sanjeev Kumar, Judge J&K High Court, while quashing the impugned order dated 21-06-2001 passed by the respondent whereby the services of petitioner were terminated, reinstated the petitioner an Auxiliary Nurse Mid-Wife in the department of respondent by holding that the impugned order has been found to be in violation of principle of natural justice as no enquiry was held before the termination of the petitioner from services. Ratios of the judgments enunciated in the cases of "**Nehru Yuva Kendra Sangathan**", "**Ratnesh Kumar Choudhary**", "**Firdous Ahmad Sheikh**", "**Raj Kumar & Bina Devi**" (Supra) relied by Ld. Counsel for petitioner, make the legal proposition abundantly clear, that the services of a probationer cannot be terminated without holding an enquiry as the same would amount to violation of principle of natural justice.

Respondents in their written objections to the petition have taken specific stand that since the petitioner was "**surplus**" in the force he was terminated from services under Sub-Rule (1) of Rule 5 of Central Govt. Services (Temporary Services) Rule 1965 without assigning any reason and

the surplus force in the CRPF is generally reduced after passing discharge orders as the petitioner is one of them as his services are no longer required, and therefore, there is no violation of Articles 14 & 16 of the Constitution. In the rejoinder affidavit filed on behalf of petitioner, it has been specifically declared that in terms of provision of temporary service rules 1965 notice has to be served and the person has to be given opportunity of being heard, whereas, respondents without assigning any reasons terminated the petitioner against provisions of law as there is nothing mentioned in the termination order that force is surplus.

Mr. Sandeep Gupta Ld. Counsel for respondents, has vehemently defended the termination order of the petitioner by canvassing arguments, that petitioner had just completed 16 weeks of his training and in terms of Rule 16 of CRPF Rule a member of force shall be enrolled for a period of 3 years and during this period he shall be discharged at any time on one months notice by the appointing authority, a temporary member of the force would be liable to be terminated/discharged with one months notice under Rule 16 of CRPF Rules of 1955 as well as Rule 5 of CCS (Temporary Rules) of 1965, wherein Rule 5 (1) empowers the competent authority to terminate temporary member forthwith without notice, while Rule 4 of Central Civil Services (Temporary Service) Rule 1965 mentions that the appointing authority should not mention the reasons for such termination. **In 2014(3) J.K.J. 100 (Ravi Kumar—Petitioner Versus UOI and Others—Respondents)** relied by Ld. Counsel for respondents, Hon'ble J&K High Court held, that the termination of petitioner a constable (GD) in CRPF in terms of Rule 16 (A) of Central Civil Services (Temporary Services) Rules 1965 r/w Rule 5 (1) of the Rules of 1965 on the ground that the medical officer had opined that petitioner was suffering from psychiatric problem and was unable to withstand stress and strain of combatant and not fit to continue as active member of the force cannot be said to have been passed unfairly, arbitrarily or with ulterior motive. **In 2008 (17) SCC 125 [Union of India & Ors versus Sukhen Chandra Dass]**, also relied by Ld. Counsel for respondents, Hon'ble Supreme Court held, that there was no necessity to hold departmental enquiry against respondent in termination of his services as temporary employee a constable of CRPF who was terminated in terms of Rule 16 of Central Civil Services (Temporary Services) Rules 1965 r/w Rule 5 (1) & 14-B of the Rules of 1965 for the reasons that the employee had willfully suppressed registration of criminal

