
(2014) 01 PAT CK 0119
In the Patna High Court
Case No : CWJC No. 1798 of 2010

Pilore Jivaji Shankar Rao

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

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

Citation : (2015) 1 PLJR 140

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Nand Kishore Pd. Sinha, Advocates for the Appellant; N.A. Shamshi, Advocates for the Respondent

Judgement

Chakradhari Sharan Singh, J.—Heard learned counsel for the petitioner and learned Assistant Solicitor General appearing on behalf of the Union of India. The petitioner is aggrieved by the order dated 16.7.2009 passed by the Senior Commandant, Central Industrial Security Force, Keausub Unit Bhako Koli, Dhanbad, Jharkhand, whereby, in terms of the provisions as contained in Rules 25 and 26 of the Central Industrial Security Force Rules, 2001 (hereinafter referred to as the Rules), the petitioner's services have been terminated during the period of his probation, as he was not found fit for his permanent appointment in Central Industrial Security Force.

2. It is not in dispute that the petitioner was appointed as Cook in Central Industrial Security Force with effect from 12.6.2008 and he was put under probation for two years. Against the said order dated 16.7.2009 the petitioner had preferred an appeal before the Inspector General of Central Industrial Security Force, Eastern Region, Patna who, vide his order dated 23.11.2009 has dismissed it.

3. From the facts pleaded and the documents annexed with the present application, it appears that the reason behind passing of the impugned order is nondisclosure by the petitioner at the time of his enlistment in the Force, about

the pendency of a criminal case against him.

4. This is also not in dispute that at the time of submission of joining in the Force a criminal case was pending against him, being Reg. No. 598 under Sections 323, 504 and 506 of the Indian Penal Code at Chalisgaon Police Station. In view of the fact that he had suppressed this factual information against the appropriate column of the attestation form in contravention of the instructions given in the attestation form, the impugned order of termination from service came to be passed.

5. Learned counsel appearing on behalf of the petitioner contends that at the time of the occurrence leading to institution of the criminal case, the petitioner was not present at the place of occurrence. He further submits that the petitioner had no knowledge about the rules and regulations of the Central Industrial Security Force and out of sheer mistake he mentioned in the attestation form that no case was pending. It has been stated in paragraph 9 of the writ application that he was not aware of the fact that any case was lodged against him. It has further been asserted that the case was instituted due to family dispute and the matter was subsequently compromised between the parties and the case has been finally dropped, with the consent of the parties, the offences being compoundable. Learned counsel appearing on behalf of the petitioner further contends that the petitioner was implicated in the said criminal case out of a petty family dispute for minor offences, which are apparently compoundable and have finally been dropped. He has placed reliance upon an order of this Court passed in CWJC No. 12642 of 2005 (Santosh Kumar Singh v. Union of India & Ors.) dated 1.10.2007 wherein this Court, in similar situation had directed the competent authority to reconsider the matter afresh. He has also placed reliance upon a Division Bench judgment of the Delhi High Court in WP(C) No. 4571 of 2010 (Patel Kalpesh Kumar v. Union of India and Ors.) to submit that the authorities should have taken a lenient view of the matter, keeping in mind that the "offences were petty in nature.

6. A probationer does not have right to hold a post. The competent authority is well within its jurisdiction to terminate service of a probationer in Central Industrial Security Force, in exercise of power under Rule 25(2) of the Central Industrial Security Force Rules, 2001, if in its opinion such employee is not found suitable for permanent appointment. Before taking such decision or passing of such order no notice or opportunity of hearing is required to be given. On perusal, the impugned order cannot be said to be punitive and as it does not attach any stigma to the petitioner.

7. From the facts indicated in the appellate order, it is apparent that it was because of suppression/concealment of material facts regarding pendency of the criminal case that the impugned order of termination of service came to be passed. The Supreme Court in case of Union of India (UOI) and Others Vs. Sukhen Chandra Das, has held in paragraph 14 as follows:--

"14 On an independent scrutiny of the relevant documents on record as discussed above, we are of the considered view that the order of termination of the respondent recorded by the competent authority is innocuous on its face and purports to be an order of discharge in accordance with the terms and conditions of the appointment of a temporary Government service. Such termination is neither punitive nor stigmatic in nature, nor it is, in any event actuated with any motive. The language of the order clearly and plainly shows that it is termination simpliciter, rightly based under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 during the period when the respondent was a temporary employee of CRPF and it does not cast any stigma on the conduct of the respondent. Thus, the finding of the High Court that the order of termination of services of the respondent will cast stigma and could not have been recorded unless the respondent is proceeded in the regular departmental proceedings for the alleged misconduct, in our considered view, cannot be sustained. The decisions relied upon by the High Court in support of its order are not applicable in the facts and circumstances of the case in hand."

8. In that case also the petitioner was found to have furnished wrong information at the time of filling up the attestation form. In case of Union of India (UOI) and Others Vs. Bipad Bhanjan Gayen, , the Supreme Court upheld the exercise of power of termination simpliciter of a probationer in the background of concealment of fact regarding pendency of a criminal case.

9. In view of the facts as pleaded in the writ application which are not much in dispute and the contents of the impugned order, I do not find any infirmity in the same.

10. However, this Court is conscious of the fact that at times an aspirant for a Government job in desperation to get such job or in a fear that he would be losing such opportunity of getting public employment chooses not to disclose fact regarding pendency of a criminal case. Such suppression may be of serious consequences in the given facts and circumstances of the case. But in the present case, I find that the petitioner was implicated in a case under Sections 323, 504 and 506 of the Indian Penal Code which are compoundable. It has been stated in the writ application that the petitioner had no knowledge about the case at the time of filling up the attestation form. The veracity of such submission as to whether he had the knowledge or not has not been tested.

11. The Supreme Court in case of Commr. of Police and Others Vs. Sandeep Kumar, has also held that in such circumstances pragmatic approach is required to be adopted. The said judgment of the Supreme Court has been relied upon in case of the Division Bench judgment of Delhi High Court in Patel Kalpesh Kumar v. Union of India and Ors. which has been relied upon by learned counsel for the petitioner.

12. In the peculiar facts and circumstances of the case, though I do not intend to interfere with the impugned order as it cannot be said to be illegal or without

jurisdiction, I remand the matter back to the Inspector General, Central Industrial Security Force, Eastern Zone, Headquarter, Patliputra, Boring Road, Patna-Respondent No. 3 to reconsider the matter and pass an order afresh taking also into consideration the fact that the petitioner has been finally exonerated and it was just a family dispute which had led to institution of a criminal case for the offences punishable under minor Sections 323, 504 and 506 of the Indian Penal Code. It is expected that respondent No. 3 shall pass an order afresh within a period of three months from the date of receipt/production of a copy of this order; without adopting a hyper-technical approach. The writ application is, accordingly, disposed of.