

(2016) 02 OHC CK 0040

ORISSA HIGH COURT

Case No: W.P.(C) No. 16105 of 2005

Satya Ranjan Pattanaik

APPELLANT

Vs

Director General of Police and
Others

RESPONDENT

Date of Decision: Feb. 4, 2016

Acts Referred:

- Constitution of India, 1950 - Article 311(2)
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 2, Section 4, Section 47, Section 5

Hon'ble Judges: S.N. Prasad, J.

Bench: Single Bench

Advocate: Kali Prasad Mishra, S. Mohapatra and C. Mallick, for the Appellant; S.K. Singh, Siva Mohanty and Debendra Kumar Sahoo-I, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Prasad, J.

1. Order passed by the Additional Deputy Inspector General dated 7.5.2002 (Annexure-3) by which petitioner has been terminated from service is before this Court.

2. Brief facts of the case, as has been pleaded by the petitioner in the writ petition, is that he had been recruited as Constable under the administrative controller of the opposite party No. 2 on 16.3.2001 after following all due procedure of appointment. The petitioner had been posted at Group Centre, Bhopal under the administrative control of the opposite party No. 5 and started discharging his duty. While the petitioner was on duty and was playing Volleyball he sustained injury by which his leg has fractured, immediately admitted in the Department/Campus hospital and thereafter he was referred to private hospital for his treatment and due to that reason he could not be able to resume his duty and as such he received notice from

the opposite party No. 5 for termination of his service after completion of one month of receipt of such notice.

Petitioner has approached before the authorities to know about the reason of issuing such notice but no reason whatsoever was assigned and petitioner was terminated w.e.f. 7.5.2002 (Annexure-3).

3. Order of Termination has been passed in exercise of power conferred under the provision of Rule 5(1) of Central Civil Services (Temporary Service) Rules, 1965, hereinafter referred to as "the Rules, 1965", but according to the petitioner there is no sufficient compliance of the provision as contained in Rule 5(1) of the Rules, 1965 since one month salary of notice period was not made to the petitioner and thereafter when petitioner has represented before the opposite party No. 5 stating therein that he has been terminated from service without giving one month salary hence the order of termination is not in consonance with the provision as contained in Rule 5(1) of the Rules, 1965 then the salary for one month was paid to him on 5.11.2003.

Petitioner has taken ground that the authority ought not to have terminated his service without providing adequate and sufficient opportunity of being heard and since he was appointed in a substantive post, hence he was required to be provided with adequate and sufficient opportunity of being heard.

Another ground has been taken that although not pleaded in the writ petition since the petitioner has sustained injury and for that he has to undergo medical treatment in the hospital of the Central Reserve Police Force and as such he became disabled hence he ought to have given benefit of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Learned counsel for the petitioner has relied upon unreported judgment of the Patna High Court in the case of Kanhaiya Ram -vs- The Union of India & ors passed in Civil Writ Jurisdiction Case No. 7540 of 2007 in support of her argument.

4. Opposite parties-Central Reserve Police Force has put appearance and filed detail counter affidavit, inter alia, stating therein that the petitioner after having joined duty had deserted from lines on 9.12.2001 but reported back at his own on 19.12.2001 however by taking lenient view he was allowed to continue the training by the competent authority but he again deserted on 9.3.2001 and as such after having considered him unlikely to be disciplined member of the Force hence under the provision of sub-rule (1) of Rule 5 of the Rules, 1965 his service was termination w.e.f. 7.5.2002.

Further contention is that prior to invoking power conferred under Rule 5(1) of the Rules, 1965 one month notice was given on 8.4.2002 (Annexure-2) and thereafter one month salary has been given on 5.11.2003 (Annexure-4). It has been stated that

the petitioner, time and again without any leave, has left duty even during course of probation and as such it was thought by the competent authority that the petitioner is not fit to hold the post of Constable and he is not fit to be a member of the disciplined Force. It has been stated that CRPF is known for its secular outlook and national character and this is the reason that enrolled members are required to go for training course across the country so that one or the other member of the disciplined Force be posted at any where across the country, but petitioner has failed to get basic training and hence he was not fit to retain as member of the disciplined Force and as such he was terminated from service.

