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**(2010) 04 OHC CK 0009**

**In the Orissa High Court**

Sri Ranjan Kumar Panda APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 19-04-2010

**Acts Referred:**
Penal Code, 1860 (IPC) — Section 325

**Citation :** (2010) 110 CLT 278

**Hon'ble Judges :** S.K. Mishra, J;A.S. Naidu, J

**Bench :** Division Bench

# Judgement

A.S. Naidu, J.—Petitioner seeks to assail the Order Dated 5.5.1999 passed by the Principal, Railway Protection Force (for short "RPF") Training School, Khargpur (Annexure-5) discharging him from training on the ground that, on verification, his character & antecedent was found to be not satisfactory, as well as the Order Dated 1.12.1999 (Annexure-6) calling upon the Petitioner to refund a sum of Rs 4,721 received by him towards stipend during the training period.

2. Bereft of unnecessary details, the short facts leading to filing of the Writ application are as follows:

In pursuant to an advertisement issued in the year 1996 by the Railway Administration, for filling up the posts of Constables in RPF, the Petitioner submitted his application on 16.12.1996. He was directed to appear provisionally in the physical test on 17.8.998, viva-voce test on 13.10.1998 & medical test on 17.12.1998. Having been found eligible he was selected as a recruit for appointment as Constable in the RPF & was appointed by Order Dated 19.2.1999. After such appointment the Petitioner was directed to attend the training at Khargpur w.e.f. 8.3.1999. Petitioner complied with the orders & reported at Khargpur & took part in the rigorous training course.

3. While matter stood thus, it is alleged, without any rhyme or reason on 3.12.1999 he was communicated by Order Dated 1.12.1999 that he has been discharged from training on the ground that he was found not suitable for the

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post in question & was further directed to refund the amount which was paid to him towards stipend during his training period. Being aggrieved, the Petitioner has approached this Court mainly on the ground that the order of discharge having been passed without according any opportunity of hearing & by assigning stigma to the Petitioner, the same is unjust, illegal & may beset aside.

4. After receiving notice, a counter affidavit has been filed by the Opp. Parties. Most of the factual aspects are admitted, but then, it is averred that the Petitioner had furnished wrong information in the forms submitted by him. He had also executed an agreement certifying that he possessed a good moral character & was not involved in any criminal antecedent. However, in course of police verification, it was found that the Petitioner was an accused in G.R. Case N.o.1021/1995 of the Court of J.M.S.C., Bhadrak & was found guilty u/s 325 I.P.C. & was released under Probation of Offenders Act by executing a bond for Rs.1,000. On coming to know about such fact, the authorities came to the conclusion that as the Petitioner did not possess good character & had criminal antecedent, he was not suitable for being appointed as a constable in the RPF. Consequently he was disengaged from training & was directed to refund the entire amount received towards his stipend. It is further contended that as the Petitioner was not appointed, no right had accrued upon him.

5. In course of hearing, Mr. Mishra, Learned Counsel for the Petitioner, relying upon several Judgments of the Supreme Court, submitted that on the basis of the selection & appointment a right had accrued upon the Petitioner & such right should not be taken away without according adequate opportunity to the Petitioner to show cause, more so because the authorities have cast stigma upon the Petitioner..

6. Mr. Patnaik, Learned Counsel for the Opp. Parties, on the other hand, forcefully submitted that in fact the Petitioner was not appointed, he was only provisionally selected & was called upon to attend training & as such no right had accrued upon him. According to Mr. Patnaik, permitting the Petitioner to take training, pending verification of his charter & antecedent did not vest any right upon him. After verification, the authorities came to know that the Petitioner was involved in a criminal case & was convicted & arrived at a conclusion that he was not fit to be appointed as a constable in the RPF. Thus, no infirmity or illegality has been committed.

7. We have heard, Learned Counsel for the parties at length, perused the pleadings & other materials annexed thereto meticulously. By letter dated 19.2.1999 (Annexuree-3) the Divisional Security Commissioner, Khurda, intimated the Petitioner that he had been enlisted to undergo initial course training before posting as Constable in RPF. Perusal of the said letter gives an impression that the Petitioner had faced rigorous recruitment test, found medically fit & thereafter was selected for being appointed as a Constable. Before posting as a Constable he was directed to under go training. Thus, the selection process had come to an end & the Petitioner having been found fit was

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appointed, but then his posting as Constable was deferred till the training period is over. Thus, we find some force in the submissions made by Mr. Mishra that the Petitioner was in fact selected & appointed & by such appointment a right had accrued upon him. The only ground on which the Petitioner has been disengaged from training is that, on verification it was found that the Petitioner was involved in a criminal case i.e. G.R. Case No. 1021/1995 & was convicted for commission of offence u/s 325 I.P.C. However, he was released under the Probation of Offence''s Act. In the rejoinder affidavit, it is averred by the Petitioner ,that the order of conviction passed in G.R. Case No. 1021/1995 was assailed in appeal in the Court of Addl. Sessions Judge, Bhadrak. The said appeal was allowed. Thus, the order of conviction was set aside. The said statement has not been disputed by the Opp. Parties, thus is accepted, applying the principles of non-traverse.

8. Thus the reasonings basing upon which the Petitioner was disengaged are also found to be not correct, as the order of conviction has been set aside by the Appellate Court. Only because some allegations were made against a person, he cannot be found unsuitable, unless of course the allegations are proved & the person is convicted. In the case at hand, the Petitioner was acquitted by the Appellate Court. The said aspect was not considered by the authorities. This Court, therefore, feels that the decision to disengage the Petitioner was taken in a haste & without proper application of mind & thus was not just & proper.

Even otherwise a right had accrued upon the Petitioner by virtue of the selection & appointment. Such right could not have been taken may without following the principles of natural justice & equity. In the case at hand, certain allegations were received with regard to the Petitioner''s past antecedent, but then no opportunity was given to him to explain the same (See Smt. Menaka Gandhi v. Union of India). It is needless to say that if opportunity would have been granted to the Petitioner, he would have brought to the notice of the authorities that the allegations were baseless & that the order of conviction was set aside by the Appellate Court.

9. In view of the aforesaid facts & circumstances & infirmities, this Court feels that the order of disengagement of the Petitioner from the training was passed without observing required paraphernalia & without granting any opportunity to the Petitioner to show cause with regard to the allegations leveled against him. Thus, this Court has no hesitation to set aside Annexures-5 & 6 & dispose of the Writ application with an observation that the authority shall issue notice to the Petitioner, calling upon him to show cause & after causing enquiry, pass necessary orders strictly in accordance with law.

S.K. Mishra, J.

10. I agree.

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