

(1986) 08 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition 26679 of 1982

S.A. Chiniwar

APPELLANT

Vs

D.I.G. of Police

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Civil Services (Probation) Rules, 1977 — Rule 5 (i) (b)

Citation : (1987) ILR (Kar) 854 : (1987) 2 LLJ 322

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Judgement

1. In this petition, under Article 226 of the Constitution, the petitioner has sought for the following relief :

"Quash by the issue of an appropriate writ, order or direction as the case may be, the order dated 11th September, 1981 of the Superintendent of Police, Bijapur (Annexure-F) discharging the petitioner from service, with a further direction directing the respondents 1 and 2 to reinstate the petitioner in service forthwith, with all consequential benefits;"

2. The contention of the petitioner is that, though the order of discharge is innocuously worded, it is really in the nature of penalty as it is actually passed on the basis of the alleged misconduct without holding an enquiry and without affording an opportunity to the petitioner. It is stated in the petition that the petitioner was appointed as a Civil Police Constable in the Karnataka State Police Service in the unit of the Superintendent of Police, Bijapur, by the order dated 2nd July, 1980. Pursuant to that, he reported to duty and was deputed to undergo training at the Karnataka State Police Training School, Channapatna. Accordingly, the petitioner reported for training at the Police Training School at Channapatna on 26th November, 1980. It is further stated that during the course of the training, the petitioner was directed to report to the Mental Hospital, Bangalore for treatment with a further direction to report back to the training

school after medical advice; that the petitioner went to the Mental Hospital, Bangalore along with his father and as he had to make some financial arrangement for the purpose of treatment, he went to his native place and there he was under the active treatment of Dr. B. R. Chowdry and that the treatment under Dr. B. R. Chowdry was continued up to 5th April 1981; that the petitioner was then taken to Bangalore by his father to get him admitted in the Mental Hospital, Bangalore; but the petitioner was asked to come to the Hospital on 28th April, 1981; therefore, he was compelled to stay at Bangalore and follow the advice of the Mental Hospital; that he was admitted as an in-patient on 28th April, 1981 and was under treatment at the Hospital till 7th May 1981; that after he was discharged from the hospital he went to Channapatna on 8th May, 1981 and reported to the Training School, Channapatna; but he was told at the Training School that in the absence of fitness-certificate, the discharge certificate was not sufficient to take him back to duty; that from 7th May, 1981 to 14th July, 1981, he was advised rest; that the Doctor at the Mental Hospital instead of giving fitness certificate, advised the petitioner to take rest and attend the Hospital as an out-patient till 14th July, 1981; therefore, he could not bring the fitness certificate and produce the same before the Police Training School, Channapatna; that this fact was also intimated to the Principal, Police Training School, Channapatna; that immediately after the fitness-certificate was granted, he reported to the Police Training School on 15th July, 1981. However, the petitioner was directed to report before the Superintendent of Police, Bijapur. Accordingly, the petitioner reported before the Superintendent of Police, Bijapur, on 16th July, 1981. But, he was not taken on duty and was asked to stay till 19th July, 1981 till the arrival of the Superintendent of Police. On 19th July, 1981, he was informed by the Superintendent of Police about the abrupt ending of the training and he was taken to duty on 19th July, 1981 itself. On 18th September, 1981, he was served with the order dated 11th September, 1981, discharging him from service with effect from 18th September, 1981.

3. No statement of objections is filed. However, all the records pertaining to the Superintendent of Police and the Deputy Inspector General of Police, Northern Range, Belgaum are produced.

4. The allegations made in the petition are such that they cannot be rejected outright without going into the records of the case. This is more so because no statement of objections is filed. The specific case of the petitioner is that he has been discharged from service on the alleged unauthorised absence. Whereas, according to the case of the petitioner, as directed by the Principal of the Training School, he was undergoing treatment in the Mental Hospital as per the advice given at the hospital. In view of these averments learned Government Pleader was directed to produce the records of the Office of the Superintendent of Police as well as that of the Deputy Inspector General. Accordingly, the records of both the offices are made available.

