

(2011) 08 CAL CK 0032
In the Calcutta High Court
Case No : W.P.S.T. 317 of 2010

Krishna Kanta Chakraborty

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (2012) 1 CALLT 412 : (2012) 2 CHN 624

Hon'ble Judges : Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Swapan Kumar Nandy and Ms. Soumi Kundu, for the Appellant;
Tapan Kumar Mukherjee and Mr. Nilotpal Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Dr. M.K. Chaudhuri, J.—This writ application is preferred against the judgment and order dated 30.03.2010 in O.A. No. 1725 of 2009 passed by West Bengal Administrative Tribunal. The fact of the case in short is that the petitioner Krishna Kanta Chakraborty was selected as Constable in the Kolkata Police at Midnapore Police line in December, 2006 and joined at Police Training School in Kolkata on 1st March, 2007. He was absenting from training since 06.04.2007 without any leave or permission. Therefore, Assistant Commissioner of Police (Training) issued notice asking him to join training immediately vide memo No. 385 dated 23.04.2007, No. 432 dated 24.05.2007 and No. 490 dated 28.06.2007. Finally, Assistant Commissioner of Police (Training) informed vide memo No. 546 dated 26.07.2007 that the Deputy Commissioner of Police (Headquarter) vide Order No. 569 dated 25.08.2007 discharged the petitioner for unauthorized absence. He submitted a prayer for reinstatement on 01.11.2007 stating the ground of absence as mother's sickness. In the said petition he admitted that he left the training school without any intimation to the authority and he prayed for condoning his absence and allowing him to join. His representation was paid no heed by the authority. Therefore, he filed the application before learned West

Bengal State Administrative Tribunal. West Bengal Administrative Tribunal vide Order No. 2 dated 30.03.2010 dismissed his case being O.A. No. 1725 of 2009 under Rule 66 on the ground that the police authority reserved the right of discharge against any recruit constable by serving one month's notice in lieu of one month's salary. Since necessary condition of discharge was strictly followed, learned Tribunal found no illegality in the order of discharge. Being aggrieved by and dissatisfied with the judgment and order the petitioner has preferred this writ application.

2. Mr. Swapan Kumar Nandi, learned counsel for the petitioner has submitted that order of Tribunal suffers from illegality on two grounds. Firstly, the Assistant Commissioner of Police has no power or authority to discharge the petitioner. Secondly, learned counsel for the petitioner has further submitted that since the discharge amounts to stigma, the petitioner is entitled to get protection under Article 311(2) of the Constitution. He is entitled to get an opportunity to defend himself. Learned counsel for the petitioner has cited the following decisions of law to establish that since stigma was attached to the petitioner in the matter of discharge, he must be given an opportunity to defend himself by way of regular proceeding.

- 1) Jagdish Mitter v. The Union of India reported in AIR 1964 Supreme Court 449.
- 2) Kumari Amina Khatun Vs. Union of India and Others,
- 3) Prithipal Singh v. State of Punjab & Ors. reported in 2000 (4) SLR 754.
- 4) Samsher Singh Vs. State of Punjab and Another,
- 5) State of Madhya Pradesh Vs. Balram Mihani and Others,
- 6) Darshan Lal v. State of Haryana & Ors. reported in 1999 (2) SLR 76.
- 7) Union of India (UOI) and Others Vs. Alok Kumar,

3. Relying upon the aforesaid decisions of law learned counsel for the petitioner has submitted that discharge of the petitioner is vitiated by illegality and cannot sustain in law in view of the fact that the petitioner was not given an opportunity to defend himself in respect of the stigma attached to him. On the other hand, Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader for the respondent State of West Bengal and Others has submitted that the writ petitioner has no legal right for any regular disciplinary proceeding prior to his discharge inasmuch as he has been given temporary appointment vide notification No. 3661-PL-dated 22.06.2005 Kolkata Gazette Extraordinary dated 29.06.2005. He joined Police Training School, Barrackpore and is required to pass said training. Under Rule 5(iii). he may be discharged during the prescribed course of training in the Police Training School/Police Training College before his confirmation at any time by the competent Authority if he is considered by the authority to be unsuitable for the post. Order of discharge shall contain the ground of discharge, but no formal proceeding prescribed for removal or

dismissal of Government servant shall be necessary. No appeal shall lie against the order of discharge. It is further submitted that writ petitioner absented himself for the long period in the training period without any intimation or permission of the competent authority and, therefore, he was discharged by order of Deputy Commissioner of Police (Headquarter). According to the submission of the learned counsel for the State he was neither a confirmed police constable nor a probationer. He was undergoing training. He joined in the training on 01.03.2007 and absented himself from 06.04.2007.