It has been stated that the petitioner has filed appeal but the appeal since been filed after period of three months from the date of termination without giving any justification or reason of delay, hence appeal was rejected being barred by limitation.

5. Heard learned counsel for the parties and perused the documents on record.

6. Before considering the rival submission of the parties, it is relevant to see the statement of objectives of constituting Central Reserve Police Force. It is to aid the Indian States in the maintenance of law and order in times of emergency, the Crown Representative's Police Force was raised as a reserve force. Under the Foreign (Jurisdiction) Order, 1937 the Crown Representative's Police Force Law, 1939 was made to provide for the constitution and regular of the Crown Representative's Police Force. The said law of 1939 ceased to have effect when India gained independence on 15th August, 1947. But the Crown Representative's Police Force was retained as the Central Reserve Police Force. To replace the old Crown Representative's Police Force Law, 1939, and to provide for the organization, control and regulation of the Central Reserve Police Force by the Central Government, the Central Reserve Police Force Bill was introduced in the Parliament and accordingly the Central Reserve Police Force Act, 1949 has come into force w.e.f. 28.12.1949.

Thus the foremost purpose for creation of Central Reserve Police Force is to maintain internal security of country. The petitioner being a candidate for consideration of his candidature has applied for being appointed as Constable in which he has been declared successful after going through the selection process and he has been engaged as Constable under the Central Reserve Police Force on 16.3.2001. The terms of appointment of the petitioner was very clear that he has to undergo two years as probation period. As per requirement petitioner was sent for training. Petitioner had absented himself from training from 9.12.2001 to 18.12.2001 but reported on duty on 19.12.2001. Opposite parties, taking lenient view, had allowed the petitioner to continue training but he again deserted and absented himself from 9.3.2002 and as such by invoking provision of Rule 5(1) of the Rules, 1965 one notice was issued on 8.4.2002 and thereafter he has been terminated from service immediately after completion of one month notice period, i.e. w.e.f. 7.5.2002, said order is under challenge.

7. Petitioner has assailed the order of termination-

(i) Firstly that there is no sufficient compliance of the provision of Rule 5(1) of the Rules, 1965 since one month salary as required under the provision as contained in Rule 5(1) has not been paid to the petitioner along with the notice or even along with the order of termination.

In order to appreciate the argument it would be relevant to rely upon the provision of Rule 5 of the Rules, 1965 which is quoted hereinbelow:

"5. Termination of temporary service.

(1)(a) The services of a temporary Government servant 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 to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services 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.

NOTE:- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a).

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post, acknowledgement due at the address of the Government servant available with the appointing authority.

(iii) If the notice sent by registered post is returned unserved it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

(2)(a) Where a notice is given by the appointing authority terminating the services of a temporary Government servant, or where the service of any such Government servant is terminated on the expiry of the period of such notice or forthwith the Central Government or any other authority specified by the Central Government in this behalf or a head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, reopen the case and after making such inquiry as it deems fit-

(i) confirm the action taken by the appointing authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper.

Provided that except in special circumstances, which should be recorded in writing, no case shall be re-opened under this sub-rule after the expiry of three months-

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule (2) the order of reinstatement shall specify-

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes."

From perusal of statutory provision it is evident that service of a temporary government servant shall be liable to termination at any time by a notice in writing and the period of such notice shall be one month provided that 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 then 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.

From perusal of the said provision it is not reflected that the order of termination, one month notice and disbursement of one month salary would be by way of same transaction, rather order of termination will be followed by one month notice, government servant has been made entitled to claim a sum equivalent to the amount of his pay plus allowances for one month period, hence provision does not stipulates that all these three things will be by way of same transaction.

