

(2006) 04 SC CK 0099

In the Supreme Court Of India

Case No : Civil Appeal No. 2172 of 2006

State of West Bengal and Others

APPELLANT

Vs

Tapas Roy

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Recruitment Rules for Constables, 1992 — Rule 10

Citation : (2007) 113 FLR 459 : (2006) 6 SCC 453 : (2006) SCC(L&S) 1408

Hon'ble Judges : Ruma Pal, J; Markandey Katju, J; C. K. Thakker, J

Bench : Full Bench

Final Decision : Allowed

Judgement

1. The appellants have challenged an order passed by the High Court by which it had set aside the order discharging the respondent from probationary service under the appellants.

The respondent was appointed in 1992 as a temporary constable and was kept on probation. He was sent for training to the training centre where he absented himself on several occasions. On the ground that he had absented himself unauthorisedly on fourteen different occasions from the training centre, an order of discharge was passed on 5 November, 1993, under Rule 10 of the Recruitment Rules for Constables, 1992 (for short the Rules) discharging him from service with the appellants.

2. Impugning the order of discharge, the respondent approached the State Administrative Tribunal (for short the Tribunal). The Tribunal rejected the application, the respondent then approached the High Court under Article 226 of the Constitution of India.

3. The High Court allowed the writ petition holding that Rule 10 of the Rules did not apply in the facts of the case. It was also of the view that the statement, quoted below; in the order of discharge casts a stigma on the respondent. Since

no opportunity of hearing had been granted to the respondent, therefore, the order could not be sustained. The decision of the Tribunal was, accordingly, set aside and the appellants were given liberty to take appropriate action against the respondent on the same grounds in accordance with law.

4. The particular passage from the order of discharge which the High Court found to be stigmatic reads as follows:

I am convinced that he is not likely to make an efficient constable and is unsuitable for the Police Department. His frequent unauthorised absence from training centre also indicates his lack of interest in training and his scant respect for discipline.

5. In our view, the High Court has erred in interfering with the decision of the Tribunal. It misconstrued the provisions of Rule 10 of the Rules. The Rule provides that,

10. A constable, while undergoing training in the Police Training College or undergoing probation in the district/unit, may at any time be discharged by the Principal, Police Training College or by the Superintendent/ Commandant, as the case may be, if he is considered by them to be unsuitable for the post, but the order of discharge shall not be given effect to till it has been submitted to and confirmed by the next higher authority.

The order of discharge shall intimate the grounds for the discharge but no formal proceedings, such as are prescribed for the removal or dismissal of Government servants, shall be necessary. No appeal shall lie against the order of discharge.

The Rule was not the subject-matter of challenge before the High Court. It specifically requires that the order of discharge should intimate the grounds for discharge. It also mandates that the order of discharge, provided it was procedurally valid, would not require any formal proceedings to be drawn up before it is passed.

6. The order of discharge has, as we have already indicated, set out several instances of the respondent absenting himself unauthorisedly from the training centre. These facts have been relied upon for the purpose of concluding that the respondent was not interested in the training and had no respect for discipline. This conclusion was a ground for holding that the respondent was unsuitable for the Police Department.

7. The High Court was of the view that Rule 10 of the Rules did not apply to orders which were stigmatic. As has already been held by this Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, that in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. We have also held that a stigma in the

wider sense of the word is implicit in every order of termination during probation. It is only when there is something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. In our view, the Tanguage quoted earlier in the discharge order, cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the respondent nor was there an inquiry as such preceding the order of discharge. The order has been passed strictly in terms of Rule 10 of the Rules. We are, accordingly, of the view that the appeal must be allowed. It is, accordingly, allowed and the impugned order is set aside.

There shall be no order as to costs.