5. It is contended on behalf of the State that the original order of discharge is

not in variance with the one communicated to the petitioner and petitioner being a Probationer, the Superintendent of Police, in exercise of the power vested in him by virtue of Rule 5(i)(b) of the Karnataka Civil Services (Probation) Rules, 1977 (hereinafter referred to as the Probation Rules) has discharged the petitioner from service. Therefore, it is not permissible for this Court to look into the records and find out the reasons behind the discharge. No doubt, if only the case of the petitioner was based only on the ground that the order of discharge was beyond the competence of the Superintendent of Police, probably it would not have been necessary to go behind the order. The specific case of the petitioner is that the order of discharge is innocuously worded and in fact it is in the nature of punishment and it is made on the alleged misconduct for which he had no opportunity to defend.

6. The Superintendent of Police, without obtaining the approval of the Deputy Inspector General, Northern Range, Belgaum, could not have discharged the petitioner. Therefore, he sought for the approval of the Deputy Inspector General to the proposed action to discharge the petitioner by the communication dated 17th August, 1981 bearing No. EST.3/PR/171/81. That communication contains the proposal for discharge and the reasons for discharge. It reads thus :

From : To : The Superintendent The Deputy Inspector-General of Police,
Bijapur. of Police, Northern Range, Belgaum. No. EST.3/PR/171/81 Bijapur,
Dated 17th August, 1981 Sir,

Sub : Misconduct of Recruit P.C. 491 S. B. Chiniwar of Bijapur District.

Sri S. B. Chiniwar was appointed as Civil Police Constable in Bijapur District on 7th July, 1980. He was deputed for training to K.S.P.T.S. Channapatna.

The Principal KSPTS, Channapatna informs that the CPC-491 S. B. Chiniwar under training, who was reported sick, was sent to Mental Hospital, Bangalore, on 31st March, 1981 on the advice of the M.O. of his Unit. The P.C. was under treatment and was discharged on 26th May, 1981 with instructions to follow up. After discharge, he has not reported back for training nor has he sent intimation regarding his condition. Hence requested for further action. It is clear that he is unsuitable for the post of constable and I under the power vested in me by virtue of Rule 5(i)(b) of K.C.S. (Prob.) Rules 1977, write to discharge him from service with effect from 31st March, 1981.

It is therefore requested to approve the proposal of discharge of the P.C. 491 as required by Rule 6(i) of the above Rules.

On receipt of approval from you, a regular discharge order will be issued as per your instructions given under No. FO 173/79-80 dated 17th August, 1979.

Yours faithfully, Sd. xx xx 15-8-81 Superintendent of Police, Bijapur."

It is this proposal that is approved by the Deputy Inspector General by his communication dated 21st September, 1981 (sic.) state the letter dated 17th

August, 1981 bearing No. EST.3/PR/171/81 regarding the discharge of recruit P.C. 491 Sri S. B. Chiniwar, and the Superintendent of Police is further directed to send the draft-discharge in duplicate. Pursuant to that, the Superintendent of Police has sent a draft discharge order in respect of the petitioner. The said draft-discharge order reads as follows :

"Proceedings of the Superintendent of Police, Bijapur.

No. EST.3/PR/171/81 Office of the Supdt. of Police, Bijapur, dated : 31st August 1981

(No subject to be mentioned)

Whereas Sri S. B. Chiniwar was appointed as a Civil Police Constable on probation for a period of two years in Bijapur District-Police Force vide Order No. EST/1/Apptt/CPCs./80-81 dated 2nd July, 1980.

Whereas the said S. B. Chiniwar reported for duty as a Civil Police Constable in Bijapur District Police force on 7th July, 1980;

Whereas the said Sri S. B. Chiniwar has not completed his period of probation and he still continues to be on probation;

Whereas I consider that Sri S. B. Chiniwar is not suitable for the post of a Civil Police Constable and I consider it necessary to discharge the said Sri S. B. Chiniwar from service.

Now, therefore, in exercise of the powers vested in me by virtue of Rule 5(i)(b) of the Karnataka Civil Services (Probation) Rules, 1977, I hereby discharge him from service with immediate effect. This has been approved by the Dy. Inspector General of Police, Northern Range, Belgaum, vide Memo No. PC/84/81-82, dated 8th September, 1981 as required under Rule 6(1) of the above Rules.

