
(2005) 11 AHC CK 0232

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32525 of 2004

Jagveer Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Central Industrial Security Force (Amendment) Rules, 2003 — Rule 26(4)

Central Industrial Security Force Rules, 1969 — Rule 19

Penal Code, 1860 (IPC) — Section 323, 324, 325, 504, 506

Citation : (2006) 5 AWC 4974

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare and V.D. Chauhan, for the Appellant; K.C. Sinha and S.S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Shri Ashok Khare, Senior Advocate assisted by Shri V.D. Chauhan, Shri K.C. Sinha, Advocate on behalf the respondents.

2. In pursuance of proceedings initiated for recruitment for the post of Constable in Central Industrial Security Force (for brief CISF) at Mathura the petitioner who had applied was selected. The recruitment took place on 23.2.2002. The petitioner was sent for training at Deoli in the State of Rajasthan. The petitioner completed his training successfully, Thereafter he was posted at CISF unit, ECL, Sheetalpur, West Bengal where he joined on 6th January, 2003 on probation. On 7th January, 2004 the Commandant, CISF Unit ECL Sheetalpur, terminated the appointment of the petitioner on probation for alleged suppression of factual information regarding pendency of Criminal Case u/s 323/324/325/504/506 I.P.C. which was registered against the petitioner at P.S. Moradabad. Feeling aggrieved by the said order petitioner filed an Appeal before the Deputy Inspector General, CISF. The Appeal has also been dismissed by the Deputy Inspector General CISF, Kolkata vide order dated 16th March, 2004. Thereafter

the petitioner made a representation before the Director General which too has been turned down on the ground that there is no provision under the CISF Act or Rules for filing an Appeal/Revision before the Directorate General. It is against these orders that the present writ petition has been filed.

3. On behalf of the petitioner it is; contended that the Commandant had no jurisdiction to pass the impugned order, in view of the agreement executed under the CISF Rules, 1969 in Form Appendix A, relevant condition whereof provides as follows :

(a) by the Deputy Inspector General at any time during the period of my initial training or the period of my probation thereafter on issue of notice of one month or the tender of one month's pay in lieu of such notice, or

(b) by the appointing authority, without notice, on my failure to pass the final examination of the initial training course.

4. In view of the aforesaid clause it is submitted that it is only the Deputy Inspector General who could have terminated the services of the petitioner, during the period of probation in view of Clause 2 (a) of the Agreement referred to above, read with Rule 19 of the CISF Rules, 1969.

5. The aforesaid contention raised by the petitioner has been opposed on behalf of the respondents with reference to Rule 26(4) of the CISF Rules 2003, wherein it is provided that the power to terminate the services of a Constable has been delegated upon the Commandant, The respondents have also brought on record attested copy of the agreement which was entered into by the petitioner at the time of his appointment on probation which is in proforma Appendix-A referred to above.

6. From the agreement so entered into between the parties as well as Rule 19 it is apparently clear that Deputy Inspector General alone has been conferred a power to terminate the appointment of a probationer during the period of probation on issuance of notice of one month or on tender of one month's pay in lieu thereof. The power conferred upon the appointing authority Commandant to terminate the services of a Constable is exerciseable, in respect of a probationer only when he fails to pass the final examination of the initial training course.

7. Clause 2(a) and 2(b) of the agreement are independent of each other and take effect in different set of circumstances. Accordingly this Court has no hesitation to record that the Commandant had no jurisdiction to terminate the services of the petitioner (probationer) during the period of probation and the power in that regard vests in the Deputy Inspector General only.

8. On behalf of the petitioner with reference to the judgment of the Hon'ble Supreme Court reported in Secy. Deptt. of Home Secy. A.P. and Others Vs. B. Chinnam Naidu, and Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, , it has been contended that there has been no suppression of material fact/information by the petitioner in his attestation form. It is alleged that the

facts as disclosed by the petitioner is his attestation form were true and correct and nothing false has been declared nor any material fact suppressed. Counsel for the petitioner made an attempt to take the Court through the records of his attestation form and orders passed by the authorities.

9. In the opinion of the Court these issues are not required to be gone into at this stage inasmuch as the impugned order has been passed by an authority who had no jurisdiction to pass the order. This Court has no room to doubt that if the competent authority proceeds to take any adverse decision against the petitioner, it will take into consideration all aspects having bearing upon the issue including the plea as raised by the petitioner hereinabove with reference to the judgments of the Hon"ble Supreme Court.

10. It is also worthwhile to notice that in the Appeal filed by the petitioner against the said order of termination dated 7.1.2004 passed by the Commandant specific plea with regards to the competence of the Commandant to pass the order was raised in paragraph 2(a). The Appellate Authority has not noticed the aforesaid contention while dismissing the Appeal filed by the petitioner by means of the impugned order dated 16.3.2004.

11. In these set of circumstances this Court is satisfied that the order passed by the Commandant as well as that passed by the Deputy Inspector General cannot be legally sustained and both the orders are hereby quashed.

12. However, it shall be open to the respondent, competent authority to take appropriate action against the petitioner in accordance with law.

13. At this stage this Court may also consider the objection of the respondents, that no cause of action or part thereof has arisen within the territorial jurisdiction of this Court. In that regard respondent has placed reliance upon the Division Bench judgment of this Court in the case of J.C. Thind v. Union of India and Ors. being writ petition No. 61529 of 2005 decided on 20.9.2005.

14. The legal principles laid down in the said Division Bench of this Court are not in doubt wherein it has been held as follows:

15. In view of the aforesaid judicial pronouncements, it may be summarized that the cause of action, is a bundle of facts and to examine the issue of jurisdiction, it is necessary that one of the interlinked facts must have occurred in a place where the case has been instituted. The said fact must have a direct nexus to the lis between the parties and in case the facts taken in the plaint/petition are denied, the plaintiff/petitioner has to prove the same. The fact must have direct relevance in the lis involved. It is not that every fact be treated as a "cause of action" in part and may create a jurisdiction of the court, in whose territorial jurisdiction it has occurred.

16. From the facts which have been noticed hereinabove, it is apparently clear that the petitioner was selected for the post of Constable in the selections held at Mathura. His appointment on probation has been terminated on the ground that

he had concealed his involvement in Criminal Case in his application/affidavit prepared at the time of selection. The criminal case is also said to be registered in Uttar Pradesh. All the aforesaid facts have taken place within the territorial jurisdiction of this Court. This Court is satisfied that the bundle of facts interlinked and that add to the lis between the parties in the present case are sufficient to hold that part of the cause of action has arisen within the territorial jurisdiction of this Court. The objection is, therefore, rejected and, therefore, the writ petition filed by the petitioner is legally maintainable.

17. Writ petition stands allowed subject to the observations made above.