

(2001) 05 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6245 of 2000

Biplab Mazumdar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 34, 420, 468
Railway Protection Force Act, 1957 — Section 21(I), 9, 9(1)
Railway Protection Force Rules, 1987 — Rule 134, 148, 148.5, 162, 162.1

Citation : (2001) 3 GLT 528

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : N.M. Lahiri, N. Choudhury and S.C. Koyal, for the Appellant; B.K. Sharma, P.K. Tiwari and U.K. Nair, for the Respondent

Judgement

A.K. Patnaik, J.—The Petitioner was selected for appointment to the post of Sub-Inspector of Railway Protection Force (RPF) and he was deputed for initial training at JR/RPF Academy at Lucknow. After such initial training he went through some practical training of SIPF (Executive). He was then posted as Sub-Inspector, RPF at CIB/HQ and attached to Computer Cell with effect from 1.12.99 and he was to remain on probation for a period of 2 years. On 19.8.2000, the Senior Branch Manager, Vijaya Bank, Fancy Bazar Branch, Guwahati lodged an FIR with the Officer -in-charge of Paribazar Police Station alleging that the Kohima Branch had issued a Bank Draft dated 10.8.2000 for Rs. 100.00 in favour of the Petitioner but the Bank Draft, was fraudulently altered by using some chemical to Rs. 1,00,000/- and presented for payment at Fancy Bazar Branch by the Petitioner along with some other documents. Pursuant to the said FIR, Panbazar Police Station Case No. 253/2000 under Sections 468/420/34, IPC, has been registered on 21.8.2000. The Petitioner was arrested and was released on bail by this Court on 12.9.2000 in Bail Application No. 155/2000. By an order dated 29.8.2000 passed by the Additional Chief Security Commissioner, Railway

Protection Force, NF Railway, Maligaon, the Petitioner was placed under suspension for involvement in the aforesaid PS case. The said order of suspension was revoked with effect from 22.11.2000. But the Petitioner was terminated from service by order dated 24.11.2000 of the Chief Security Commissioner, Railway Protection Force, NF Railway, Maligaon. In the said order of termination it has been stated that the Chief Security Commissioner was of the opinion that the Petitioner who was under probation was not fit for permanent appointment. Aggrieved by the said order of termination from service, the Petitioner has filed this Writ Petition under Article 226 of the Constitution for appropriate relief.

2. Mr. NM Lahiri, learned Counsel for the Petitioner, submitted that the impugned order of termination was arbitrary and punitive and has been passed on the allegations made in the FIR alleged by the Senior Branch Manager, Vijaya Bank. He submitted that the Petitioner though a probationer could not have been terminated from service without following the principles of natural justice but admittedly the principles of natural justice have not been followed before the impugned order of termination was passed. In support of his submission, he relied on the decision of the Supreme Court in the case of V.P. Ahuja Vs. State of Punjab and Others, He further submitted that Rule 162 of the Railway Protection Force Rules, 1987 (for short the "Rules") provides for the procedure to be followed in case of conviction by a criminal Court but the said procedure has not been followed in the present case. He submitted that the Inspector, RPF, CIB/NFR under whom the Petitioner was working on probation has submitted his report to the Chief Security Commissioner, RPF, NF Railways, in which he has, inter alia, stated that the Petitioner has worked sincerely and in disciplined manner during his ten are in Computer Cell and he did not find anything adverse in his working or in his behaviour during office hours. According to him, in view of the said report of the immediate superior of the Petitioner with regard to his performance, the impugned order of termination on the ground that the Petitioner was unfit for permanent appointment could not have been passed.

