
(2010) 03 GAU CK 0043
In the Gauhati High Court
Case No : Writ Petition (C) No. 1519 of 2006

Saroj Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16
Central Industrial Security Force Rules, 2001 — Rule 25, 25(1), 25(2), 25(3)
Constitution of India, 1950 — Article 14, 16

Citation : (2010) 4 GLR 139 : (2010) 2 GLT 897

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : K.N. Choudhury, A. Baruah, R. Dubey, M. Mahanta and B.K. Kashyap, for the Appellant; D. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Musahary, J.—Can the period of probation after expiry of initial period be extended repeatedly, to be precise, as many as 4(four) times, advising the probationer to improve his performance without specifically indicating the area in which he is required to improve and simultaneously initiating departmental proceeding for alleged misconduct? Is such an action bona fide, legal and justified calling for no interference in judicial review? The petitioner cries loud demanding justice against the alleged injustice done to him. He tried to substantiate pleadings as follows:

The petitioner was appointed in the Central Industrial Security Force (CISF), as a direct entry, Sub-Inspector (Executive) on 18.12.1976 and since then, he has been serving on various posts in the Force at different industrial units and after serving so, he was promoted to the rank of Inspector (Executive) on ad hoc basis on 15.2.1985 and he was declared to complete his probation period on 14.7.1987. His service in the rank of Inspector was confirmed with effect from 1.1.1988 by an order dated 26.2.1992. Thereafter he was promoted to the rank

of Assistant Commandant (Executive) purely on ad hoc basis and was transferred to CISF unit BSL Bokaro, where he joined on 2.12.2000. He was directed by the Dy. Inspector General, CISF to hold the charge of Zonal i/c (Zone-II) until further orders and he was appreciated for his service by the said DIG vide appreciation letter dated 5.1.2001. He was again allowed to hold the charge of AC/CIW and Pass section on 4.12.2001 for which also he received same appreciation from the said DIG.

While he was serving as Inspector (Executive), the petitioner was appointed on promotion to the post of Assistant Commandant (Executive) on regular basis along with others with effect from 1.3.2002. He earned a cash reward of Rs. 500 from DIG, INT, PUQ and also received Police Medal for his meritorious services from the President of India on 26th January, 2003 followed by a letter of appreciation on 5th February, 2003 from the Managing Director, BSL Bokaro. He was, thereafter, asked to take over the charge of COY No. 41 deployed at Raj Bhawan Gangtok on 15.11.2003 where he received a letter of appreciation from the Commissioner-cum-Secretary to the Governor of Sikkim. Subsequently, he was posted at CISF unit ONGC, Jorhat, Assam from Gangtok and he joined in the said post on 14.2.2004. The "petitioner was on probation for a period of two years up to 29.2.2004. The period of probation was extended to 29.8.2004 by an order dated 6.8.2004 issued by the Assistant Inspector General (Pers). The petitioner made a representation on 16.8.2004 to the Director General, CISF, HQ, New Delhi for reviewing the order extending probation period through proper channel, which was forwarded by the Commandant to the DIG, CISF unit ONGC, Nazira. In reply to the said representation, the petitioner received a letter dated 20.8.2004 from the Commandant advising him to improve performance within the extended period of probation failing which he would be reverted to the rank of Inspector (Executive), at any time, during the probationary period without further notice. After expiry of the extended period of probation on 29.8.2004, the respondents authorities extended the period of probation up to 28.2.2005 whereupon he made a representation for reviewing the said order to the higher authorities and he received similar reply from the Commandant vide letter dated 8.10.2004 whereby he was asked to improve his performance within the extended period failing which he would be reverted to the rank of Inspector (Executive) at any time during the probationary period without further notice.

By a letter dated 12.10.2004 from the Commandant, the petitioner was informed that his representations are being examined by the higher authorities and suitable reply would be given in due course of time and if required he would also be granted personal interview of DG, CISF. In the meantime, by a wireless message dated 27.11.2004, the petitioner was intimated about his transfer to CISF unit BVFCL, Namrup in Assam. The petitioner submitted representation against the said transfer order but ultimately he joined his service at the said unit. He then received a show-cause notice dated 4.1.2005 from the DIG. He submitted reply on 21.1.2005 to the said show-cause notice and on being satisfied with his reply, the proposal for DIG's displeasure was withdrawn vide

