
(2015) 03 AHC CK 0114

In the Allahabad High Court

Case No : Special Appeal Defective No. 228 of 2015

Nishar Ahmad and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 143, 147, 149, 232, 294(b)
Railways Act, 1989 — Section 143, 145, 147

Citation : (2015) 4 ADJ 187 : (2015) 110 ALR 839 : (2015) 3 AWC 3101 :
(2015) 146 FLR 1007 : (2016) 1 SCT 555 : (2015) 4 UPLBEC 3360

Hon'ble Judges : D.Y. Chandrachud, C.J.; Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : S.K. Pandey, for the Appellant

Final Decision : Dismissed

Judgement

1. The special appeal has arisen from a judgment of the learned Single Judge dated 27 August 2014 dismissing a writ petition filed under Article 226 of the Constitution. The appellants were recruited as Constables in the Central Reserve Police Force (CRPF) in 2002. They were initially imparted training at the Group Centre CRPF, Rampur. After completing fourteen weeks of training, they were required to undergo the rest of the basic training at Recruits Training Centre-III, CRPF Pallipuram in Kerala. An incident took place while the appellants were in journey aboard the Kerala Express on 28 October 2002. Certain girl students and teachers of the Beersheba English Medium Public School, Pipariya, Hoshangabad, who were also travelling on the train, complained that they had been molested and were subjected to misbehavior by personnel of the CRPF travelling on the same train. The train was stopped at Alwaye Station where the Railway Police registered Criminal Case No. 75 of 2002 under Sections 143, 145 and 147 of the Railways Act and Sections 232 and 354 of the Indian Penal Code. The appellants were allowed to proceed to their destination. Subsequently, an identification parade was held during the course of which the teachers and students allegedly

identified the CRPF recruits including the appellants. After identification, the recruits were arrested by the police. Fifteen recruits including the five appellants were served with orders of termination on 22 October 2002. These orders of termination simplicitor were passed under the provisions of Sub-Rules (1)(a) and 2(a) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 read with Rule 16(a) of the Central Reserve Police Force Rules, 1965 (the Rules). The names of the appellants were ordered to be struck off from the strength of the General Commandant, CRPF Rampur with effect from the same date.

2. The appellants and a group of recruits whose services were terminated filed writ proceedings before the Kerala High Court. By a judgment and order dated 15 January 2003, a learned Single Judge of the Kerala High Court disposed of the petition on the ground of an alternate remedy which was available under Rule 28 by relegating them to the pursuit of that remedy. Following this, the Inspector General (Operations and Training) passed an order on 30 May 2003 holding that the group of fifteen recruits had behaved in a manner unbecoming of a Government servant; that they had indulged in misbehaviour and rowdy conduct by picking up a quarrel with co-passengers including women and girls while travelling from New Delhi to Thiruvananthapuram. They were held not to deserve to be members of a disciplined force, such as the CRPF, and their representation for reinstatement in service was rejected.

3. Aggrieved by the order of the Inspector General, seven out of the fifteen recruits moved this Court. By judgments dated 6 October 2004 and 23 December 2004, the learned Single Judge declined to entertain the writ petition and dismissed a review application. Following this, a Special Appeal *Amit Kumar v. Union of India and others*, 2009 (4) ADJ 552 (DB) was filed before a Division Bench. By a judgment and order dated 13 April 2009, the Division Bench of this Court dismissed the special appeal relying upon a judgment of the Division Bench in *Paras Nath Pandey v. Director, North Central Zone, Cultural Centre, Nyay Marg, Allahabad*, 2008 (10) ADJ 283 (DB). The Division Bench held as follows:

"The incident, which took place in Kerala Express between the CRPF training recruits and the girls student and teachers of a School is not disputed, though identity of persons who actually were involved in the incident is sought to be disputed by the appellants contending that they were not travelling in the same compartment. It is also not disputed that the victims identified the trainee recruits including the appellants when the identity parade was conducted though it is contended that the identification parade was not in accordance with law. Further, neither a charge-sheet was issued to the appellants nor any regular departmental enquiry was conducted but the respondent Nos. 5 passed an order of termination simplicitor after being prima facie satisfied that the appellants as members of an armed force of Union of India are not maintaining such character as would be in public interest. In our view, the facts of this case are covered by in para 57(k) of the judgment, which shows that mere preliminary enquiry to make assessment about the work and conduct of an employee so as to whether

he should be retained in service or not would not render the order of termination simplicitor founded on the alleged misconduct. Para 57(n) of the judgment in Paras Nath Pandey (supra) further shows that any subsequent explanation given in the affidavit filed before the Court where the order is challenged or by the authorities while deciding the representation or appeal of the employee would not make the otherwise termination simplicitor as punitive. We, therefore, are satisfied that the issue raised in this appeal is squarely covered by our judgment in Paras Nath Pandey (supra) and in view of what has been said in para 57, we do not find that here is a case which warrants interference by holding that the order of termination simplicitor is punitive and founded on the alleged misconduct."

4. Besides, the Division Bench held that this was not a fit and proper case for the grant of discretionary relief in the exercise of the equitable jurisdiction under Article 226 of the Constitution on the following grounds:

"A man in force is expected to be a person of solid ideals and model conduct. He may not supposed to be person not possessing normal human weaknesses but being a man of disciplined force, he must be a man of better restraint, control and responsible to the modesty of fellow country people, particularly to the women folk. In our view, here is a fit case which does not deserve at all any interference in extraordinary equitable jurisdiction under Article 226 of the Constitution and, therefore, even otherwise, we are of the view that the appellants do not deserve any relief in the facts and circumstances of the case. This appeal deserves to be dismissed."

