
(2015) 07 DEL CK 0360

In the Delhi High Court

Case No : W.P. (C) 6107/2013 and 3242/2014

Anil and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 354
Sashastra Seema Bal Act, 2007 — Section 132

Citation : (2015) 07 DEL CK 0360

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Jyoti Singh, Sr. Advocate, A.K. Trivedi, Padma Kumar, Tinu Bajwa, Amandeep Joshi, Sameer Sharma and Ashok. K. Vij, Advocates, for the Appellant; Barkha Babbar and Dipanjali Tyagi, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioners challenge the order of 17.05.2013 discharging them from the Sashastra Seema Bal (SSB). The impugned order (hereafter referred to as "discharge order") invoked Rule 16 of the Sashastra Seema Bal Rules, 2009.

2. The brief facts are that the petitioners were inducted into the SSB and sent for 44 weeks" training at Debendranagar, Assam. During the period of training, in January 2013, they were granted mid-term break for 14 days. After completion, they boarded Guwahati Sampark Kranti Express on 29.01.2013. When the train halted at Mughal Sarai Railway Station, the petitioners were de-boarded, after being informed that two First Information Reports (FIRs), i.e. 34/2013 and 34(A) /2013 were lodged. These alleged commission of offences punishable under Sections 354 /307 IPC. The petitioners were arrested but granted bail on 09.02.2013. The criminal case has not ended. After the petitioners reported for duty on 11.02.2013, a Court of Inquiry was conducted. This culminated in an order which led to Summary Force Court proceedings which resulted in

imposition of two months" imprisonment in force custody and forfeiture of pay and allowance for 14 days. On 17.05.2013, the SSB authorities opined that the imposition of penalty by Summary Force Court proceedings was not in accordance with law since the allegations pertained to commission of criminal offence of which cognizance had been taken by the competent court. In the light of the provisions of the Sashastra Seema Bal Act, 2007, which mandate that in such eventuality, the trial of offences pending before the competent court could be taken over - which was not done, the entire proceedings culminating in the imposition of penalty was illegal. On the same day, the respondents issued the discharge order; the discharge order in respect of both the petitioners (Anil and Sonu Yadav) inter alia stated as follows:

In respect of Anil:

"AND WHEREAS, in accordance to the powers available to the undersigned as per Section 132 of SSB Act, 2007 read with Rule 185 of SSB Rules, 2009, I have annulled the proceedings of SFC vide order No. 08/JAG/FTR-GHY/13/7810-19 dated 17.05.2013 on the ground that the said proceedings were illegal as the SFC has been convened without taking over the case from concerned Police/Judicial authorities for invoking the concurrent jurisdiction available to the Force Courts.

NOW THEREFORE, in terms of clause-4 of Part-II (Condition of Service) of Appendix-I under Rule 16 of SSB Rules, 2009, I the undersigned hereby order to discharge RCT/GD constable No. 120793943 Anil from service from the date of receipt of this order as he has failed to conduct himself as an efficient member of the Force."

XXXXXX XXXXXX

In respect of Sonu Yadav:

"AND WHEREAS, in accordance to the powers available to the undersigned as per Section 132 of SSB Act, 2007 read with Rule 185 of SSB Rules, 2009, I have annulled the proceedings of SFC vide order No. 08/JAG/FTR-GHY/13/7810-19 dated 17.05.2013 on the ground that the said proceedings were illegal as the SFC has been convened without taking over the case from concerned Police/Judicial authorities for invoking the concurrent jurisdiction available to the Force Courts.

NOW THEREFORE, in terms of clause-4 of Part-II (Condition of Service) of Appendix-I under Rule 16 of SSB Rules, 2009, I the undersigned hereby order to discharge RCT/GD constable No. 120796498 Sonu Yadav from service from the date of receipt of this order as he has failed to conduct himself as an efficient member of the Force."

3. The petitioners contend that the impugned order is in a sense a stigmatic one because it relies upon the materials which formed the basis of abortive summary court proceedings. Having once decided to initiate disciplinary proceedings and

even continue with the process up to the imposition of penalty, the respondents could not legitimately have sought recourse to the power to discharge or terminate them simpliciter. It is argued secondly that even though the petitioners were indicted for the alleged criminal offence in that they have been named in the charge sheet before the police, their case is no different from eight others who are continuing in the force. Characterizing the respondents' position as discretionary, learned counsel submitted that in similar circumstances where other SSB personnel also alleged to have been involved in some incident were discharged, this Court directed their reinstatement. Learned counsel cites the judgment of the Court in W.P.(C) 4804/2014 - Sonu Kumar v. UOI and Ors., (decided on 28.11.2014). Lastly, it was contended that the SSB cannot rely upon Rule 16 of the Sashastra Seema Bal Rules, 2009, to invoke the power of discharging a personnel simpliciter. Alternatively, it is submitted that the reference to Clause 4 of the Conditions of Service contained in the appointment letter is also of no consequence.

4. Learned counsel for the respondents submits that the power to discharge any personnel in the SSB who is not even a probationer was validly invoked in the circumstances of the case. It is highlighted that even though the proceedings were drawn and resulted in imposition of penalty by Summary Force Court, the fact remained that they were without jurisdiction as the entire proceedings had to be taken over from the criminal court in accordance with law. In such circumstances, the material which formed the basis of that process or proceedings always remained and could be validly considered. These were in the form of serious allegations of misbehaviour by the petitioners, among other SSB personnel who were traveling in the train. The misbehaviour in question was directed against some NCC women cadets who were co-passengers.