It is specific case of the petitioner, as has been pleaded in the writ petition, that when one month salary has not been paid to the petitioner, he made a representation before the opposite party No. 5 to release one month salary and thereafter one month salary has been disbursed on 5.11.2003.

Thus the basic requirement of the statute is that government servant shall be entitled to claim which stipulates that release of one month salary is not by way of same transaction and as per his claim one month salary which has been released on 5.11.2003 vide Annexure-4.

In view of this, contention of the learned counsel for the petitioner cannot be accepted that the order of termination under Rule 5(1) of the Rules, 1965 is not in consonance with the Statute rather from the facts narrated above the action is held to be in consonance with Rule 5(1) of the Rules, 1965.

(ii) Secondly it has been contended by learned counsel for the petitioner that the petitioner ought to have provided all opportunity of being heard before passing order of termination as because he was medically ill due to injury sustained by him in course of playing Volleyball in the training and he was provided treatment at Campus hospital, Bhopal and subsequently for getting expertise treatment he was advised to go in private nursing home and that is the reason of not attending the duty.

Petitioner has not annexed any document in support to substantiate his argument regarding the fact that he has ever been referred for expertise treatment in the private nursing home by the CRPF Hospital, Bhopal and in absence of any document, this argument cannot be accepted by this Court to be a valid reason for his absence in duty, moreover the petitioner has also not communicated any letter to the authorities of the CRPF to show his bonafide since nothing has been stated or any document has been annexed in this writ petition in this regard, rather in the counter affidavit specific plea has been taken that while on training he was absented from 9.12.2001 but reported back on 19.12.2001 since this was the first instance which according to the opposite parties was also serious mistake for probationer who wants to be a member of disciplined Force but taking lenient view he was allowed to continue training but again on 9.3.2002 he has absented himself from training. Thus from the specific stand taken by the opposite parties-CRPF it is evident that petitioner has absented himself twice from the training since it is the mandatory requirement for being member of disciplined Force. Opposite parties have been provided with power as contained in Rule 5 of the Rules, 1965 and under Rule 16 of the Central Reserve Police Force Rules, 1955 wherein it has been provided "Period of Service.--

(a) All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three months' notice in accordance with the said rules, as amended from time to time.

(b) Should the Central Government decide at any time to disband the Force or any part of it either before termination of the period for which a member of the Force is enrolled or at any time thereafter, he shall be liable to discharge, without compensation from the date of disbandment.

(c) No member of the Force shall withdraw from the duties of his office without the express permission of the Commandant or an accredited gazetted officer.

(d) The appointing authority may, during the period of initial appointment of a member of the Force appointed under [section 4 and 5] of the Act, permit him, for good and sufficient reason, to resign from the Force with effect from such date as may be specified in the order accepting his resignation: Provided that on the acceptance of his resignation any such member of the Force shall be required to refund to the Government all the cost of training imparted to him in the Force or a sum equal to three months' pay and allowances, received by him prior to the date of his resignation whichever is less. Explanation.--(1) For the purpose of this sub-clause "during the period of initial appointment" shall mean the period before a member of the Force is declared quasi-permanent.

(2) The appointing authority may refuse to permit a member of the Force to resign if any emergency has been declared in the country either due to internal disturbances or external aggression.

(e) The appointing authority may give substantive status to such members of the Force as are found suitable in all respect."

Thus the provision of Rules 1965 has been made part and parcel of CRPF Rules, 1955.

Hence the authorities of the CRPF after taking into consideration these powers have issued one month notice for termination of the petitioner from service and immediately after completion of period of one month petitioner was termination from service on 7.5.2003.

Petitioner is raising a question that he has not been provided opportunity of being heard but it is settled that in case of termination simpliciter a probationer cannot be held to get protection as has been enshrined under Article 311(2) of the Constitution of India and from perusal of the order of termination (Annexure-2) it is evident that that the order of termination is simpliciter.

