

(2015) 01 DEL CK 0162
In the Delhi High Court
Case No : Writ Petition (C) 45/2015

Raju Chaudhary

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Citation : (2015) 2 SLJ 76

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : P.N. Singh and Party-in-Person, for the Appellant; Vikas Mahajan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 76/2015

Allowed, subject to just exceptions.

WP(C) 45/2015

1. Learned counsel for the respondents who appears on advance copy being served has produced the service record of the writ petitioner. The same has been perused by us.

2. The petitioner was enrolled, on probation, as a Constable (GD) in CRPF. Exercising power under Rule 5 of the CCS (Temporary Service) Rules, 1965, the petitioner has been discharged from service. The order in question is non-stigmatic. It does not contain any reasons which could be said to be casting a stigma on the writ petitioner.

3. It is pleaded in the writ petition that by virtue of Rule 108 of the Central Reserve Police Force Rules, 1955, the petitioner would be required to be treated as deemed to have been confirmed after completing two years" service as a

probationer. It is pleaded in the writ petition that being appointed on June 13, 2011, the two years" probation period came to an end on June, 13, 2013. The impugned order being passed in December 03, 2013 is obviously contrary to law and is liable to be declared as an illegal order.

4. The petitioner is under a misapprehension of the legal position.

5. The law on deemed confirmation of a probationer is clear and stands very clearly noted in the decision reported as High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, followed with approval by the Supreme Court in the decision reported as Rajinder Singh Chauhan and Others Vs. State of Haryana and Others, Three situations result in two different results is the ratio which can be culled out from the said two decisions. Situation one is where in the service rules or in the letter of appointment a period of probation is specified with a power to extend the same without prescribing any maximum period of probation and no order is passed confirming the probationer. The second situation is where the rules for initial probation and extension thereof provide a maximum period for extension and also provide that beyond the maximum period it is not permissible to extend the probation. The third is where the rules prescribe a maximum period of probation but also require a specific act on the part of the employer to issue an order confirming the appointment. It was held that cases falling under situation one or three cannot be treated as a case of deemed confirmation. Only under situation two would it be treated as a case of deemed confirmation.

6. The logic of the reasoning is clear. If, as in situation two a maximum period for probation is provided with a negative stipulation that beyond said period probation cannot continue, it follows automatically that if the probation continues beyond the maximum period it has to be treated as a case of deemed confirmation for the reason the negative stipulation prohibiting continuation of probation beyond the maximum period prescribed must take its effect.

7. Besides, a perusal of Rule 4(a) of the CRPF Rules, 1955 would evince that whereas superior officers are appointed to the force, all others are enrolled in the force. Superior offices would be of the rank of Company Commander and above.

8. Rule 108 of the Central Reserve Police Force Rules, 1955 on which the petitioner relies relates to officers appointed or promoted to a superior post and sub-Rule (1)) thereof requires the appointment or promotion to be initially on probation for a period of two years. Sub-Rule (2) of Rule 108 requires an appraisal post probation period being offered for permanent appointment. Sub-Rule (3) of Rule 108 empowers the Government to extend the period of probation. Sub-Rule (1), (2) and (3) of Rule 108 reads as under:-

"108. Probation and confirmation-

(1) The selected candidates shall be appointed or promoted to a superior post in the Force on probation for a period of two years.

(2) On the completion of the period of probation, the candidates shall, if considered fit for permanent appointment, be confirmed in their appointments subject to the availability of substantive vacancies in permanent posts.

(3) The Government may extend the period of two years specified in sub-rule (1)".

9. Thus, even if Rule 108 governs the service of the petitioner, he cannot claim status of a permanent employee of CRPF. But, as a matter of fact we note that the writ petitioner cannot rely upon Rule 108 of the CRPF Rules, 1955 for the reason, as noted above, the petitioner was enrolled to the junior most post in CRPF i.e. as a Constable (GD).

10. Pertaining to members of the force who are not appointed i.e. who are not superior officers, but are enrolled in the force, the applicable rule is Rule 16 of the Central Reserve Police Force Rules, 1955 which specifies three years" period as the period of probation for those who are enrolled in CRPF.

11. The petitioner being enrolled as a Constable (GD) on June 13, 2011 was obviously a probationer when the impugned order was passed, for the reason the three years" probation period would come to an end on June 13, 2014.

12. Rule 102 of the Central Reserve Police Force Rules, 1955, reads as under:-

"102. Other conditions of Service-

The conditions of service of members of the Force in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of India of corresponding status".

13. It is thus apparent that the CCS (Temporary Service) Rules, 1965 govern the service of the petitioner.

14. On facts what we need to note is that the petitioner deserted the force on August 01, 2013 when he was still on probation. He returned back on August 24, 2013, only but to desert for a second time on September 09, 2013. Warrants of arrest to apprehend the petitioner and produce him before the Commandant of the nearest CRPF battalion was issued but before it could be executed the petitioner returned to the battalion to which he was posted on November 17, 2013.

15. The record would evince that the Commandant of the battalion put up a note pertaining to the service record of the petitioner for being appraised by the competent authority, enlisting therein that the petitioner deserted twice and on one occasion had over stayed leave by a period of ten days. It is apparent that the propensity of the petitioner to be an unwilling worker was the focus of consideration.

16. The superior authority considered the service record and took the decision to terminate the service of the petitioner exercising power under Rule 5 of the CCS (Temporary Service) Rules, 1965.

17. Having considered the record which led to the issuance of the impugned order dated December 03, 2013, we are satisfied that the power has been exercised bona-fide keeping in view the service record of the petitioner. No case is made out to interference with the impugned order dated December 03, 2013.

18. The writ petition is accordingly dismissed but without any order as to costs.