
(2016) 03 JH CK 0043
In the Jharkhand High Court
Case No : L.P.A. No. 89 of 2015

Neeraj Goliyan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Citation : (2016) 2 JBCJ 528 : (2016) 4 JCR 413 : (2016) 3 JLJR 419

Hon'ble Judges : Virender Singh, C.J. and S. Chandrashekhar, J.

Bench : Division Bench

Advocate : Alok Anand, Asif Khan and Sweta Bharti, Advocates, for the Appellant; Rajiv Sinha, ASGI, Niraj Kumar and B.K. Ojha, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J.

1. The appellant- writ petitioner (hereinafter to be referred to as "the petitioner") being aggrieved of order dated 26.11.2014 handed down by the learned Single Judge in WP(S) No. 1020 of 2011, has preferred the instant Letters Patent Appeal, in which there was delay of 30 days, the condonation thereof sought through I.A. No. 1409 of 2015, stands allowed vide, separate order of even date.
2. We, with the consent of the learned counsel for both sides, have taken up the main appeal for its consideration.
3. The petitioner was appointed on the post of constable in the Central Industrial Security Force (CISF) on 24.04.2003. Initially, he was on probation for two years, which was extended subsequently. The petitioner had indulged in gross indiscipline, misconduct, dereliction of duty, deliberate violation of lawful order and that he also deserted the unit line with effect from 24.9.2006 to 18.12.2006 (in all 86 days) without prior information and permission of the competent authority, for which, memorandum of charge was served upon him giving him opportunity to respond to those charges. Ultimately, vide order dated

19.02.2007, his services were terminated under Rule 25(2) of the Central Industrial Security Force Rules, 2001 (for short "CISF Rules, 2001"). The petitioner filed representation against the order of termination dated 19.02.2007, which was considered by the appellate authority, but to no advantage to the petitioner.

4. Being aggrieved of the order of termination and the order passed by the appellate authority, the petitioner knocked the door of this Court in WP(S) No. 1020 of 2011 seeking quashment of both the orders, which now stands dismissed by the impugned order.

5. The learned counsel for the petitioner contended that order dated 19.02.2007 is stigmatic and therefore, a regular departmental enquiry should have been instituted which has not been done before the order of termination dated 19.02.2007 was issued. It is further contended that a departmental proceeding was initiated vide memorandum dated 02.02.2007 for unauthorized absence for 86 days however, no enquiry was instituted before the order of termination dated 19.02.2007 was issued.

6. Rule 25 (2) of CISF Rules, 2001 provides for terminating the service of a probationer on one month's notice. Rule 25 (2) 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."

7. On previous occasions, the petitioner was awarded the following punishments, as one finds from the order of the appellate authority:--

"1. Awarded the punishment seven days pay fine vide order No. 15014/CISF/BCCL/AC/DISC/Area-5/04/3180 dated 21/22-11-2004 for OSL days from 23/8/2004 to 10/9/2004 unauthorizedly.

2. Awarded the punishment seven days pay fine vide order No. 15014/18/CISF/AC/Area-5/05/2252 dated 5/12/2005 for OSL for 08 days 12/9/2005 to 19/9/2005 unauthorizedly. He absented himself from 28/9/2005 to 25/9/2005 for a period of six days.

3. Awarded the punishment withholding of increment for a period of one year without cumulative effect vide order No. V-15014/18/CISF/AC/Area-5/05/2305 dated 13/5/2005 for AWL from 10/11/2005 to 22/11/2005 unauthorizedly.

4. Awarded the punishment seven days pay fine vide order No. V 15014/CISF/BCCL/CS-37/AC/EJA-XI/2006/1524 dated 27/6/2006 for AWL from 30/4/2006 to 5/5/2006 unauthorizedly.

5. Awarded the punishment withholding of increment for a period of three years

without cumulative effect vide order No. V-15014/CISF/BCCL/CS-37/AC/A.XI/2007/301 dated 19/2/2007 for AWL from 24/9/2006 to 18/12/2006 (86 days) unauthorizedly."

8. The appellate order dated 28.09.2007 notices the previous misconduct of the petitioner. The penalty imposed upon the petitioner on previous five occasions are matters of record and the same cannot be disputed by the petitioner. The service of the petitioner has been terminated during the period of probation. The conditions under Rule 25 (2) of CISF Rules, 2001 are satisfied in much as, one month's salary has been given to the petitioner. Considering the previous misconduct of the petitioner, the appointing authority formed an opinion that the petitioner is not fit for permanent appointment as a member of the Force and consequently, order of termination dated 19.02.2007 was issued. In the face of penalty imposed upon the petitioner on previous five occasions, the use of the expression "found not satisfactory during the period of probation" is not stigmatic.

9. In "State Bank of India and Others v. Palak Modi and Another" , (2013) 3 SCC 607, it has been held that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. Referring to paragraph No. 25 in the said decision, the learned counsel for the petitioner contended that the allegation of misconduct of unauthorized absence from duty for 86 days, was the foundation for the action taken against the petitioner and therefore, order of termination dated 19.02.2007 is liable to be quashed. This contention merits no acceptance. The order of termination dated 19.02.2007 simply records that the petitioner has been found unsuitable for the post held by him. Even in respect of other misconducts, as noticed above, properly constituted departmental proceedings were initiated which culminated into penalty orders inflicted upon the petitioner. In "State of Punjab and Others v. Sukhvinder Singh" , (2005) 5 SCC 569, a case in which the employee remained absent unauthorizedly for 22 days and without holding any formal departmental enquiry or preliminary fact-finding enquiry, the probationer was discharged from service on the ground that he was not likely to become efficient police officer, the Hon"ble Supreme Court held that, inferring his absence from duty as the foundation for the order of termination was misconceived and the order of termination from service was not punitive in nature.

10. The learned counsel for the petitioner next contended that the show-cause notice dated 07.03.2007 was issued to the petitioner to overcome the mistake committed by the respondents in issuing order of termination dated 19.02.2007. We find no force in the aforesaid submission. The show-cause notice dated 07.03.2007 was issued with regard to withholding of the salary of the petitioner for 86 days, the period during which he remained unauthorizedly absent. For the unauthorized absence of 86 days the petitioner was awarded punishment of withholding of increment for a period of three years without cumulative effect vide order dated 19.02.2007. By a subsequent order, the petitioner was denied

salary for the aforesaid period of 86 days.

11. As a sequel of the aforesaid discussions, we do not find any merit in the instant appeal, which deserves to be dismissed at this stage itself. Ordered accordingly.