3. In reply, Mr. BK Sharma, learned Standing counsel for the Railways, submitted that under Rule 57.3 of the Rules, the appointing authority has the power to terminate a probationer if he is of the opinion that the probationer is not fit for permanent appointment. He argued that since the appointing authority had come to learn about the involvement of the Petitioner in the aforesaid criminal case, he was of the opinion that the Petitioner was not fit for permanent appointment in the RPF and for this reason he passed the impugned order of termination. In reply to the submission made by Mr. Lahiri submitted that the impugned order has been passed by the appointing authority without complying with the principles of natural justice, he submitted that a reading of the impugned order of termination would show that it is not stigmatic and that this is a case of termination simpliciter. He cited the decisions of the Supreme Court in case of The State of Bihar Vs. Gopi Kishore Prasad, , Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others,

and Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, for the proposition that where the employer simply terminates the service of a probationer without any stigma, the employer is not required to comply with the principles of natural justice even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post which he was temporarily holding. Mr. Sharma also referred to the provisions of Rule 148.5 of the Rules to show that the termination of service of an enrolled member of RPF during the period of probation in accordance with sub-rule 3 of Rule 57 of the Rules does not amount to punishment within the meaning of Rule 148 of the Rules.

4. The Petitioner was a member of RPF and the Railways Protection Force Act, 1987 (for short the "Act") and the Rules made thereunder are applicable to him. Section 9 of the Act provides for dismissal and removal of the members of the Force. The relevant portion of the said Section 9 is quoted hereinbelow:

Dismissal, removal, etc. of members of the Force (I) Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may:

(i) dismiss suspend or reduce in rank any enrolled member of the Force whom he shall think remiss or negligent in the discharge of his duty, or unfit for the same, or

(ii) *** **

Section 21(I) of the Act empowers the Central Government to make rules for the purpose of carrying out the purpose of the Act. Rule 57 of the Rules relates to probation. Rules 57.2 and 57.3 on which reliance has been placed by Mr. Sharma are quoted hereinbelow:

57.2 On successful completion of the period of probation or any extension thereof, a member of the Force shall be retained in his appointment on regular basis and be confirmed in due course against the available substantive vacancy.

57.3 If, during the period of probation any extension thereof, as the case may be, the appointment authority is of the opinion that the member of the Force is not fit for permanent appointment, the appointing authority may terminate the services of a direct recruit or revert the member of the Force to the post held by him prior to such appointment:

Provided that in case of termination of service a probationer shall be given a notice of one month to that effect or pay in lieu thereof.

Provided further that a notice or pay in lieu thereof shall not be required where the termination of service results as a consequence of the failure of the probationer to pass the initial training course or a repeat course, if any.

Rule 148 prescribes the punishment which can be imposed in a disciplinary proceeding. The relevant portion of rule 148.5 on which Mr. Sharma has placed

reliance is quoted hereinbelow:

148.5 Explanation:

The Following shall not amount to a punishment within the meaning of this rule, namely:

(a) withholding of increment of an enrolled member of the Force for failure to pass a departmental examination in accordance with the rules or orders governing class or grade or rank or post or as per terms of his appointment; .

(b) stoppage of an enrolled member of the Force at the efficiency bar in the existing scale of pay on the ground of his unfitness to cross the bar;

(c) non-promotion of an enrolled member of the Force, whether in a substantive or officiating capacity, due to his failure to pass the pre-promotion course, to a rank or grade to which he is eligible or has been empanelled;

(d) reversion of an enrolled member of the Force officiating in a higher rank or a grade to a lower rank or grade on the ground that he is considered to be unsuitable for such higher rank or grade on any administrative grounds not connected with his conduct;

(e) reversion of an enrolled member of the Force appointed on probation to his permanent rank, grade or post, during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation;

(f) repatriation of an enrolled member of the Force to his parent cadre or department;

(g) retirement of a member of the Force under Rules 84 and 85 on grounds of unsuitability or physical and mental unfitness respectively;

(h) suspension of enrolled members of the Force under Rule 134;

(i) termination of services of an enrolled member of the Force:

(1) appointed on probation, during the period of probation or any extension thereof in accordance with the provisions of Sub-rule (3) of the 57; or

Rule 162 of the Rules on which Mr. Lahiri relied on provides the procedure to be followed in case of conviction in a criminal case. Rules 162.1, 162.4.2 and 162.5 which are relevant for the purpose of this case are quoted hereinbelow:

162. Procedure to be followed in case of conviction by a criminal court

162. I The Divisional Security Commissioner or the Commanding Officer shall go through the record; of every case brought against an enrolled member of the Force in the court, and shall take departmental cognizance of every criminal case in which an enrolled member of the Force is convicted or acquitted or discharged (except when the case is false) and record on appropriate order.