4. In the circumstance, learned counsel for the State has submitted that he has no right to be heard by way of regular disciplinary proceeding and, therefore, writ petition is liable to be dismissed. Following decisions have been cited by learned counsel for the State :-

- 1) Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others,
- 2) State of Punjab v. Bhagwan Singh, (2002) 9 SCC 636

5. We have carefully heard the submission of learned counsel of both sides and perused the materials on record including the discharge letter, Government notification and police regulation as well as decision of law.

6. The petitioner joined the Police Training School on 01.03.2007. He remained absent from 06.04.2007 till the date of discharge vide D.C. Headquarter Order No. 569 dated 25.07.2007. He was discharged for unauthorized absence. He submitted a presentation on 17.11.2007. It is submitted by learned counsel for the petitioner that the said discharge is illegal and invalid on two grounds that the order of discharge was passed by Assistant Commissioner of Police who has no power to pass an order of discharge. But on the close scrutiny of the order of discharge vide Annexed P-4 page 17 it appears that Assistant Commissioner of Police (Training) only communicated the discharge order passed by Deputy Commissioner of Police. This submission of learned counsel for the petitioner finds no merit on this point.

7. From the Notification No. 3661-PL-22nd June, 2005 published in Calcutta Gazette Extraordinary dated 29.06.2005 from West Bengal Home Department, Police, it appears that the Sipahi/Constable in the Kolkata Police Force on being appointed shall be deputed in Police Training School, Kolkata or in the Police Training College, Barrackpore and shall be required to pass out the said training after having undergone a course of training there. Clause 5(iii) provides that "a candidate while undergoing prescribed course of training in the Police Training School/Police Training College or before his confirmation in the rank, may at any time be discharged by the Competent Authority, as the case may be, if he is considered by them to be unsuitable for the post but the order of discharge shall not be given effect to till it has been communicated to and confirmed by the next higher authority (Appointing Authority). The order of the discharge shall contain the ground for the discharge but no formal proceeding such as prescribed for the removal or dismissal of Government servant shall be necessary. No appeal shall

be against the order of discharge".

8. Having regard to this aforesaid provision the Competent Authority is required to assess the suitability of the constable. If the Competent Authority finds that the candidate is unsuitable for the post he may be discharged without any formal proceeding for removal or dismissal of Government servant. In the present case, the petitioner continuously absented himself without any permission from the Competent Authority after one month of his joining the Police Training School, Kolkata. He did not join in spite of repeated direction to report Police Training School. Therefore, Competent Authority discharged him from service for unauthorized absence from the training school. It is submitted by learned counsel for the petitioner that the petitioner was actually removed/dismissed from the service by way of punishment attaching stigma. Therefore, he is entitled to get an opportunity for self-defense by of regular disciplinary proceeding meant for removal/ dismissal from service. Since the same was not done, his discharge is vitiated by Article 311(2) of the Constitution. Learned counsel has cited decision of law - Jagdish Mitter v. The Union of India reported in AIR 1964 Supreme Court 449. In the said case petitioner was a temporary 2nd Division Clerk in the Government office. In his order of discharge it was observed that he was found undesirable to be retained in Government Service. Hon''ble Apex Court observed that the said observation casts a stigma on the appellant. If it was observed that he need not be continued, then no stigma could be attached to him. Hon''ble Apex Court observed that if the purports of the order is to cast an aspersion on the temporary servant he should be given protection guaranteed under Article 311(2) of the Constitution. In another decision Kumari Amina Khatun Vs. Union of India and Others, it was also observed that if the conduct of the employer is to terminate by way of punishment, it casts a stigma on his competence and affects his future career adversely. Hon''ble Apex Court in Prithipal Singh v. State of Punjab & Ors. reported in 2000 (4) SLR 754 observed that if the order of employee reveals imputation of misconduct to the effect that he disobeyed to the order of superior, it is nothing but a stigma attached to the order of discharge. If a stigma is attached, opportunity has, to be given before passing any order. Hon''ble Apex Court in Samsher Singh Vs. State of Punjab and Another, and in State of Madhya Pradesh Vs. Balram Mihani and Others, has similarly pointed that if the discharge is by way of punishment, the candidate is entitled to get a protection under Article 311. It was also held by Hon''ble Apex Court that before a probationer is confirmed, the authority is under obligation to consider whether he is suitable for the post. If the authority finds that on account of inadequacy for the job or for any reason but not for involving moral attitude the probationer is unsuitable he may be discharged. In the instant case, the rule provides that the Competent Authority is under obligation to assess to suitability of the Constable and he may be discharged if the authority concerned considers that he is unsuitable for the post. No formal disciplinary proceeding is required. In the present case, the discharge certificate does not at all record that the petitioner is undesirable for service or that he is disobedient to carry out the

