
(2009) 12 DEL CK 0393

In the Delhi High Court

Case No : Writ Petition (C) No. 2128 of 1996

Ex. CT/Painter, CRPF Suresh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1955 — Rule 5(1)
Central Reserve Police Force Rules, 1955 — Rule 16

Citation : (2009) 12 DEL CK 0393

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : O.N. Sharma, for the Appellant; Aakriti Gandotra, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—On 8.2.1993 the petitioner was appointed, on probation as a constable (painter) under CRPF. In the letter of appointment issued to the petitioner it was clearly indicated that he would be on probation for a period of 3 years.

2. While still on probation the petitioner was communicated an adverse entry in his ACR to the effect that he was an inefficient painter and his work and conduct required close watch. The petitioner submitted a response stating that when he joined service he lacked experience in the trade and that he would improve his working.

3. On 6.4.1995 the petitioner was put to notice that his work continued to be unsatisfactory requiring outside help to be taken for completion/performance of the work assigned to him. The petitioner submitted a reply stating that all work assigned to him was dutifully performed.

4. On 5.6.1995 following order was communicated to the petitioner:

In pursuance of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary

Service) Rules, 1955. I.N. Bhardwaja Commandant 107 Bn., RAF/CRPF hereby give a notice to No. 933070042 Constable/Painter Suresh Kumar of HQ Coy 107 Bn. RAF/CRPF and order that his service shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or as the case may be tendered to him.

5. The instant writ petition was filed urging that the termination being based on the alleged inefficiency of the petitioner, was punitive, and hence without issuing a charge memo and holding an inquiry, the services of the petitioner could not be terminated. Alternatively it has been pleaded that the termination being stigmatic i.e. labeling the petitioner as an inefficient person required an inquiry to be held after issuing a show cause notice to the petitioner and giving him an opportunity to defend himself.

6. It is not in dispute that in terms of Rule 16 of the CRPF Rules 1955, a Member of the Force is to be initially enrolled for a period of 3 years and during this period of engagement, is liable to be discharged from service at any time on one month's notice issued by the appointing authority. It is also not in dispute that such employees are governed by the CCS (Temporary Service) Rules 1965.

7. Rule 5 of the CCS (Temporary Service) Rules permits the appointing authority to terminate the services of a temporary government servant by giving him a month's prior notice or salary for one month.

8. It is thus apparent that the respondents have the necessary power to terminate the services of the petitioner after giving him one month prior notice.

9. It may be noted at the outset that in the writ petition no mala fide has been alleged against the appointing authority who has issued the termination notice.

10. With reference to the ACR entry recorded by the appointing authority that the work of the petitioner was unsatisfactory and that he was an inefficient person as also with reference to the communication dated 6.4.1995 whereunder petitioner was informed of his continued inefficiency, contention urged is that the foundation of the order of discharge from service is the alleged inefficiency of the petitioner and hence it is not a case of discharge simpliciter but a case of casting a stigma on the petitioner.

11. What is a stigma?

12. In the decision reported as Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, it was observed: According to Websters New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person.. The Legal Thesuras by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame.

13. In the decision reported as The State of Orissa and Another Vs. Ram Narayan Das, it was held that the words unsatisfactory work and conduct. in the

termination order will not amount to a stigma.

14. The reason is obvious. Notwithstanding subjecting a new recruit to the rigors of a selection process, the employer has a right to see whether the recruit is able to perform the duties assigned to him. Being on probation, the recruit is kept under a watch to ascertain his performance. Not only is the recruit under the scrutiny but even the initial judgment of the employer is under a scrutiny for the reason even the employer has to consider and decide whether his initial judgment was correct. Logic demands that where the new recruit is able to discharge the duties assigned to him he should be permanently absorbed. It would be most illogical to say to the recruit that I find nothing wrong with your work but still I do not permanently absorb you. That is why some decisions have taken the view that it would be unfair not to point out the shortcomings in the work of a probationer thereby depriving him an opportunity to improve himself and all of a sudden discharge him from service stating that his work is not up to the mark.

15. Thus, we do not find the order of discharge as casting a stigma merely because in the past, communications were sent to the petitioner requiring him to improve his working. Even if we read in the order of discharge that it is premised on the inefficiency of the petitioner, as noted above, law does not treat the same to be as stigmatic.

16. Thus, it cannot be said that the order of discharge is punitive.

17. With respect to the plea whether the notice dated 6.4.1995 was the foundation or the motive for the action, we note that the said controversy is unnecessary for the reason in the said notice no misdemeanour or misconduct was alleged. It was simply pointed out to the petitioner that he was not working efficiently. That apart, we have enough case law where pertaining to a misconduct detected during the probation of an employee a show cause notice was issued to respond as to why on account of the stated misconduct the services be not terminated, but ignoring the show cause notice, a simple order of discharge from service was issued. When questioned in a Court on the plea that the veil be lifted to see as to what was the foundation of the order, it was held that motive and foundation are two different concepts. We may quote only from one decision reported as Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, As to foundation, it was observed:

...a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal,

even if full benefits as on simple termination, are given and non-injurious terminology is used.

18. As to motive, it was observed:

On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge.

19. Suffice would it be to state that if an inquiry is conducted into an alleged misconduct behind the back of the officer and a simple order of termination is passed, founded on the report of the inquiry indicting the employee, the action would be tainted but where no findings are arrived at any inquiry or no inquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received it would be a case of the complaints motivating the action and hence order would not be bad as observed in the decision reported as *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*,

20. To conclude on the issue, we note the decision of the Supreme Court reported as *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, where in para 28 thereof, how the issue has to be dealt with by Courts was stated. It was held: Therefore, whenever a probationer challenges his termination the Courts first task will be to apply the test of stigma or the form test. If the order survives this examination the substance of the termination will have to be found out.

21. Since we have held that the termination of the probationer is not casting any stigma and on the substance test we have held the same not to be punitive, there is no merit in the writ petition which is dismissed.

22. Since the petitioner is without a job, we refrain from imposing any cost.