
(2014) 11 JH CK 0074
In the Jharkhand High Court
Case No : W.P. (S) No. 1020 of 2011

Neeraj Goliyan

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

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

Citation : (2015) 1 JLJR 563

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Alok Anand, Advocates for the Appellant; Ashok Singh, Advocates for the Respondent

Judgement

Sujit Narayan Prasad, J.—The petitioner, being aggrieved by the order dated 19.2.2007, passed by the respondent No. 5, and also by the order dated 28.9.2007, passed by the respondent No. 4, by which he has been terminated from" service, has approached this Court. The brief facts, as has been argued on behalf of the petitioner, is that the petitioner had been appointed on the post of constable in the Central Industrial Security Force on 24.4.2003 initially on probation for a period of two years, subject to the condition that if his service will be found to be satisfactory during the said period, his probationary period will be extended. However, the period of probation of the petitioner was extended up to 2.3.2007 by giving one extension. It has been submitted that by virtue of a show cause notice, the petitioner"s service was terminated vide order dated 19.2.2007 on the ground that during the period of probation, his service was not found to be satisfactory. Against the order of termination, the petitioner had preferred appeal before the appellate authority, which was also rejected vide order dated 28.9.2007. It was submitted that although the order dated 19.2.2007 is not stigmatic, the show cause notice was issued to the petitioner on 2.2.2007 making certain allegations of misconduct, dereliction of duty and deliberate violation of lawful order and instruction against the petitioner. Thus, the petitioner"s service was terminated on the ground of misconduct. Before passing

the impugned order dated 19.2.2007, a regular departmental proceeding, as contemplated under Article 311(2) of Constitution of India, was to be initiated against the petitioner, but the order of termination was passed without affording sufficient opportunity of hearing to him. It has been further submitted that even the appellate authority had not considered this aspect of the matter and in very perfunctory manner has passed the impugned order dated 28.9.2007 upholding the decision of the disciplinary authority. Learned counsel for the petitioner has submitted that Rule 25(2) of the C.I.S.F. Rules, 2001 speaks about termination of a probationer without any misconduct, but from perusal of the show cause notice dated 2.2.2007, it appears that there was misconduct on the part of the petitioner, hence Rule 25(2) of the C.I.S.F. Rules, 2001 would not be applicable to the facts and circumstances of this case. It has been further submitted that although earlier instance has been quoted in the appellate order, the petitioner has been terminated from service on the ground of overstay of 86 days and for that if he could have been provided an opportunity of hearing, he might have brought to the notice of the authority concerned that due to his illness he had overstayed for 86 days.

2. On the other hand, learned counsel for the respondents has submitted that after completion of Basic Training, the petitioner reported to CISF Unit, BCCL, Dhanbad and was performing his duties in CISF Unit, BCCL, Dhanbad. He had been assigned duties accordingly, but his performance was found unsatisfactory. He neglected the duties frequently, overstayed on leave, absented without leave from duty. His probation period was found unsatisfactory and accordingly the probation period was extended from 1.6.2005 to 2.3.2007. In spite of extension of probation period, he failed to improve his performance and was awarded with 5 punishments during short span of the service for different misconduct. The details of punishment awarded to him are as under:--

"(a) The petitioner was awarded the punishment of seven days pay fine vide order No. (3180) dated 21/22.11.2004 for 19 days OSL from 23.8.2004 to 10.9.2004.

(b) The petitioner was awarded the punishment of seven days pay fine vide order No. (2252) dated 5.12.2005 for OSL from 12.9.2005 to 19.9.2005 for 8 days unauthorizedly and again he absented without leave (AWL) himself from 20.9.2005 to 25.9.2005 for six days.

(c) The petitioner was awarded the punishment of withholding of increment for a period of one year without cumulative effect vide order No. (2305) dated 13.5.2005 for AWL from 10.11.2005 to 22.11.2005 unauthorizedly.

(d) The petitioner was awarded the punishment of seven days pay fine vide order No. (1524) dated 27.6.2006 for AWL from 30.4.2006 to 5.5.2006 unauthorizedly.