communication dated 20.4.2005. The period of probation of the petitioner was extended for the third time up to 31.8.2005, against which, the petitioner submitted representation on 18.6.2005 requesting the DIG, CISF unit Oil Duliajan, Assam to intimate about the field or place where his improvement/performance is necessary so that he can perk up the performance on the particular field by making strenuous efforts. In reply, he received a letter dated 10.8.2005 signed by Dy. Commandant informing him that the performance of the petitioner was found unsatisfactory during the extended period of probation by screening committee of FHQR. Thereafter, the petitioner was served with a memorandum dated 18.7.2005 containing statements of imputation of misconduct and misbehaviour with proposal to take action against him under Rule 16 of the CCS (CCA) Rules, 1965. He was asked to submit representation within 10 days failing which it would be presumed that he has no representation to make and an order would be passed against him ex parte. The petitioner submitted his representation on 10.8.2005 and also a reply dated 30.8.2005 on the memorandum of charges denying the charges levelled against him. In the meantime, before receiving any reply from the respondent authorities to the explanation submitted by him, the period of probation was further extended for the third time up to 28.2.2006, which was communicated vide letter dated 3.11.2005 signed by the respondent No. 3, Assistant Inspector General (Pers.). The petitioner was intimated on 24.11.2005 that the decision to extend probation up to 28.2.2006 was taken in a meeting of the Internal Screening Committee held on 31.10.2005 advising the petitioner to take more initiative to improve upon his performance within the extended period of probation, i.e., 18.2.2006 failing which he would be reverted to the rank of Inspector (Executive) at any time during the probation period without further notice under the relevant rules. The petitioner has completed the aforesaid probation on 28.2.2006 but he has received no communication from the respondent authorities confirming his probation or declaring satisfactory completion of probation as required under the Rules. The petitioner now apprehends that the respondent authorities would not grant further extension of probation period and they would revert him to a lower post at any time and, hence, he approaches this Court with the prayers that-

(i) the decision regarding extension of period of probation of the petitioner taken by the Internal Screening Committee at the CISF Headquarters in its meeting held on 17.9.2004, 26.5.2005 and 31.10.2005,

(ii) Order No. E-15014/1/2004/Pers.II/1796 dated 6.8.2004 issued by respondent No. 3 extending the period of probation of the petitioner up to 29.8.2004 (Annexure 13, p. 47),

(iii) Order No. E-15014/1/2004/Pers.II/2301 dated 17.9.2004 issued by respondent No. 3 extending the period of probation of the petitioner up to 28.2.2005 (Annexure 17, p. 52),

(iv) Order No. E-15014/1/2005/Pers.II/1546 dated 27.5.2005 issued by respondent No. 3 extending the period of probation of the petitioner up to

31.8.2005 (Annexure 29, p. 68),

(v) Order No. E-15014/1/2005/Pers.II/3313 dated 3.11.2005 issued by the respondent No. 3 extending the period of probation of the petitioner up to 28.2.2006 (Annexure 35, p. 81),

(vi) Memorandum No. V-15014/5/2005/L&R/2002 dated 18.7.2005 issued by respondent No. 4 pertaining to allegations of misconduct and dereliction of duties against the petitioner (Annexure 32, p. 71),

be quashed and set aside.

2. I have heard Mr. K.N. Choudhury, Learned Senior Counsel for the petitioner as well as Mr. D. Das, learned CGC, appearing on behalf of the Union of India and other respondents.

3. Mr. K.N. Choudhury, Learned Counsel appearing for the petitioner submits that the impugned decisions taken by the Internal Screening Committee at the CISF Headquarters in its meetings held on 17.9.2004, 26.5.2005 and 31.10.2005 regarding extension of probation period of the petitioner as well as the consequential impugned orders dated 6.8.2004, 17.9.2004, 27.5.2005 and 3.11.2005 issued by the respondent authorities are arbitrary, unreasonable and illegal inasmuch as the same are violative of Articles 14 and 16 of the Constitution of India as well as the principles of natural justice and administrative fair play in action. He also submits that the impugned decisions and orders were issued without any application of mind to and without taking into consideration the clean service record as well as efficient performance of duties rendered by the petitioner. According to Mr. Choudhury, the aforesaid decisions and orders were passed at the behest of some influential officials of the CISF who want to settle some personal score with the petitioner, and this is evident from the fact that a show-cause notice for Director General's displeasure was once issued and later on it had to be withdrawn on receipt of satisfactory reply from him and thereafter, the show-cause notice on the alleged misconduct and misbehaviour was issued against him at the instance of some officers who are not happy with the brilliant and satisfactory services rendered by the petitioner for which he has received appreciations from the higher officers concerned including the Police Medal from the President of India. The said officers are desperate to get the petitioner reverted to a lower post but the same could not be materialized due to interim order passed by this Court at the time of issuing the notice on 8.3.2006, yet, however, they have been successful in getting the minor punishment/penalty of "censure" imposed on him vide order dated 18.1.2007 issued by the Deputy Inspector General (Pers.) vide No. V-15014/5/2005/L&R/234, i.e., during pendency of hearing of this writ petition. For filing of FIR, the petitioner alone cannot be held responsible as indicated in the statement of allegations and for that he alone cannot be punished/penalized by way of awarding "censure". Mr. Choudhury, Learned Counsel submits that the petitioner cannot be made scapegoat for the collective action or step taken by the CISF unit as per the

decision rendered by the Apex Court in Bongaigaon Refinery and Petrochemicals Ltd. and Ors. v. Girish Chandra Sarma (2007) 2 SCC 206.

