
(2004) 09 AHC CK 0308
In the Allahabad High Court
Case No : C.M.W.P. No. 20089 of 2000

Santosh Chaube	Vs	APPELLANT
Inspector General of Police and Another		RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 5(1)
Central Reserve Police Force Rules, 1955 — Rule 14, 15
Constitution of India, 1950 — Article 311(2)
Penal Code, 1860 (IPC) — Section 147, 148, 323, 352, 504

Citation : (2005) 6 AWC 5470

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Indrasen Singh Tomar and M.D. Singh Shekhar, for the Appellant;
Mohd. Isa Khan and Bal Mukund, S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwal, J.—The Petitioner was appointed as a Constable in Central Reserve Police Force on 15.2.1999 and thereafter he was sent for training by an order dated 28.9.1999. The services of the Petitioner was terminated without assigning any reason under Rule 5 (1) of the Central Civil Service (Temporary Services) Rules, 1965 (hereinafter referred to as the Rules of 1965) read with Rule 15 of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as the Rules of 1955). The Petitioner thereafter filed an appeal, which was rejected by an order dated 25.1.2000. Consequently, the Petitioner filed the writ petition for quashing of the orders dated 28.9.1999 and 25.1.2000 and for a direction to reinstate the Petitioner with continuity of service and with full back wages and other benefits.

2. Heard Sri M. D. Singh Shekhar, the learned Counsel for the Petitioner and Sri Bal Mukund, the learned Counsel for the Respondents.

3. The learned Counsel for the Petitioner submitted that the order removing the

Petitioner was violative of the principles of natural justice and that no reasons was assigned while terminating the services of the Petitioner. The learned Counsel for the Petitioner further submitted that from a perusal of the appellate order, it is clear that the order of termination was based on a report given by the District Magistrate and, therefore, it was not a simpliciter order of termination which could be passed under Rule 5 (1) of the Rules of 1965.

4. In the counter-affidavit the Respondents have stated that after the enrollment in the police force, the Petitioner was required to fill a verification Form No. 25 as contemplated under Rule 14 (b) of the Rules of 1955. The Petitioner did not furnish the correct information and concealed the fact that he was charge-sheeted under Sections 147, 148, 352, 323, 504 and 506, I.P.C. The Respondents submitted that since the Petitioner had concealed material facts with regard to his involvement in a criminal case and the services of the Petitioner being temporary in nature a simpliciter order, was issued under Rule 5 (1) of the Rules of 1965.

5. Before proceeding further it would be appropriate to refer the provisions of the Rules under which the impugned order has been passed. Rule 14 of the Rules of 1955 provides as under:

14. Verification:

(a) As soon as a man is enrolled, his character, antecedents, connection and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The verification roll shall be sent to the District Magistrate or Dy. Commissioner of the District of which the recruit is a resident.

(b) The verification roll shall be in CRP Form-25 and after verification shall be attached to the Character and Service roll of the member of the force concerned.

(c) The Commandant may waive verification in the case of men who have been enrolled in the Force within six months of their discharge from the regular Army.

6. From the aforesaid it is clear that as soon as the person is enrolled in the force, he is required to submit certain informations in Form No. 25. Clause (1) of Form No. 25 states that:

The furnishing of false information or suppression of any factual information in the verification roll would be a disqualification and is likely to render candidate unfit for employment under the Government.

7. Clause (3) of Form 25 states that:

If the fact that false information has been furnished or that there has been suppression of any factual information in the verification roll comes to notice at any time during the service of a person, his services would be liable to be terminated.

8. Clause 12 of Form No. 25 provides that the person has to give details as to

whether he was prosecuted in criminal proceedings or not and whether any criminal case was pending against him. This information was required in order to find out about the antecedents of the candidates. From a perusal of Form No. 25 read with Rule 14 of the Rules of 1955, it is clear that if a person furnishes false information or suppresses any factual information, he would become unfit for employment under the Government and that his services would be liable to be terminated.

