

Lakhveer Singh Vs Union of India

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 18, 2013

Citation: (2014) 2 SCT 804

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Judgement

Rajiv Narain Raina, J.

The petitioner competed for direct recruitment to the post of Constable (General Duty) in the Indo-Tibetan Border

Police Force (ITBP). He qualified the examination conducted by the Staff Selection Commission (NWR), Chandigarh. He was called for detailed

medical examination vide letter dated 6th August, 2011. He cleared the medical examination. He was enrolled on 3 rd November, 2012, taken on

duty and was put on probation. He was then sent to training/duty and posted at Recruit Training Centre, Shivagangai, Village Illupaikudi, PO

Padamathur, District Shivagangai, Tamil Nadu. He claims that he fell sick on 23rd March, 2013. He claims that he was treated there but his illness

persisted. He says that he requested the respondent authorities to grant him leave for treatment but his prayer was declined. No material particulars

have been pleaded in the petition or documents produced for this Court to know what exactly happened to the petitioner after 23 rd March, 2013.

It is his say that he left the unit with intimation to the officer concerned. No evidence to establish this fact has been placed on record. The

explanation remains only his bald statement. He admits that he returned to his village in Bathinda to get treatment for typhoid and back pain and

remained admitted according to him in Mittal Private Hospital, Bathinda. During his absence, he was visited with a notice dated 29th April, 2013

issued by the Commandant, 45th Battalion, ITBP, Idayapatti Camp, PO Amur South, District Madurai, Tamil Nadu respondent No. 3 vide office

memo No. 2095 dated 11th April, 2013 and 2323-24 dated 25th April, 2013 which both were letters calling him to join duty forthwith, failing

which, his services would be terminated. A third notice was issued on 29th April, 2013 again asking him to report for duty, despite his failure to do

so on two prior notices. He did not respond to the show cause notices. He, however, admits receipt of notice dated 29th April, 2013 which he

says ""shocked"" him. The petitioner pleads that he was still undergoing treatment. He was thus unable to attend duty. Accordingly, he sent a written

request to grant him leave of a month as he was still unwell. If he sent such request, then no evidence of the same has been placed on record by

way of a copy of such letter or its date of making or mailing. The Commandant, 45th Battalion, ITBP acting as the appointing authority/disciplinary

authority of Constables (GD) passed an order dated 21st May, 2013 terminating the services of the petitioner thereby discharging him from service

by invoking the provisions of rule 14 of the Indo-Tibetan Border Police Force Rules, 1994 with effect from 23rd March, 2013, the date when he

absented from work without intimation or leave sanctioned. His name was struck off the rolls. This order has been passed during the period of

probation. The petitioner has before this Court in this petition filed under Article 226 of the Constitution impugned the termination order.

2. Thereafter, on 17th September, 2013, the petitioner made a representation explaining his absence on account of typhoid and back pain, for

which ailments he was admitted for treatment in a private hospital in Bathinda. He states in the representation that after treatment he returned to the

camp on 11th July, 2013 but the adjutant denied his re-joining. He relied on medical documents which have not been produced on the record of

this case. It is only pleaded that the same can be shown at the time of arguments, if need be. He requested an interview with the ""DG"" through the

letter dated 17th September, 2013.

3. Learned counsel for the petitioner relies on numerous decisions of this Court in State of Punjab v. Parkash Chand Constable, 1992(1) SLR 174

: 1996(4) SC 762, Om Parkash v. State of Haryana, 1995(3) S.C.T. 170:1994(2) RSJ 791 (DB), Mahi Pal v. State of Haryana, 1995(3) SCT

170, State of Haryana thr. Collector, Hissar Vs. Lakhan Lal, , State of Haryana v. Laxman Singh; 1991(7) SLR 799, Lakhi Ram v. Union of

India; 1989(7) SLR 365, CWP No. 15262 of 1998 decided on 1.12.1998, CWP No. 1279 of 1996 decided on 10.9.1997, CWP No. 11628

of 1995 and CWP No. 6797 of 2005 and of the Supreme Court in R. Sulochana Devi Vs. D.M. Sujatha and Others, and D.K. Yadav Vs.