(e) The petitioner was awarded the punishment of withholding of increment for a period of three years without cumulative effect vide order No. (301) dated 19.2.2007 for AWL from 24.9.2006 to 18.12.2006 for 86 days unauthorizedly."

3. It has been further submitted on behalf of the respondents that Rule 25(2) of the C.I.S.F Rules, 2001 specifically provides that the appointing authority has power to terminate the service of a probationer, if in his opinion, the service of the probationer is not found to be fit, as such there is no illegality in the impugned orders. Moreover, an employee who had not improved himself even after giving one extension during the period of probation, he cannot be retained in service that too under the service of a disciplined force.

4. Heard the parties, perused the record.

5. Admittedly, the petitioner had been appointed as a constable under the respondents-C.I.S.F. When he was sent for training, he could not pass the Basic Training within the stipulated period, as such his training period was extended for a period of two months and thereafter he qualified the Basic Training. In the appointment letter, there was specific condition that the petitioner will be on probation for a period of two years and if it is informed by the competent authority that the service of the petitioner is not satisfactory, his service will be liable to be terminated. The concerned authority did not find the petitioner's service to be satisfactory during the probationary period, as such one extension was given to him during short span of his service. Altogether five punishments, minor in nature, had been imposed on the petitioner. Since, the petitioner had been appointed as a member of a disciplined force, as such he was supposed to perform his duty with utmost sincerity and satisfaction to the higher authority. If any employee will not perform his duty up to mark and to the satisfaction of the higher authority during the probationary period, it is on the higher authority to take a decision to retain the petitioner in service by extending the period of probation as per the terms and conditions mentioned in the appointment letter. However, the respondents had given one opportunity to the petitioner to improve himself, but even thereafter he had not improved himself. The provision has been made under Rule 25(2) of the C.I.S.F. Rules, 2001 for terminating the service of such employee, which is quoted herein-below:--

"If during the period of probation the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, the appointing authority may discharge him or terminate the services from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his parent department, as the case may be."

6. The competent authority has been vested with the power to take appropriate decision for discharging a probationer, if he is of the opinion that the employee is not fit for the service. The word "fit" has been referred in Rule 25(2) of the C.I.S.F. Rules, 2001, which has broad meaning. Fitness includes conduct, character and satisfactory service. Admittedly, the petitioner had been awarded five punishments, which itself indicate that the service of the petitioner was not found to be satisfactory by the competent authority, as such one opportunity was provided to the petitioner to improve himself by giving one extension during the

probationary period, but even thereafter, there was no improvement in the performance of the petitioner. Thereafter, a show cause notice was issued to the petitioner on 2.2.2007 and the impugned notice was issued to him on 19.2.2007 by the competent authority under the provision prescribed in Rule 25(2) of the C.I.S.F. Rules, 2001. So far as the contention made by learned counsel for the petitioner that since the impugned order has been passed on certain allegation/misconduct, the petitioner was entitled to be provided an opportunity of hearing under Article 311 of the Constitution of India, since there is specific rule/statute to pass an appropriate order with respect to a probationer, application of Article 311 (2) will not come into play, as only the competent authority can assess the performance of an employee. When in the opinion of the competent authority, the conduct/service of an employee is not found to be satisfactory, merely on the ground of not providing adequate opportunity, dissatisfactory service rendered by an employee cannot be accepted by the department. Moreover, since the petitioner was on probation for a period of two years and there are serious allegations of irregularities against him., as has been referred by the Inspector General, C.I.S.F. in his appellate order, the respondents authorities have taken a decision in exercise of power conferred under Rule 25(2) of the C.I.S.F. Rules, 2001 by which the competent authority has been vested with the power to discharge a probationer from the service on the ground of dissatisfactory service.

7. In the facts and circumstances stated hereinabove, I find that there is no requirement to interfere with the decision taken by the disciplinary authority. This writ petition is, accordingly, dismissed being devoid of merit.