Thus the order of termination being simpliciter and not punitive or stigmatic hence the petitioner cannot be held to get protection as has been provided under Article 311(2) of the Constitution of India rather he was to be dealt with the provision as contained in Temporary Service Rules, 1965 read with Rule 16 of the CRPF Rules, 1955. Accordingly, contention of the petitioner regarding providing adequate and sufficient opportunity before order of termination is hereby rejected.

(iii) Thirdly the contention which was taken by the learned counsel for the petitioner is that since he was injured, as such he should be given protection under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

In order to appreciate this argument it is necessary to see the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Rules 1996 respectively. It is relevant to see provision as contained in Rule 4 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules 1996 Rules, 1996, same relates to power of issuance of disability certificate which is being quoted hereinbelow for ready reference.

"Issue of disability certificate - (1) On receipt of an application under rule 3, the medical authority shall, after satisfying himself that the applicant is a person with disability as defined in sub-clause (t) of section 2 of the Act, issue a disability certificate in his favour in Form II, Form III or Form IV as applicable.

(2) The certificate shall be issued as far as possible, within a week from the date of receipt of the application by the medical authority, but in any case, not later than one month from such date.

(3) The medical authority shall, after due examination,

(i) give a permanent disability certificate in cases where there are no chances of variation, over time, in the degree of disability, and

(ii) shall indicate the period of validity in the certificate, in cases where there is any chance of variation, over time, in the degree of disability.

(4) If an applicant is found ineligible for issue of disability certificate; the medical authority shall explain to him the reasons for rejection his application, and shall also convey the reasons to him in Writing.

(5) A copy of every disability certificate issued under these rules by a medical authority other than the Chief Medical Officer shall be simultaneously sent by such medical authority to the Chief Medical Officer of the District."

8. Thus it is evident that for getting benefit of the Act, 1995 one has to come with specific certificate having been issued by the medical authorities but no such medical certificate regarding disability of the petitioner has been enclosed with the writ petition.

Petitioner has claimed to get benefit of provision as contained in Section 47 of the Act, 1955 because it stipulates which is being quoted hereinbelow for ready reference.

"Non-discrimination in Government Employment - (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

9. Thus from perusal of Section 47 of the Act, 1955 it is evident that there shall not be any discrimination in Government employments on the ground of acquiring disability of an employee in course of his service provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits, but for getting benefit of Section 47 of the Act, 1955 it is the foremost condition that the employee has to acquire disability during his service and to that effect disability certificate to be produced after obtaining it under Rule 4 of the Rules, 1996 but no such document had been produced, hence no benefit can be given to the petitioner under the provisions as contained in section 47 of the Act, 1995.

However, no such pleading has been made regarding this ground in the writ petition but since learned counsel for the petitioner has taken this ground in course of argument and as such same has been dealt with and has accordingly been answered.

10. From the facts it is evident that the petitioner has sustained injury but in absence of any disability certificate having been obtained from the competent authority as required under the provisions of Rules, 1996, hence the petitioner having not with disability certificate he cannot claim any benefit of disability by getting provisions under Section 47 of the Act, 1955, hence this plea of the petitioner is rejected.

11. As has been stated in the very first paragraph regarding objectives of creation of Central Reserve Police Force which is for maintaining internal security of the country and for that members of the force must be of disciplined member otherwise the very purpose for which it has been constituted would be frustrated.

Admittedly petitioner was engaged for becoming a member of the disciplined Force but in course of training itself he after few days absented from training for period of 10 days and thereafter reported on duty but again absented himself from duty without any information to the authorities, hence it cannot be said to fit to hold the post of member of disciplined Force and as such the authority after taking into consideration the provisions of the central Civil Services (Temporary Service) Rules, 1965 has passed order of termination of service which is purely simpliciter in nature.

12. In view thereof, I do not find any reason to interfere with the order of termination.

Accordingly, the writ petition is dismissed being devoid of merit.