4. Mr. Choudhury further submits that the respondent authorities, in spite of successfully completing the probation, refrained from confirming the petitioner's service as Assistant Commandant and kept on extending the probation period which has ended on 28.2.2006 without passing any order of confirmation under Rule 25(3) of the CISF Rules, which is against the law settled by the Apex Court in Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh and Others, The facts narrated, according to Mr. Choudhury, sufficiently demonstrate that the impugned decisions and orders were made in exercise of power other than bona fide and in good faith and as such, the same are liable to be set aside and quashed applying the principles laid down by the Supreme Court in various cases including the one in Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttaranchal and Others,

5. Mr. D. Das, learned Central Government Counsel (CGC) submits that the present petition has become infructuous inasmuch as the respondent authorities have awarded/imposed minor punishment of "censure" on the petitioner by an order dated 18th January, 2007 and a new cause of action has arisen. The petitioner has accepted the aforesaid punishment inasmuch as he has made no representation/appeal against the same. Taking through the averments made in the affidavit-in-opposition filed by the respondent Nos. 1 to 10, it is submitted by Mr. Das, learned CGC that vigilance cases were pending against the petitioner while he was posted at CISF Unit BSL, Bokaro and his performance was not found satisfactory by the Internal Screening Committee. So, a show-cause notice was issued upon the petitioner on the basis of a confessional statement made by two criminals but however, the respondent-Director General decided to drop the proposal made in the said show-cause notice on being satisfied with the clarification/explanation tendered by the petitioner. There was a departmental proceeding against the petitioner under Rule 16 of the CCS(CCA) Rules, 1965 on the charge that while the petitioner was posted at CISF unit, BSL Bokaro he unauthorizedly retained the material rejected by the management on 23.6.2003 and after repeated clarifications given by the management officials, he lodged an FIR on 26.6.2003, which ended with imposition of "censure" on the basis of overwhelming evidence to ascertain the said charge and it was found that before filing the FIR against the firm M/s. Manish Enterprises, it was incumbent upon the petitioner to have ascertained from the management whether the material being taken out by the aforesaid firm were genuine or not. As regard the extension of probation period, he submits that the service of the petitioner was not found satisfactory and as such, he was advised to improve upon his performance. The extension orders were passed on the basis of the findings/decisions of the Internal Screening Committee, which cannot be faulted and termed as arbitrary, illegal, unreasonable and mala fide.

6. The claim of the respondent authorities that the probation period of the

petitioner had to be extended on the basis of assessment of his service and the decision of the Internal Screening Committee at the Headquarters of CISF is to be verified and examined from the records. Mr. Das, learned CGC has produced the following records:

(1) Confidential Character Roll of Mr. Saroj Kr. Singh (petitioner) No. 81 CR. F.3/415/05-SI

(2) File No. V-15014/2005-L&R-Pt.I.

Regarding Departmental Enquiry against Shri Saroj Kr. Singh, Asstt. Commandant.

(3) File No. V-15014/5/2005-L&R Pt.II.

Regarding Departmental Enquiry against Shri Saroj Kr. Singh, Asstt. Commandant.

(4) Folder No. 1, No. F.3/415/05-SI Regarding departmental enquiry.

(5) Folder No. II, F.3/415/05-SI

Regarding departmental enquiry.

(6) Filed No. V-15014/Misc.(1)/2005/L&R

Internal Screening Committee recommendations.

Amongst the aforesaid records, Sl. No. 1, i.e., confidential character Roll of the petitioner is most important and relevant one. The said Roll contains the ACRs right from the entry in service, as S.I./Executive to 31.3.2008, as Assistant Commandant including the Probation reports.

7. Let me first take up the confidential reports of the petitioner as Assistant Commandant for the period from 1.4.2001 to 31.8.2008.

(1) In the ACR from 1.4.2001 to 31.3.2002, both the Reporting Officer and Reviewing officer graded him "outstanding", but the Accepting Officer modified the same as "very good" without recording any reason thereof. The only reason the Accepting Authority recorded was that the Reporting and Reviewing Officers over-assessed the performance of the petitioner but he has not elicited how such over assessment was done by the Reporting and Reviewing Officers (vide pp. 135-140).