5. Rules 15 and 16 of the SSB Rules, 2009 reads as follows:

"15. Probation." (1) A person appointed through direct recruitment as an officer, subordinate officer, under officer or enrolled person shall be on probation for a period of two years.

(2) The Central Government in the case of officers and the authority prescribed in rule 14, in the case of subordinate officers, under officer and enrolled persons may, for the reasons to be recorded in writing, extend the period of probation for such further period or periods not exceeding two years or may during the period of probation, terminate his services without assigning any reasons.

(3) The provision of sub-rules (1) and (2) shall also be applicable to a person on his initial promotion as an officer and persons who do not complete the period of probation satisfactorily are liable to be reverted to their former rank.

16. Procedure for enrolment, mode of enrolment and other matters connected therewith." (1) Before a person is enrolled as a member of the Force, the Commandant of a unit or any other officer who may be detailed as an enrolling officer by the Director-General, shall read and explain to him, or cause to be read

and explained to him in his presence, the conditions of service of the post to which he is to be enrolled and shall put to him the questions contained in the form of enrolment as set out in Appendix I and shall, after having cautioned him that if he makes a false answer to any such question he shall be liable to punishment under the Act, record or cause to be recorded his answer to each such question.

(2) If, after complying with the provisions of sub-rule (1) and such other directions as may be issued in this behalf by the Director-General from time to time, the enrolling officer is satisfied that the person desirous of being enrolled, fully understands the questions put to him and consents to the condition of service, and if the said officer is satisfied that there is no impediment, he shall sign and shall also cause such person to sign the enrolment form and such person shall thereupon be deemed to be enrolled.

(3) (a) Every person enrolled as a member of the Force under sub-rule (2) shall be administered an oath or affirmation in the form set out in Appendix I.

(b) The oath or affirmation shall as far as possible be administered by an officer not below the rank of Commandant or an officer authorised in writing by such officer in this behalf.

(c) The oath or affirmation shall be administered when the person to be attested has completed his training."

6. The facts reveal that the initial Summary Force Court proceedings, that resulted in the imposition of two months' imprisonment in force custody and forfeiture of pay and allowance for 14 days, was correctly considered, on 17.05.2013- by the SSB itself to be irregular and without jurisdiction, given that the allegations were seized of by the competent criminal court which had taken cognizance of the offence. Quite correctly, the SSB cancelled those proceedings and the penalty. The question is whether the SSB ought to have initiated a fresh domestic proceeding, to determine the misconduct. The petitioners would urge that the SSB cannot; the latter asserts to the contrary.

7. The conditions of service which the petitioners agreed to in the contract which they entered into with the SSB at the time of engagement inter alia states as follows:

"4. You are liable to be discharged during the first year of the service if you are not likely to become an efficient member of the Force."

This is undeniable, because the condition forms part of the appointment letter/order, which was accepted by the petitioners. It is evident that the events which preceded the petitioners' termination cast their shadow. They were arrested and later tried by the Summary Force Court. That proceeding was insupportable in law and set aside. The contention that the material which formed the basis of that proceeding could not have been taken into account has to be seen in the context of whether the foundation of the termination order is misconduct, or if it

is merely unfitness of the petitioners to hold the post.

8. It is established law that a probationer does not possess the right to hold her or his post and can be terminated from employment in terms of the rules (Purshottam Lal Dhingra v Union of India AIR 1958 SC 826). The decision in The State of Bihar Vs. Gopi Kishore Prasad, is authority for the proposition that termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is not penal. However, if inquiry is held without following full procedure, and that forms the basis of termination, the discharge (or termination) is penal and stigmatic. It was also observed that

"But, if the employer simply terminates the services of the probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause."

Samsher Singh Vs. State of Punjab and Another, is authority for the proposition that motive for a termination order is irrelevant. If the foundation of the order is some misconduct, its seemingly innocuous nature does not protect it; the court can declare it to be punitive.

9. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, one of the questions which arose for consideration before the Supreme Court was in what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive. The Court observed as under:-

"If findings were arrived at an inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations will be bad. But if the inquiry was not held, no findings were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

In Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, it was held that:

"Generally speaking when a probationer's appointment is terminated it means

that the probationer is unfit for the job, whether by reason of misconduct or ineptitude whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic."

10. Clearly, motive for an order is irrelevant. Although in this case, it would appear that the SSB relied on materials which might point to the petitioner's misconduct,- especially in view of the aborted Summary Security Force Court proceeding- in reality, the order was non-stigmatic. The material seen, i.e the petitioners' arrest, was only for the purpose of ascertaining their suitability rather than to see whether they were guilty of misconduct. Being members of a disciplined force, their conduct had to be blameless throughout their career. The incident which led to their arrest could legitimately be seen as bringing disrepute to the Force they belonged. Consequently, the SSB's recourse to the power to terminate their services, simpliciter was not stigmatic or punitive.

11. In view of the above discussion, we are of the opinion that the impugned termination/discharge order cannot be set aside on the grounds urged in these proceedings. It is, however, open to the petitioners to represent to the respondents in the eventuality of their being acquitted of the charges. In case such a representation is received by the respondents/SSB the same shall be duly considered and their decision communicated to the petitioners as expeditiously as possible, preferably within eight weeks of receipt of their representations. The writ petitions are dismissed, but in terms of the above directions; there shall be no order as to costs.