order of superior. No stigma is attached in the matter of discharge. Discharge certificate only reveals that he has been discharged for unauthorized absence from Police Training School. The ground of discharge mentioned in the discharge certificate does not at all reveal that he has been discharged by way of punishment. Since no stigma is attached to the order of discharge, he is not entitled to get any defense by way of disciplinary proceeding. Therefore, the decisions of law cited by learned counsel for the petitioner do not at all support the petitioner's case that stigma was attached to the petitioner. It is well-settled principle of law that if the order of discharge does not contain any stigma by imputation of misconduct or disobedience as foundation of punishment, the probationer is not entitled to self-defense under Article 311(2) of the Constitution through disciplinary proceeding. The purpose for not attaching stigma is that if the candidate is found unsuitable without any stigma he may avail himself of the opportunity to any other gainful job. Hon'ble Apex Court in a decision reported in *State of Punjab v. Bhagwan Singh*, (2002) 9 SCC 636 has clearly held that if discharge order reveals that the performance of police constable is not satisfactory and he is unlikely to be good police officer, the remark cannot be said to be stigmatic. It has been reported by the Inspector RI police line that conduct of constable Bhagwan Singh on the whole is not satisfactory and he is not likely to become a good police officer and, therefore, he was discharged. Hon'ble Apex Court held such observation in terms of the Punjab Police role cannot be held to amount to stigma. Similarly, in the another decision *Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others*, it has been made clear that the Appointing Authority has to look into the performance of the work and the duties during the period of the probation and if the authority finds that during the probationary period the work and performance of the probation was unsatisfactory, the Competent Authority is entitled to terminate the service and this does not amount to any stigma. In the said case, the authority recorded the finding that the employee was regularly absent on one ground or other. Under this circumstances, the Competent Authority terminated his service and no stigma was found by Apex Court. Therefore, said discharge is not volatile under Article 311(2) of the Constitution and he is not entitled to get an opportunity of disciplinary proceeding. In the present case also the Competent Authority discharged the petitioner for unauthorized absence from Police Training School. No other language was used to attach any stigma to the petitioner. Therefore, in terms of Notification issued in the Kolkata Gazette Extraordinary dated 29th June, 2005 Rule 5(iii) he has been found unsuitable for unauthorized absence from Police Training School. It may be noted in this connection that the petitioner was required to undergone on probation for two years exclusive of the period spent in a Police Training School or College. After passing the police training, he was required to remain on probation for two years (Regn. 51 of Police Regulations of Calcutta, 1968). Therefore, it has rightly been submitted by the learned counsel for the respondent the status of the petitioner is not a "Probationer" but a "Trainee". Even in training period he was found unsuitable and was discharged for unauthorized absence for continuous of three months

before discharge. He submitted a representation after four months of the discharge. Therefore, he is not entitled to get any protection under Article 311 (2) of the Constitution. Learned trial Court observed that the condition of discharge i.e. one month's notice or one month's salary in lieu of notice has been complied with. Therefore, order of discharge does not suffer from any illegality. In our considered view, we are unable to interfere with the judgment and order passed by learned Tribunal. Therefore, writ application fails and is dismissed without any cost.

Photostat certified copy of the judgment and order, if applied for, be made over to the parties on usual terms.

Ashim Kumar Banerjee, J.

I agree.