(2) The ACR of the petitioner for the period from 1.4.2002 to 9.6.2002 could not be initiated as the period is less than 90 days. The non-initiation certificate was issued on 11.4.2003 by the DIG, CTSF unit Bakaro (p. 142).

(3) In respect of ACR for the period from. 10.6.2002 to 11.10.2002, both the Reporting and Reviewing officers graded the petitioner as "outstanding", which was agreed with by the Accepting Officer (p. 143-147).

(4) In the ACR for the period from 12.10.2002 to 31.3.2003, both Reporting and Reviewing Officers graded him "outstanding", (pp. 148-153) but there is no remark of the Accepting Authority for the said period.

(5) In the ACR for the period from 1.4.2003 to 31.1.2004, the Reporting and Reviewing Officers graded him as "very good" but the Accepting Officer graded him as "average officer" (pp. 154 to 161). The aforesaid remark was recorded against the petitioner in the ACR while posted at CISF unit BSL Bokaro as he was allegedly found to have committed misconduct (p. 159).

(6) There is no ACR for the period from 1.2.2004 to 31.3.2004 in respect of the petitioner as the said period is less than 90 days but non-initiation certificate dated 3.4.2004 was issued in this regard by the Commandant CISF unit, ONGC, Jorhat (p. 162)

(7) In the ACR for the period from 1.4.2004 to 27.11.2004, the Reporting officer as well as the Reviewing Officer graded him "very good", which was agreed to by the Accepting Officer also (pp. 170-175).

(8) In the ACR for the period from 28.11.2004 to 31.3.2005, both the Reporting and Reviewing Officers graded the petitioner "very good" which was agreed to by the Accepting Authority (pp. 176-180).

(9) In the ACR for the period from 1.4.2005 to 31.12.2005, both Reporting and Reviewing Officers graded him "good" which was agreed with by the Accepting Officer (pp. 189-194).

(10) In the ACR for the period from 1.4.2006 to 31.3.2007, both Reporting and Reviewing Officers graded the petitioner as "good" and the same was also agreed to by the Accepting Authority (pp. 200-205)

(11) In the ACR for the period from 1.5.2007 to 31.3.2008, both the Reporting and Reviewing Officers graded him as "very good", which was agreed to by the Accepting Authority (pp. 207-211).

8. Now let me have a look at the probation reports in respect of the petitioner. It may be noted that the probation period of the petitioner was to be completed on 29.2.2004 but it was extended for another 6(six) months, i.e., up to 29.8.2004 and subsequently extended on 4(four) occasions till 28.2.2006.

(1) The Reporting Officer found that the petitioner meets all requirements of the job on the basis of his performance and graded him as "good" in the probation reports which were accepted by the Reviewing Officers recommending his retention/confirmation but the Accepting Officer, i.e., IGP did not agree with the Reporting and Reviewing Officers and recommended for extension of probation by 6(six) months after preparing a gist of adverse report against the petitioner while he was posted at CISF unit BSL Bokaro. The respondent-Director General, CISF finally ordered the extension of probation period of the petitioner for 6(six) months, i.e., up to 29.8.2004 (pp. 164-166).

(2) The probation report in respect of the petitioner for the extended period up to 29.8.2004 was prepared by the Commandant as the Reporting Officer, who found the petitioner fit for all requirements of job and graded him as "good". The Reviewing Officer accepted and recommended his case for retention/confirmation and the Accepting officer, IGP in his remarks dated 14.9.2004 noted that the petitioner's performance from 28.2.2004 to 14.7.2004 has improved during this period and nothing adverse remark was noticed during the said period and recommended for confirmation. But in spite of such recommendation of the Reviewing and Accepting Officers, the respondent-Director General finally ordered further extension of probation period of the petitioner for 6(six) months, i.e., up to 28.8.2005.

(3) While passing such order, the respondent-Director General did not record any reason (pp. 167-168). Accordingly, the formal order was passed by the Assistant I.G. (Pers.) extending the period of probation up to 29.8.2005 (p. 169).

(4) On completion of extended probation period by 29.2.2005, the Commandant, i.e., Reporting officer found the conduct of the petitioner "good" and fit for retention/conformation. The Reviewing Officer, i.e., DIGP agreed with the assessment of the Reporting officer and found him fit to hold the rank of Assistant Commandant on the basis of the aforesaid reports/remarks/assessments of the Reporting Officer. The Accepting Officer, i.e., IGP, on the assessment of the Reporting and Reviewing Officers, put remarks as suitable for retention (pp. 183-184) but the matter was placed before the Director General, CISF for final order. It has been noted by the respondent-Director General that "assessment in respect of Shri Saroj Kr. Singh, AC/Executive for Missing Line probation period". Then he passed the final order to the effect that "probation period is extended further for a period of six months i.e., up to 31.8.2005" (p. 185).