5. The learned counsel appearing on behalf of the appellants has stated before the Court that a Special Leave Petition which was filed before the Supreme Court against the decision of the Division Bench was dismissed, though a copy of that order has not been produced before this Court at the time of the hearing of the special appeal.

6. The appellants were prosecuted for offences under Sections 143, 147, 149, 323, 324, 341, 342, 354, 294(b), 427, 509 IPC and Section 145 of the Railways Act. On 23 February 2008, the Judicial Magistrate (First Class) (JMFC) acquitted the appellants. The Judicial Magistrate held, on the basis of the testimony of the principal, teachers and students of a higher secondary school who deposed in their evidence as PWs 1 to 5 that the CRPF personnel who were travelling in the train had outraged the modesty of women teachers and girl students. However, the JMFC held that there was no reliable evidence to show that the accused had committed the above overt acts and that the prosecution had failed to prove the identity of the accused beyond reasonable doubt. Granting to them the benefit of doubt, the appellants were acquitted.

7. After the judgment of acquittal on 23 February 2008, the appellants filed a mercy petition before the Director General, CRPF on 1 April 2008, seeking sympathetic consideration of their application for reinstatement, following the

judgment of acquittal. Eventually, a writ petition was filed before this Court under Article 226 which has been dismissed by the impugned judgment and order of the learned Single Judge dated 27 August 2014. The learned Single Judge has held that other similarly situated persons had filed a writ petition which was dismissed on 6 October 2004 and a special appeal was also rejected on 13 April 2009. Following the judgment of the Division Bench in the special appeal, the writ petition was dismissed.

8. The learned counsel appearing on behalf of the appellants submitted that the judgment which was rendered by the coordinate Division Bench in the earlier special appeal filed by seven out of the fifteen CRPF recruits is per incuriam. The submission is that the Division Bench has not properly appreciated the ratio of the decision in Paras Nath Pandey's case (supra) and had erred in coming to the conclusion that the order of termination was one of termination simplicitor and was not punitive in nature.

9. On the other hand, the learned Additional Solicitor General, besides placing reliance on the decision, has submitted that the view which was taken by the learned Single Judge was clearly justified having regard to the fact that the earlier decision of the Division Bench in a special appeal was binding and related to other recruits forming part of the same batch of recruits where the facts are indistinguishable.

10. Before we deal with the merits of the case, it must be noted at the outset that the appellants were served with orders of termination simplicitor dated 22 October 2002. The appellants initially moved the Kerala High Court which directed the disposal of their representations in view of a statutory alternate remedy available under Rule 28 of the Rules. The Inspector General (Operations and Training) rejected the representation on 30 May 2003. The order of termination was questioned as far back as in 2003 in Writ Petition No. 45575 of 2003 filed by seven other recruits. Their writ petition was dismissed on 6 October 2004 and the review application was dismissed on 23 December 2004. The special appeal was dismissed on 13 April 2009. The appellants instituted writ proceedings before this Court under Article 226 of the Constitution on or above 4 August 2008 (Civil Misc. Writ Petition No. 41382 of 2008). This was well over five years after the order of termination. The explanation for the delay was that the appellants were being prosecuted before the Court of the Judicial Magistrate (First Class) in Kerala and that after the prosecution ended in an acquittal on 23 February 2008 the appellants submitted a mercy petition on 1 April 2008. We find that this is not a valid explanation for the delay of well over five years in questioning the legality of the order that was passed by the Inspector General (Operations and Training) on 30 May 2003. The challenge of the appellants to the order of termination was on the ground that it was not an order of termination simplicitor but was punitive in nature and had nothing to do with the pendency of a criminal prosecution before the JMFC. The ground that an order of termination is punitive in nature, proceeds on the basis that the real foundation for the

termination is an act of misconduct. The truth or falsity of the allegation is not the gravamen of the challenge. The challenge would proceed on the basis that the real foundation of the termination is an allegation of misconduct and that it must be established in disciplinary proceedings. Such a ground was not foreclosed even during the pendency of the criminal prosecution. As a matter of fact, we have noted that a group of seven recruits whose case was indistinguishable from the appellants had taken recourse to their remedies by filing writ proceedings in 2003 soon after the representation was rejected on 30 May 2003. The appellants had no valid explanation for the delay.

11. Consequently, we are inclined to hold and accordingly hold that the writ petition, which was filed by the appellants to challenge the order of termination and the order rejecting their representation, was barred by laches. There was no cogent explanation for the delay.

12. Alternately, as held by the learned Single Judge, a coordinate Division Bench of this Court, having examined similar facts in *Amit Kumar v. Union of India* (Special Appeal No. 107 of 2005) dismissed a challenge to an order of the learned Single Judge on facts which are indistinguishable. The judgment of the Division Bench would bind this Court and as a matter of judicial discipline, we would not be inclined to take a different view. For these reasons, we are unable to accede to the submissions which have been urged on behalf of the appellants. The special appeal, accordingly, stands dismissed for these reasons. There shall be no order as to costs.