J.M.A. Industries Ltd., , to contend that absence from duty is not the gravest act of misconduct justifying termination, discharge, removal or

dismissal. It is his further case that the impugned order has been passed in violation of the principles of natural justice since he was not heard before

the order was passed. He says that the respondents are enjoined to react or respond to a representation served by a person within a reasonable

time because there are two obvious advantages of such action, i.e., the person would know how and for what reasons he has been denied the

relief and the reasoned version of the State would be on judicial record before the Court for its judicial scrutiny at the very initial hearing. In this

way, the respondents have not dared either to respond to the representation or to the legal notice of the petitioner. Hence, the inaction on the part

of the respondents clearly amounts to willful disobedience of the directions issued by the Division Bench of this Court in CWP No. 4382 of 2002

decided on 21st March, 2002; Satbir Singh v. State of Haryana and others which holds that similarly situated persons should be given similar

treatment and not compelled to approach Court for relief.

4. It cannot be disputed that on 23 rd March, 2013 the petitioner returned to his village in District Bathinda without prior intimation since no proof

of the same has been placed on record. The petitioner does not deny receipt of notices dated 11th April, 2013 and 25th April, 2013 mentioned in

the 3 rd notice dated 29th April, 2013 since he has not denied the receipt of the notice in the pleadings presented before this Court. If he had

notice of the serious consequences of his absence on 11th April, 2013, then he still remained willfully absent till 11th July, 2013 when he asserts he

returned to the unit at Madurai but was denied joining duty notwithstanding that his services stood terminated on 21st May, 2013 during probation.

The petitioner also does not disclose the date of receipt of the termination order dated 21st May, 2013 from which one could call upon him to

disclose what he did either till 11th July, 2013 taking that pleadings to be true or up till 17th September, 2013 when he requested for an interview

with the ""DG"" which I presume is the Director General, ITBP. It has also not been disclosed in the petition that he suffered from Typhoid and back

pain and that condition could not be treated in the ITBP Hospital or Government Hospital at the place of training in South India.

5. In the facts and circumstances of this case, it may not be unreasonable to hold that the petitioner had abandoned service from 23rd March,

2013 only to approach this Court for a preliminary hearing on 18th December, 2013. He has not even cared to place his medical record for the

perusal of this Court to know the nature of the treatment involved, justifying exercise of equitable jurisdiction in his favour. The petition is

surrounded by darkness with no light appearing from the skeletal facts presented which are insufficient to ignite the jurisdiction of this Court and to

call upon the respondents to answer the question of violation of the principles of natural justice. It is well to remember that the petitioner was a

member of a paramilitary force albeit on probation and the highest standards of conduct were expected of him. The provisions of rule 14 of the

rules was invoked against him which read as follows:-

14. Probation.- (1) A person appointed through direct recruitment as an officer, subordinate officer, or enrolled person shall be on probation for a

period of two years.

(2) The Central Government in the case of officers and the authority prescribed in rule 13 in the case of subordinate officers and enrolled persons

may, for the reasons to be recorded in writing, extend the period of probation for such further period or periods not exceeding two years or may

during the period of probation, terminate his services without assigning any reasons.

(3) The provision of sub-rules (1) and (2) shall also be applicable to a person on his-initial promotion as an officer. Persons who do not complete

the period of probation satisfactorily are liable to be reverted to their former rank.

6. In a case of abandonment of service, all that the Court is required to see is intention to work. If the intention is one of a malingerer with no real

intention to serve, then such conduct may justify a conclusion that a person has voluntarily resigned from service without actually having to say so in

writing. If he abandoned his job and deserted, then truly speaking, no order is legally required to be passed striking off the name of the petitioner

from the rolls of the ITBP force. The termination order, therefore, can well be said to have been passed as a measure of abundant caution in a case

of desertion. The judgments relied upon by the petitioner originate from Punjab Police Rules which specifically deal with the expression ""gravest

acts of misconduct"" while dealing with discharge from service or dismissal of regular police personnel and not probationers, which words and

expression are singularly missing from rule 14 of the ITBP Rules, 1994. After all, the termination order leading to the striking off the name of the

petitioner from the rolls of the force was passed after the petitioner had served no more than 4 months on probation and was under basic recruit

training. I have no reason to interfere with the impugned order dated 21st May, 2013 and would dismiss this petition. Ordered accordingly.

However, the dismissal of this writ petition would not stand in the way of the petitioner from seeking an audience before the nominee of the

Director General of Police, ITBP, New Delhi to take a last view in the matter. If such a request is made by the petitioner, I have no doubt that the

petitioner would be afforded one opportunity of hearing ex-post facto before the nominee exercising appellate power over the order of the

Commandant, 45th Battalion or as required by the rules of the Force.