9. The order of termination of the service of the Petitioner has been issued under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, which is quoted hereinunder:

5. Termination of temporary service.-(1) (a) The services of a temporary Government servant who is not a quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority in the Government servant ;

(b) The period of such notice shall be one month ;

Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

10. From a perusal of Rule 5 of the Rules, 1965 it is clear that the services of a temporary Government servant can be terminated at any time by giving him one month's notice in writing or one month pay in lieu of notice.

11. The learned Counsel for the Respondents submitted that since the services of the Petitioner was purely temporary and since he had concealed material information with regard to his involvement in a criminal case, his services was dispensed with under Rule 5 of the Rules of 1965 by giving him one month's pay in lieu of notice. The Respondents were not required to issue any kind of charge-sheet or show cause notice before terminating his services.

12. The submission of the learned Counsel for the Respondents is devoid of any merit. In any view, in the present facts of the case, Rule 5 of the Rules of 1965 could not be invoked and the Petitioner's services could not be terminated by issuing a simpliciter order of termination. No doubt the service of the Petitioner was purely temporary in nature and his services could be dispensed with under Rule 5 of the Rules of 1965. But once the veil is lifted and it was found that the services of the Petitioner was terminated on account of certain charges, namely, that he had suppressed material information with regard to his involvement in a criminal case, in that event, Rule 5 of the Rules of 1965 would not apply and a simpliciter order of termination could not be issued.

13. It is settled law that if the order of termination is based on certain charges the services could not be dispensed with without giving a notice and without giving an opportunity of hearing. In *Nepal Singh Vs. State of Uttar Pardesh and Others*, , the Supreme Court held:

It is now settled law that an order terminating the services of a temporary Government servant and ex facie innocuous in that it does not cast any stigma on the Government servant or visits him with penal consequences must be regarded as effecting a termination simpliciter, but if it is discovered on the basis of material adduced that although innocent in its terms the order was passed in fact with a view to punishing the Government servant, it is a punitive order which can be passed only after complying with Article 311(2) of the Constitution.

14. In *Kanhialal Vs. District Judge and Others*, , the Supreme Court held:

The order of discharge passed against the Appellant was, therefore, clearly penal in character and there can be no doubt that even if he was a temporary servant, he was entitled to the protection of Article 311(2) of the Constitution and hence no penal order could be passed against him without complying with the requirements of that Article. Since admittedly the requirements of Article 311(2) were not satisfied in the case of the Appellant before terminating his service, we are of the view that the order passed by the learned District Judge terminating the service of the Appellant must be held to be void.

15. Rule 14 (b) of the Rules of 1955 read with Form No. 25 indicates that if the candidate furnishes false information or suppresses material information, his services would be liable to be terminated. It is clear that the termination of the candidate for suppression of material information can only be dispensed with only after giving a notice and that his service could not be dispensed with under Rule 5 of the Rules of 1965, merely by issuing a simpliciter order of termination. When the services of the Petitioner was being dispensed with on the ground of furnishing false information or suppressing material information, it was mandatory for the Respondents to give a show cause notice and an opportunity of hearing before passing the order of punishment. The order of punishment would be rendered void if the principles of natural justice was violated.

16. The learned Counsel for the Petitioner submitted that the Petitioner only came to know that his services was terminated on the ground of being involved in a criminal case for the first time when the Respondents came out with this allegation in the counter-affidavit. The learned Counsel for the Petitioner submitted that the Petitioner had been acquitted in the criminal case.

17. In *Qamrul Hoda v. Chief Security Commissioner, N.E. Railway, Gorakhpur*, 1997 AWC 197: (1997) 2 UPLBEC 1201, it was held:

It is settled law that every judgment operates retrospectively (unless expressly made prospective), and hence it will be deemed that the Petitioner was never involved in the criminal case he was acquitted.

18. The said judgment was subsequently affirmed by a Division Bench in Writ Petition No. 3864 of 2004, Awadhesh Kumar Sharma v. Union of India, decided on 24.1.2000.

19. Since the Petitioner was acquitted in the criminal case, it will be deemed in law that in fact he was never involved in a criminal case.

20. Consequently, the writ petition is allowed. The impugned orders dated 28.9.1999 and 25.1.2000 are quashed and a mandamus is issued to the Respondents to reinstate the Petitioner with continuity of service and with full back wages.