Sd. xx xx Superintendent of Police, Bijapur."

On receipt of the aforesaid draft-discharge order, the Deputy Inspector General has sent it along with his letter dated 8th September, 1981 bearing No. FC/84/81-82 according permission to discharge the petitioner from service on the ground of unsuitability.

7. The contention of the petitioner is that it is not an order of discharge simpliciter and it is an order passed on an alleged misconduct and this is contained in the letter dated 17th August, 1981 and it is submitted that the order of discharge is really in the nature of penalty. It is further submitted that as held by the Supreme Court in Anoop Jaiswal Vs. Government of India and Another, report in the letter dated 17th August, 1981 is relevant and is required to be looked into. Whereas, Sri S. V. Narisimhan, learned Government Pleader, submits that having regard to earlier decisions of the Supreme Court in Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, once it is found that the draft-order is not different from the one communicated to the petitioner it is not

permissible to take into consideration the contents of the other records of the case.

8. The decisions of the Supreme Court in *Nepal Singh Vs. State of Uttar Pradesh and Others*, cases are considered by this Court in *Gadekar v. KSRTC* (1981 (2) KLJ 401). After considering both the cases, this Court has laid down the following criteria for the purpose of going into the records in a case where an order of discharge is challenged :

"..... Thus the ratio of the three decisions indicates that there is no bar at the There should to entertain a Writ Petition against an order of discharge, the wording of which is innocuous, as contended for the Corporation, though the scope for interference in such a case is undoubtedly very limited, and it may be summarised as follows :

(i) If the wording of an order by which a probationer is discharged indicates that it is only a discharged simpliciter, ordinarily it must be accepted as correct and there is no scope for interfering with such an order.

(ii)(a) If however the person concerned asserts that the order though innocuously worded is really in the nature of penalty, and the Court considers that the averments are such that they cannot be rejected without verification of the records, the Court can call upon the authority who had made the order to produce the original order to verify whether that is different from the one communicated.

(b) If both, i.e., the order communicated and the original of it found in the file, are similar, the Court should not dig deep into the records to unearth some misconduct not disclosed in the original order also and hold that the order was based on misconduct and therefore it attached a stigma and then set aside the order on that ground. In other words, a stigma not attached by the order communicated to the concerned employee, or the original order, cannot be attached to it, by finding out some record of any charges levelled or framed against the person sometime earlier, even if it be in close proximity to the date of the discharge order in order to strike down the order. By doing so, the Court would be going to the motive of the authority in passing the order. Such a course is impermissible, because it is extremely difficult, if not impossible, for the Court to hold that some misconduct was the cause for discharge, when the authority has the power to discharge the employee on the ground of unsuitability only without reference to the allegation of misconduct, if any, made against him and the authority has made the order in exercise of that power.

(c) If the original order made by the authority expressly refers to a misconduct as one of the basis for discharge, though omitted to be incorporated in the order communicated, the order must be held to be bad and cannot be upheld on the ground that it was not set out in the communication. In other words, if the contents of the order communicated is at variance with its original on the file and the latter is found to be based on an allegation of misconduct of which the

person had no opportunity to meet, the Court cannot still say that it is not based on misconduct.

(d) To put it in a nut-shell, the Court cannot hold that an impugned discharge order (either the one which is communicated or its original on the file) attaches a stigma to the character and conduct of the discharged person though it attaches none or that it attaches none though it attaches one."

One of the criteria laid down is that if the original order made by the authority expressly refers to a misconduct as one of the basis for discharge, though it is omitted to be incorporated in the order communicated, the order must be held to be bad and cannot be upheld on the ground that it is not so set out in the communication. It is further held by this Court that if the contents of the order communicated are at variance with its original contained in the file and the latter is found to be based on an allegation of misconduct of which the person had no opportunity to meet, the Court cannot still say that it is not based on misconduct. When this Court has already interpreted the aforesaid three decisions of the Supreme Court and understood them in a particular manner and laid down the aforesaid principles as arising out of the aforesaid three decisions with which I also agree, I do not consider it necessary to consider in detail the contention of learned Government Pleader that the rule laid down in Oil & Natural Gas Commission's case (*supra*), has not been correctly interpreted by this Court. Learned Government Pleader has laid stress on para-12 of that decision, which is as follows Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali,

"The facts of the present case appear to be on all fours with those of the aforesaid decision. From the undisputed facts detailed by us in an earlier part of the judgment, it is manifest that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it could not be termed as penalty or punishment."