(5) After completion of probation by 31.8.2005, the Reporting Officer, after assessment, found that the petitioner meets requirement of the job in all respects and graded him as "good", which was accepted by the Reviewing Officer with recommendation that the petitioner is fit for retention/confirmation. The Accepting officer namely, IG agreed with the same but the DG, CISF in his final order extended the probation period for a further period of six months, i.e., up to 28.2.2006. No reason has been given for passing the said order. There is also no mention whether such order was passed on the basis of the decision of the Screening Committee (p. 197-198). Accordingly, the consequential order extending the probation up to 28.2.2006 was issued by the Assistant IG(Pers.) on 3.11.2005 (p. 199).

9. From the ACRs of the relevant periods aforementioned, on adverse entry is found and no occasion arose for communication of any adverse entry to the petitioner. His ACR may be summarized as follows:

Period of ACR

Remarks of Reporting Officer

Remarks of Reviewing Officer

Remarks of Accepting Officers

1.4.2001 to 9.6.2002

Outstanding

Outstanding

Very good

10.6.2002 to 11.10.2002

Outstanding

Outstanding

Outstanding

12.10.2002 to 31.3.2003

Outstanding

Outstanding

Nil

1.4.2003 to 31.1.2004

Very good

Outstanding

Average

1.4.2004 to 27.11.2004

Very good

Very good

Very good

28.11.2004 to 31.3.2005

Very good

Very good

Very good

1.4.2005 to 31.12.2006

Good

Good

Good

1.4.2006 to 31.3.2007

Good

Good

Good

1.5.5007 to 31.3.2008

Very good

Very good

Very good

10. In the probation reports both the Reporting and Reviewing Officers found the petitioner fit and recommended for his retention/confirmation. The Accepting Officer, except on one occasion, disagreed with the remarks of the Reporting and Reviewing Officers, i.e., during probation period ended on 29.2.2004.

11. In the probation report in respect of probation period which ended on 28.2.2005 (from p. 182), the respondent-DG, CISF while extending the probation period of the petitioner upto 31.8.2005 had mentioned about assessment of the committee (Screening Committee) made on the basis of the performance report. The proceedings of the Screening Committee, wherein it took the decision to extend the probation period for a further period of six months, i.e., upto 31.8.2005, is not found in the records produced by the respondents. It could not therefore, be examined how the said decision was taken by the Screening Committee in spite of positive remarks of the Reporting and Reviewing Officers and the Accepting Authority, who found the petitioner as suitable for retention/confirmation. It is also not found in the records as to why the respondent-DG, CISF passed an order extending further probation period for six months, i.e., upto 28.2.2006 in spite of the unanimous report of the Reporting, Reviewing and Accepting Officers as fit for retention/confirmation of the petitioner. As already noted earlier, the said extension order was passed without any mention about the decision of the screening committee. The respondents could not show as to whether the last extension order was passed on the basis of the decision taken by the screening committee and if such decision of the screening committee is lacking or non-existent, it cannot be accepted as valid and legal. The last extension order is found to be arbitrary and illegal for want of decision/approval of the screening committee. Similarly, the extension of probation of the petitioner for further six months, i.e., upto 31.8.2005 is also not sustainable inasmuch as the respondent authorities have failed to show from the records the existence of any minutes of the proceeding or decision taken by the Screening Committee. A mere mention/reference to a decision of the assessment of the committee, as mentioned in the final report (p. 185), cannot be accepted as correct and true unless it is borne on records.

12. The other 5(five) files are connected mostly with departmental proceeding initiated against the petitioner which ended awarding of minor punishment like "censure". The aforesaid award of punishment was communicated to the petitioner vide letter No V-15014/5/2005/L&R/-234 dated 18.1.2007, which is reproduced below -

Directorate General Central Industrial Security Force (Ministry of Home Affairs)

Block No. 13, CGC Complex, Lodhi Road, New Delhi-01

NO.V.15014/5/2005/L&R/234 Dated 18th January, 2007 ORDER

WHEREAS, disciplinary proceedings under Rule 16 of the CCS(CCA) Rules, 1965 were instituted against Shri S.K. Singh, Assistant Commandant, CISF vide charge memorandum of even number (2002) dated 18.7.2005 for the following charge:

