
(2013) 04 CAL CK 0019
In the Calcutta High Court
Case No : W.P.S.T. No. 91 of 2006

Sirajul Haque Mondal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

Citation : (2013) 3 CHN 243

Hon'ble Judges : Nishita Mhatre, J; Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Zafirul Islam, for the Appellant; Joytosh Majumder and Pinaki Dhole, for the Respondent

Judgement

Anindita Roy Saraswati, J.—The challenge in this petition is to the decision of the West Bengal State Administrative Tribunal, Calcutta Bench in OA No. 1363 of 1997. The petitioner was appointed as Sepoy on Calcutta Police and joined the service on 25-01-1988. The Dy. Commissioner of Police issued a charge sheet against the petitioner on basis of the materials on record on 11-08-1995 along with a statement of allegation, alleging therein that after completion of his training he failed to prove himself fit for confirmation. Though, he was given two chances to fit for confirmation as per Regulation 51(3), chapter XV of P.R.C. The petitioner was provisionally discharged by the Order of Dy. Commissioner on 17-03-1997. The Joint Commissioner of Police affirmed the Order and discharged the petitioner from service. Then the petitioner preferred an application u/s 19 of the Administrative Tribunals Act, 1985, which was also dismissed by the said tribunal.

2. The application, however, has been opposed by the respondent authority by filing a reply, before the West Bengal State Tribunal denying all the materials allegations of the petitioner. It has been contented on behalf of the respondents that the petitioner was a habitual absentee from duties and he was thoroughly in disciplined in his conduct and his service record will clearly indicate that he never cared for obeying the Rules and regulations and the promises that was given by

him to the concerned authority, and upon establishing the in disciplined conduct of the petitioner, and that he also failed to qualify himself for confirmation, he was discharged from the service in terms of Regulation 51(3), of chapter XV of P.R.C.

3. However, in the instant case the petitioner has challenged the Order of discharged passed by the D.C. Head Quarter and the appellate Order subsequently confirmed by the Joint Commissioner of Police and also the Order of West Bengal State Administrative Tribunals by which his application u/s 19 of Administrative Tribunals Act was dismissed.

4. Learned Advocate for the petitioner by referring the provision of West Bengal service Rules 1979, specially, with reference to Rule 5(1) submitted that since the petitioner rendered service uninterruptedly since 1988, so it will be deemed that by working for more than 8 years, he will be treated as confirmed and as such the Order of discharge of the petitioner in terms of Regulation 51(3), chapter XV of P.R.C. is quite illegal. He also cited a case i.e. Madhusudan Chawdhury vs. State of West Bengal and Ors. reported in 2006 (1) CLJ (Cal) and submitted that misconduct of remaining absence from duty without permission of the concerned authority cannot be treated as major offence. As such the dismissal from service for the aforesaid offence is not proper.

5. Learned Advocate for the respondent, on the contrary, submitted that the petitioner being a member of the police force, their probation, confirmation etc. are guided by the regulation of the P.R.C. and precisely Regulation 51(3) of chapter XV of P.R.C. is applicable in the instant case and not the provisions of Service Rules, 1979.

6. It is quite admitted position that Constables and Sepoys shall remain probation for 2 years exclusive of the period spent in training at the Police Training College or School. The terms of Regulation 51(1), Sub-regulation (2) of the aforesaid regulation authorises, the Dy. Commissioner of Police, Head Quarter to confirm the probationer on the completion of the period of probation. Sub-regulation (3) of Regulation 51 authorises the confirming authority to extend the period of probation of any such probationer for a period not exceeding one year or discharge him from service.

7. It is quite settled position of law that a probationer cannot automatically acquire the status of a permanent member of his service, unless the Rules under which he is appointed expressly provided for. Learned Advocate for the respondent refers the cases i.e (1997) 10 SCC 682 State of UP and Ors. v. Rajendra Kumar Singh and Anr. and also a case i.e Jai Kishan Vs. Commissioner of Police and another, in support of his contention.

8. However, it appears to us, from the findings of the proceeding drawn up against the petitioner, that since his induction to the service in the year 1988 he has incurred 51-punishments upto 11-08-1995, for flouting various govt. Rules and regulations. It is also on record that during the pendency of the proceeding

against him, he has further incurred punishment for 9 times and accordingly the Joint Commissioner of Police confirmed the Order of discharge dated 30-05-1997 with an observation that the charged Sepoy has been found guilty of gross misconduct and dereliction of duty during the enquiry. Moreover, as per the provisions laid down in Regulation 51(3), Chapter XV of P.R.C. a Sepoy who is found unsuitable for confirmation even after extension of the period of his probation for one year is liable to be discharged.

9. In the present case, the petitioner had absented himself in unauthorized manner for 51 + 9 times during his entire service of 8 years for which he was punished. In this case the petitioner failed to improve his performance in the service in spite of given chance. Since, it was found that there was no satisfactory improvement, his probation was terminated and he was removed from his service as probationer by the competent authority.

10. Though the petitioner claimed that after completing the period of probation and by working for more than 8 years he will be treated as confirmed automatically, but, the fact remains that, simply by completing a period of probation an employee cannot have claim to be a permanent member of his service. Until and unless his service record is taken into consideration and a positive decision is taken by the appointing authority for making him permanent.

11. Under such circumstances, we hold that there is no scope to interfere with the observation of the tribunal rejecting thereby the application filed by the petitioner, The present petition is accordingly dismissed. Urgent certified photocopies of this Order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Nishita Mhatre, J.

I agree.