These observations are made by the Supreme Court having regard to the facts and circumstances of that case. The order of discharge was justified on the ground that it was in terms of the order of appointment. In para-2 of the decision, the relevant terms of the order of appointment which empowered the appointing authority to discharge the appointee during the period of probation without assigning any reason, are referred to. Again in para-6 of the decision, certain admitted facts are referred to. Among them are included the aforesaid terms of appointment. Therefore, it is not possible to hold that the aforesaid observations make it impermissible to go into the cause for the order of discharge. If it is held that the Court cannot even go into the cause for the order, it will only result in permitting the authority to exercise the power arbitrarily which is not permissible as it is an antithesis of very rule of law, which is embodied in our Constitution. Therefore, and also having regard to the decision

of the Supreme Court in Anoop Jaiswal's case (supra), which squarely applies to the case on hand, it is not possible to hold that the aforesaid observations in Oil & Natural Gas Commissions case (supra), are of any assistance to learned Government Pleader.

9. In Anoop Jaiswal's case (Supra), the Supreme Court has considered the validity of the order of discharge after referring to the previous decisions (Of course, the decisions in V. R. Saboji's case (supra), Oil and Natural Gas Commission's case (supra) and Nepal Singh v. State of U. P. case (supra), have not been referred). It has been laid down in para-12 Anoop Jaiswal Vs. Government of India and Another, as follows :-

"..... The cases of other probationers who were also considered to be ring leaders were not seriously taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.

Thus, from the aforesaid decision of the Supreme Court it is clear that in a given case, it is open to the Court, in exercise of its jurisdiction under Article 226 of the Constitution, in order to determine the true character of the order, to go behind the order of discharge and find out the reason for the discharge, which cannot at all be separated from the order of discharge. Of course, the person challenging the order of discharge must make out a case that it is not an order of discharge and it is in the nature of punishment. I have already pointed out that the reason for the discharge is contained in the letter dated 17th August, 1981, which has been approved by the Deputy Inspector General. Even in the original order of discharge which is already reproduced, it is noticed that the subject mentioned is the misconduct of the petitioner. No doubt, the portion has been scored off with a note "No subject to be mentioned" Therefore, it is omitted in the order communicated to the petitioner. Learned Government Pleader Sri Narasimhan, submits that as it is struck off by the Deputy Inspector General while approving the order of discharge, it cannot be considered as forming part of the original order and as such, the order communicated to the petitioner is not in variance with the original order. When in the original order, reference is made to the misconduct of the petitioner by the Superintendent of Police who is the original authority to pass the order on the approval of the Deputy Inspector General, the mere fact that the Deputy Inspector General while approving it, has struck off the offending portion it is not possible to hold that the alleged misconduct has

not been the basis for the order of discharge. The letter dated 17th August, 1981 cannot at all be read in isolation; it has to be read along with the order of discharge, because it forms the basis for the order of discharge. Thus, it is clear that it is not an order of discharge simpliciter but it is an order of discharge passed on the basis of the misconduct and as such it leaves a stigma on the petitioner. Consequently the order of discharge must be held to have been passed by way of punishment. That being so, before passing the order of discharge, the competent authority ought to have held an enquiry as per the Karnataka State Police Service (Disciplinary) Rules, 1965.

10. For the reasons stated above, this petition is entitled to succeed. It is accordingly allowed. The order of discharge dated 11th September, 1981, produced as Annexure-F is hereby quashed. The petitioner is also entitled to consequential benefits such as reinstatement and arrears of salary. It is ordered accordingly. It is also further made clear that liberty is reserved to the respondents to proceed against the petitioner in accordance with law, after reinstatement.