162.4.2 Without prejudice to the rights of the accused on final acquittal, such proceedings shall be taken up as soon as the first trial court has passed orders of conviction and disposed of immediately in order to avoid the wasteful expenditure involved in allowing the enrolled member of the Force to remain under suspension.

162.5 Proceedings in case of discharge : When an enrolled member of the Force is prosecuted before a court but discharged for insufficiency of evidence or any technical ground or by giving him the benefit of doubt, the disciplinary authority shall examine the possibility of instituting departmental proceedings after an objective consideration of all the facts and circumstances of the case and may take such action as deemed appropriate.

5. A plain reading of Sub-section (1) of Section 9 quoted above would show that any enrolled member of the Force can be dismissed, suspended and reduced in rank by the superior officer, if such superior officer thinks that he is negligent in discharging of his duties or unfit for the same. That the said Section 9 also applies to a probationer. The Petitioner was placed under suspension under the provisions of the said Section 9 of the Act by order dated 29.8.2000 of the Additional Chief Security Commissioner, RPF, NF Railways, Maligaon, for his involvement in Panbazar PS Case No. 253/2000 under Sections 468/420/34, IPC and for detention in custody. The opening words of sub-section (1) of Section 9 make it clear that the power of the superior officer to place an enrolled member of the Force under suspension or to dismiss him from service or to reduce in rank is subject to the provisions of such rules as the Central Government may make under the Act. The power under Sub-section (1) of Section 9 of the superior officer is thus subject to Rule 162 which provides for procedure to be followed in case of conviction by a criminal court. Rule 162.1 provides that the Divisional Security Commissioner or the Commanding officer shall take departmental cognizance of every criminal case in which an enrolled member of the Force is convicted or acquitted or discharged and record an appropriate order. Rule 162.4.2 provides that proceedings will be taken up against such enrolled member of the Force as soon as the first trial court has passed orders of conviction. Rule 162.5 further provides that where the enrolled member of the Force is prosecuted before a court but discharged for insufficiency of evidence or on technical ground or by giving him benefit of doubt, the disciplinary authority will consider the possibility of departmental proceedings after an objective consideration of the facts and circumstances of the case and may take such action as he deems appropriate. It is clear on a plain reading of the aforesaid rules that unless and until an order of conviction or acquittal or discharge has been passed by the Court in a criminal case in respect of an enrolled member of RPF no action can be taken against such enrolled member of RPF merely on the basis of allegations made in the FIR or the charge-sheet filed by the police after investigation on such allegations.

6. Rule 57.3 of the Rules which provides for termination of a probationer during

the period of probation has to be read consistent with the aforesaid provisions of Section 9 of the Act and Rule 162 of the Rules. The records produced before the court as well as averments made in the affidavit-in-opposition filed on behalf of the Respondents do not show that the Petitioner has been terminated from service either for unsatisfactory performance or for negligence of his duties. Instead the said records and the averments made in the affidavit in opposition show that the Petitioner has been terminated from service due to his alleged involvement in Panbazar PS Case No. 253/2000 under sections 468/420/34, IPC. But the appointing authority who has passed the impugned order of termination failed to appreciate that the allegations against the Petitioner in the said Panbazar PS Case were in the stage of investigation by the police. The provisions of Rule 162 discussed above would show that cognizance of such allegations against the Petitioner could be taken by the department only after the criminal court passed an order of conviction, acquittal or discharge.