That the said Shri S.K. Singh, while posted and functioning as Assistant Commandant, CISF Unit, BSL Bokaro during the period from 2.12.2000 to 21.1.2004 was assigned the duties of Assistant Commandant (CIW). On 31.10.2002, M/s. Manish Enterprises, Bokaro had supplied 2 Nos. Coil to BSL, Bokaro, but the same were rejected by the Management, owing to qualitative difference in voltage grade, i.e., 24V (3TY7683-ODB4) instead of 220V (3TY7683-ODM4). Accordingly, the store authorities of BSL, Bokaro had informed the firm and requested them to remove the rejected material and supply fresh material, as per approved specification. In compliance with the instruction of the Management, M/s. Manish Enterprises supplied the correct material and received back the rejected ones on 23.6.2003 vide gate pass No. A-120484 dated 23.6.2003. When they were taking the rejected material out through gate No. 9 of BSL, Bokaro, the CISF personnel on duty upon checking found difference in the quality of material being taken out by M/s. Manish Enterprises and the one mentioned in the gate pass. Therefore, the duty personnel seized the gate pass of Shri Punit Goenka, Supervisor of M/s, Manish Enterprises along with material and all relevant papers on 23.6.2003.

On 26.6.2003 Shri V.P. Sharma, Dy. General Manager (MM/Stores) and Shri M.P. Sahu CMM IC(CS) of BSL, Bokaro contacted Shri S.K. Singh, Assistant Commandant/CIW, CISF and explained the factual position of the case. However, Shri S.K. Singh, AC/CIW did not buy their arguments and filed an FIR with Marafari Police Station, Bokaro, on 26.6.2003, i.e., after three days of the seizure, on his own. On an anticipatory bail application moved by the accused, the session court, Bokaro granted his bail on the ground that as per the documents there was no mala fide intention on the part of M/s. Manish Enterprises to cause loss to BSL, Bokaro, since the Management had not made any payment in respect of rejected materials.

Shri S.K. Singh, being the AC/CIW of the unit did not make any worthwhile efforts to ascertain from the management whether or not right material was being taken out. He however ordered seizure of the material which was being

taken out by the representative of the firm. Even the efforts of senior officials of the management, who tried their best to convince him about the genuineness of the material being transported out, did not cut ice on Shri Singh. Thus, the incident caused the Management to form an adverse opinion about the functioning of the CIST in the Plant. Thus, Shri S.K. Singh, Assistant Commandant exhibited utter recklessness in discharge of his duties and thereby lowered the image of the Force in the estimation of management of CISF Unit BSL, Bokaro. This act on the part of Shri S.K. Singh amounts to gross misconduct and dereliction of duties which is not expected from a responsible officer of his status in an Armed Force of the Union. Hence, the charge

2. AND WHEREAS, the charge memorandum dated 18.7.2005 was served upon the charged officer on 26.7.2005 and he was asked to submit his written statement of defence against the charge memorandum within 10 days of the receipt of the memorandum. The Charged Officer submitted his reply to the charge memorandum on 30.8.2005 and denied the charge levelled against him.

3. AND WHEREAS, the Union Public Service, Commission who were consulted in the matter, have advised vide their letter No. F.C/415/05-S.I dated 30.11.2006 (copy enclosed) that the ends of justice would be met in this case, if the penalty of "censure" is imposed on Shri S.K. Singh, the Charged Officer.

4. NOW, THEREFORE, after careful consideration of the records of the case, submissions made by the charged officer together with the advice of the UPSC and the facts and circumstances of the case, the President of India has come to the conclusion that Shri S.K. Singh, Assistant Commandant, CISF be awarded the penalty of "censure". It is accordingly ordered.

5. A copy of this order is added to the Confidential Roll of Shri S.K. Singh, Assistant Commandant, CISF.

(By order and in the name of the President) Sd/-(TAJ HASSANO Deputy Inspector General (Pers.)

To

Shri S.K. Singh, Assistant Commandant: Through IG (NES), CISF, Assistant Commandant, CISF Unit, Kolkata. BVFCL, Namrup (Assam), Encls: Copy of advice of UPSC

13. It appears that the aforesaid punishment of "censure" was imposed after consultation with the Union Public Service Commission (UPSC) vide communication letter No. F.3/415/05-SI dated 30.11.2006. The UPSC, while communicating its comments and advice, made the following observations in Para 3.9 as under:

3.9 The Commission also observe that according to the CO management had to take responsibility for the filing of the FIR since they did not produce the authenticity certificate from 23.6.2003 to 26.6.2003 despite his best efforts. The

statement of Inspr. B. Lugun that the CO ordered the lodging of FIR is false. The true facts are that on 26.6.2003 at about 1715 hrs the DIG himself and later on zonal in charge ordered Inspr. Lugun to lodge FIR immediately and he did so. CO had recommended five times to DC and DIG to refer this case to the management, but nobody listened to him, and both of them used unparliamentary words to him. Therefore, Inspr. Lugun, DC and DIG were responsible for delay in lodging the FIR, not him.