cases against him at the time of verification. The case laws (Supra) relied by Ld. Counsel for respondents make it manifestly clear, that a temporary employee in CRPF Force if found not fit to continue as effective member of the force for the reasons of health problem or criminal cases registered against him, the termination was held legally justified. Arguments of Ld. Counsel for respondents that the petitioner in the case in hand has been terminated on the ground of his being surplus in the force is not in consonance with the principles of law deduced in the case laws (Supra) relied upon by him, the same are repelled, rejected and discarded. The impugned order of termination dated 27-04-2002 depicts that the services of petitioner have been terminated forthwith. Respondents have not assigned any reasons for termination of the petitioner who being a temporary employee is also protected under the provisions of Article 311 of the Constitution of India and could not have been terminated without conducting proper enquiry. Respondents have invoked Rule 5 of Central Services (Temporary Services) Rules 1965 and Rule 16 of CRPF Rules. It is settled position of law, that special rules will always override the general law. The general law can only be invoked once the rules are silent. Admittedly, the petitioner was governed by Rule 16 of CRPF Rules for the purpose of ordering his termination. Rule 16 of CRPF Rules contemplates that all the members of force shall be enrolled for a period of 3 years and during this period of engagement, they shall be liable to be discharge at any time on one months notice by the appointing authority. In the case in hand, petitioner who has completed 16 weeks of his training period, has yet to complete 3 years, and he could have been discharged by invoking Rule 16 of the CRPF Rules provided he was given one months notice. The respondents (Respondent No.5) instead have invoked Rule 5 of Central Services (Temporary Services) Rule 1965 by giving pay and allowance for the period of notice. This in my considered opinion could not be done by the respondents. The petitioner is strictly governed by Rule 16 of CRPF Rules which envisages one month's prior notice before ordering his discharge. This has not been followed in the present case. No enquiry was held against the petitioner nor he was given an opportunity of being heard. The impugned order of termination against the petitioner, therefore, is violative of Articles 14, 16 & 311 of the Constitution of India and unsustainable in the eyes of law.

- 11.** Dealing with the 2nd substantial question of law, “whether the court is empowered to go beyond the order and to see whether the order is made as a camouflage for an order of dismissal for reasons other than what appear on the face of order”?

In Gujrat Steel Tubes Ltd. Vs. Gujrat Steel Tubes Mazdoor Sabha (AIR 1980 SC 1876) Hon'ble Mr. Justice V.R. Krishna Iyer as his lordship then was), speaking for the majority, for the first time, expounded the doctrine of lifting of the veil to see the true nature of the order, i.e. whether the discharge orders issued by the management were punitive or non-penal. The doctrine of lifting of veil again was considered by their lordships of the Supreme Court in *Annop H Jaiswal Vs. Government of India*, (1984 (1) SLR 426) and, after considering the case law on the subject, their lordships were pleased to observe as under:-

“Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order, though in the form is merely a determination of employment, is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.”

Since, in the instant case the order of termination is not an order of termination simplicitor, therefore, in light of the above settled position of law, this court is within its powers to go beyond the orders. Reading of impugned order of termination in the case in hand would make it clear, that though it does not mention any reasons, nevertheless, in the objections the respondents have taken specific stand that the petitioner has been found “surplus” in the department of respondents. Be it noted, that impugned order has also been assailed on the grounds, that it has been passed for ulterior motives, is punitive in nature, petitioner has not done anything for which such major excessive and disproportionate punishment has been imposed, termination order is silent about the reason of termination, petitioner was found medically fit and was undergoing training, respondents have not issued any discharge certificate in terms of Rule 17 of CRPF Rules. Impugned order of termination does not indicate that petitioner has been terminated as he was not likely to prove efficient in the department and is not fit to continue as effective member of the force. The impugned order of termination only states that the services of petitioner are terminated. Why is not the services of petitioner required in the department

is not disclosed or spoken out in the order of termination. In such a factual backdrop, respondents (respondent No.5) are said to have acted unfairly, arbitrarily and with ulterior motive in passing the impugned order of termination, terminating the services of the petitioner in exercise of power vested to him in pursuance to the proviso to Sub-Rule 1 of Rule 5 of CCS (Temporary Services) Rules 1965.

12.In view of the above, the impugned order of the termination of the petitioner from services, therefore, is violative of Rule 16 of CRPF Rules r/w Articles 14, 16 & 311 of the Constitution of India, the same cannot be sustained. I, allow the writ petition and pass the directions/order viz; (i) **By Certiorari** Order No. D.II.1/2002-GC-EC.II dated 27th April 2002 issued by Addl. DIGP, Group Centre, CRPF Ban Talab, Jammu (Respondent No.5) by which the services of petitioner has been terminated stand quashed & (ii) **By Mandamus**, it is commanded/directed that the respondents shall reinstate the petitioner forthwith, allow him to perform his duties as provided under rules, however, the petitioner is entitled to notional promotions from the date of his termination from services.

13.Disposed of accordingly

Jammu:
18 .07.2022
Vijay

(Mohan Lal)
Judge

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