7. Rule 148.5, of course, provides that termination of service of an enrolled member of the Force appointed on probation during the period of probation in accordance with the provisions of Sub-rule (3) of Rule 57 would not amount to punishment within the meaning of Rule 148. This only clarifies that when an enrolled member of the Force appointed on probation is terminated during the period of probation on the ground that he has been found not fit for permanent appointment, such termination will not amount to punishment. Thus the provisions of Rule 148.5 of the Rules have no relevance to the present Case in which the Petitioner has been terminated on account of his alleged involvement in criminal case on the ground that he is not fit for permanent appointment. In a case where an enrolled member of the Force on probation is alleged to be guilty of negligence of his duties or any misconduct course of his employment, the appointing authority may choose not to initiate any disciplinary proceeding against him and not to impose any punishment on him pursuant to such disciplinary proceeding and instead terminate him from service on the ground that he is not fit for permanent appointment. But where some allegations are made against an enrolled member of the Force in an FIR which do not relate to any negligence of duty or any misconduct in course of employment, the appointing authority cannot take cognizance of such allegations or any report of the police on such allegations until and unless an order of conviction, acquittal or discharge is passed by the criminal court as provided under Rule 162 of the Rules.

8. There is no doubt a distinction between a member of the Force who is on probation and a member of the Force who is appointed on regular basis. But under Rule 57.2 of the Rules quoted above, on successful completion of the period of probation or any extension thereof, a member of RPF who is on probation has a right to be retained in his appointment on regular basis and be confirmed in due course against available substantive vacancies. Hence a member of RPF who is on probation and who is otherwise fit for permanent appointment cannot be terminated from service on the basis of mere allegations in an FIR or report submitted by the police officer on such allegations which do

not disclose negligence of his duties or any misconduct in course of his employment. There is also nothing in the Rule 162 of the Rules to show that the provisions under the said Rule 162 are applicable only to a member of RPF who has been regularly appointed and are not applicable to a member of RPF who was on probation. There is no explanation similar to the explanation under Rule 148.5 that provisions of Rule 162 will not apply to a case of termination of a probation under sub-rule 3 of Rule 57 of the Rules on the ground that he is not fit for permanent appointment. Rather the provisions of Rule 162 of the Rules are intended to ensure that a member of RPF appointed regularly or on probation is not removed from service or subjected to any other punishment only on the basis of allegations in the FIR or the report submitted by the police after investigation, which do not disclose negligence of duties or any misconduct in course of his employment by such member of RPF.

9. The decisions of the Supreme Court in the case of *State of Bihar v. Gopi Kishore* (supra), *Radheshyam Gupta v. UP State Agro Industries Corporation* (supra) and *Dipti Prakash Benarjee v. Satyendra Nath Bose National Center of Basic Science* (supra) cited by Mr. Sharma are cases in which the Supreme Court has held that the services of a probationer can either be terminated on the basis of misconduct established in a disciplinary proceeding or by an order of termination simplicitor without any stigma on the ground that he is unsuitable or unfit for being retained in service and the said decisions do not apply to the facts of the present case in which a probationer is sought to be terminated from service on the basis of allegations made in the FIR or on the basis of report of the police officer investigating into the said allegations which do not disclose negligence of duties by the probationer or any misconduct on his part in course of his employment. Similarly, the decision of the Supreme Court in the case of *VP Ahuja v. State of Punjab and Ors.* (supra) cited by Mr. Lahiri is a case where the probationer was terminated on the ground that he had failed in performance of his duties administratively and technically and does not apply to the facts of the present case in which a probationer has been terminated from service not on the ground that he has failed to perform his duties but on account of allegations in the FIR or the report of the police after investigation of such allegations which do not disclose any failure on the part of the probationer to perform his duties administratively or technically. Further in none of the aforesaid decisions cited by Mr. Sharma and Mr. Lahiri, the Supreme Court had the occasion to deal with statutory provisions similar to Rules 162.1, 162.4.2 and 162.5 which provided for departmental cognizance of a criminal case in which a member of RPF was involved only after the order of conviction or acquittal or discharge was passed by the court.

10. For the aforesaid reasons, the impugned order dated 24.11.2000 passed by the Chief Security Commissioner, RPF, NF Railways, Maligaon terminating the Petitioner from service is quashed and the Respondents are directed to reinstate the Petitioner in service with back wages with effect from 24.11.2000, i.e. the date from which the termination of the Petitioner from service had been effected.

Considering the facts and circumstances of the case, however, the parties shall bear their own costs.