14. Because of the above observations, in my considered view, the ratio in Bongaigaon Refinery (supra) as cited by the Learned Counsel for the petitioner, is applicable to the present. The petitioner alone cannot be held responsible for any omission and/or commission in filing the FIR. It is also clearly evident from the aforesaid observations that any responsible person would have no hesitation to come to a conclusion that the petitioner was unnecessarily harassed for no fault of his by way of withholding his confirmation in service and extending his probation time and again in spite of recommendations made by the Reporting and Reviewing Officers, and even by the Accepting Officer for his retention/confirmation as he was found fit and suitable in the probation period. Moreover, there was no adverse entry in the service records of the petitioner making him disqualified or unfit for being retained/confirmed in service. There is also no denial to the claim of the petitioner that he was awarded with President's medal for his distinguished service and other awards from the higher authorities for his meritorious service on various occasions.

15. Rule 25 of the Central Industrial Security Force Rules, 2001 provide for probation for every member of the Force except those appointed on deputation/absorption for a period specified in relevant column of the Recruitment Rules, which should ordinarily be kept on probation for more than twice the period prescribed in respective Recruitment Rules. The said Rules require reproduction for better appreciation of the petitioner's case:

25. Probation. - (1) Every member of the Force except those appointed on deputation/absorption, shall be on probation for the period specified in relevant column of the Recruitment Rules:

Provided that in the absence of a specific order of confirmation or a declaration of satisfactory completion of probation, a member of the Force shall be deemed to be on probation

Provided further that no member of the Force shall ordinarily be kept on probation for more than twice the period prescribed in respective Recruitment Rules.

(2) If during the period of probation, the appointing authority is of the opinion that a member of the Force is not fit for permanent appointment, the appointing authority may discharge him [or terminated the services] from the Force after issue of notice of one month or after giving one month's pay in lieu of such notice, or revert him to the rank from which he was promoted or repatriate to his

parent department, as the case may be.

(3) On successful completion of probation by a member of the Force, the appointing authority shall pass an order confirming the member of the Force in the grade in which he joined the Force.

16. The admitted position in this case is that the initial probation of the petitioner started/commenced from 1.3.2002 and it ended by 29.2.2004 as per the pleadings of the respondents. As per the second proviso to Rules 25(1), no member of the Force should ordinarily be kept on probation for more than twice the period prescribed. If this proviso is applied, the petitioner's ultimate probation period ended on 29.2.2004. During the probation period from 1.3.2004 to 28.2.2005 the appointing authority, after assessment of the performance of the petitioner, was to give opinion as to whether he was fit or unfit for permanent appointment and thereafter if he is found fit, the said authority is to pass an order confirming the petitioner's service. As has been discussed earlier on the basis of the relevant records, the petitioner was found fit by the Reporting and Reviewing Officers which were negated on one or two occasions and that too without any basis or disclosing any reason thereof. The Accepting Authority had given undue weightage on the departmental proceeding initiated against the petitioner for certain alleged misconduct, which was not attributable to petitioner individually, without considering the aspect of collective responsibility of the unit while he was posted at BSL, Bokaro and also without giving due consideration on the advice/comments of the UPSC.

17. A member of the Force, if found unfit during probation, may be discharged or terminated from service as provided under Rule 25(2). There is no provision for withholding the order of confirmation when a member of the Force has successfully completed the probation. In the present case, the probation period of the petitioner was extended as many as 4 times although he was found fit by the Reporting and Reviewing Officers including the Accepting Authority during all the extended period, of probation. The impugned action of the respondent authorities particularly respondent-Director General in extending the probation period upto 31.8.2005 vide his order dated 31.3.2005 and further extension upto 28.2.2006 is unreasonable, illegal and arbitrary, which must be quashed and set aside.

18. Rule 25 of the CISF Rules, 2001 does not provide for automatic confirmation on the expiry of probation period. It however, provides that a member of the Force must be found fit during probation and an order confirming the member of the Force is required to be passed by the appointing authority. The petitioner has been made to suffer due to whims and caprice of the respondent-Director General since he alone disagreed to accept the grading awarded by the Reporting, Reviewing and Accepting Officers, who had the occasions to observe the performance of the petitioner in the field of works and found him fit. It is surprising to note that in spite of positive opinions of the concerned officers, the respondent-Director General refused to agree with them resulting into inglorious

uncertainties in petitioner's service. The respondent authorities, by refusing to take any decision on the successful completion of petitioner's probation and passing an order of confirmation, have shown a gesture that confirmation depends on their sweet will and pleasure. So they have refrained from passing an order of confirmation as required under Rule 25(3) of the CISF Rules, 2001 and awarded the punishment of "censure" without indicating as to whether the probation period of the petitioner would be extended further after, 28.2.2006 or they would make necessary declaration to the effect that the petitioner has successfully completed his probation and his service as Asstt. Commandant would be confirmed. It is shocking to note that the respondent authorities have taken the impugned action against the petitioner by applying the archaic law of hire and fire which were prevalent in the colonial rule. The present day service rules, provide enough security to the employees in public service. The concept of probation has been devised basically to give protection to the employer to remove the employee by an easy process, if he is found to be unfit, inefficient or incompetent to hold the post during probation. In other words, the employer has the right to dispense with the service of the employee on probation if he/she is found unfit, inefficient, and unsuitable at the end of the period of probation; but the law has been changed drastically in this field. A duty has been cast upon the employer to inform the employee about his deficiency from time to time so that the employee on probation may improve himself.

19. In the present case, the respondent authorities, at no point of time, pointed out or informed the petitioner about his deficiencies. The employee should be made aware of the defect in his work and deficiency in his performance. This has been held so in *Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others*, In the said case, it was observed that the defects or deficiencies, indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. It is also observed that timely communication of the assessment of work in such cases may put the employee on the right track and if no such communication is made to the employee it would be arbitrary to give a movement order to the employee on the ground of unsuitability. In *Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others*, the Apex Court held that it is the duty of the employer to inform the employee about his deficiencies from time to time so that the employee may improve himself.

20. Admittedly, in the present case, no such deficiencies or defects in respect of the petitioner has been recorded either in the annual confidential report or in the probation reports as discussed earlier. In the prescribed form for probation reports there are as many as 6(six) areas like (1) mental capacity; (2) works/habit/attitude; (3) stability; (4) ability to get along; (5) ability to manage; and (6) physical fitness. The Reporting officer in all the probation reports in respect of the petitioner, commented that he meets all the requirements of the job and, therefore, there was no occasion to point out or inform him about any deficiencies. With such probation reports, in my considered view, the respondent authorities would not have any ground for not passing any order declaring

successful completion of the probation and not passing an order confirming his service. By the impugned action of the respondent authorities, it has been shown that non-confirmation of the petitioner's probation is actuated by the so-called charge of misconduct against him for filing the FIR. In my considered view, it has got no relation with the fitness and suitability of the employee on probation. If an employee on probation is found meeting all the requirements of job and no defect or deficiency is found in his performance, he cannot be declared as unfit for confirmation. If he is found fit, the employer cannot withhold the order confirming his probation. The allegation of misconduct cannot stand on the way of passing any order for confirmation of service, if no deficiency or defect is found in the performance of the employee during probation. It is a contradiction in the stand of the respondent authorities to say that the petitioner is found fit during probation but found unsuitable for confirmation in service. It is also a contradiction in the stand of the respondent authorities to say that the petitioner is fit for the job as found during probation and withholding his confirmation for alleged commission of misconduct. The respondent authorities are suffering from indecision as they could not make up their minds, for which, the petitioner has been made to suffer. Even if the alleged misconduct is taken into account, it has already found that the petitioner alone can not be held responsible for the same and cannot not be punished.

21. On examination of the entire service records particularly, the probation reports, I have no doubt in my mind that the petitioner could meet all the requirements of job and there was no defect or deficiency in his performance in any area except the alleged misconduct which has got nothing to do with the fitness or suitability of the petitioner for confirming his service as Assistant Commandant. The respondent authorities are bound to pass an appropriate order confirming the petitioners in the post of Assistant Commandant as he had successfully completed the probation. This petition, therefore, must succeed. The impugned decisions of the so-called Internal Screening Committee at the CISF Headquarters in its meetings held on 6.8.2004, 17.9.2004, 26.5.2005 and 31.10.2005 (which are not available in the records produced) for extension of period of probation of the petitioner; and consequential impugned orders dated 6.8.2004 (Annexure 13), 17.9.2004 (Annexure 17), 27.5.2005 (Annexure 29) and 3.11.2005 (Annexure 35) stand quashed and set aside. It is directed that the respondent authorities shall pass appropriate order declaring that the petitioner has successfully completed probation and confirming him in service in the grade of Assistant Commandant as provided under Rule 25 of the CISF Rules, 2001.

22. With the above observations and directions, this writ petition stands allowed. There shall be no order as to costs.