Sushil Kumar Vs. Indo Tibetan Border Police Force and anr.

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Court : Madhya Pradesh

Decided On : Feb-23-1993

Reported in : (1994)IILLJ264MP; 1993(0)MPLJ419

Judge : T.N. Singh and ;K.M. Pandey, JJ.

Acts : Central Reserve Police Force Act, 1949 - Sections 5; Central Civil Service (Temporary Ser vice) Rules - Rule 5

Appeal No. : M.P. No. 1466/1989

Appellant : Sushil Kumar

Respondent : indo Tibetan Border Police Force and anr.

Advocate for Def. : N.P. Mittal, Adv.

Advocate for Pet/Ap. : Arun Mishra, Adv.

Judgement :
ORDER

T.N. Singh, J.

1. This order shall govern disposal of M.P. Nos. 1466 and 1467, both of 1989. Both petitioners have a common grievance and indeed, respondents have raised a common plea in the instant petitions claiming that they are not entitled to any relief

from this Court on the basis of a single legal contention raised in returns filed in both petitions which is forcefully and very competently pressed by Shri Mittal.

2. Petitioner Sushil Kumar of M.P. No. 1466 of 1989 was appointed under Order, Annexure P/l, dated October 26, 1988 on being selected in the test conducted for that purpose, in the post of Constable/Lineman. The other petitioner Virendra Singh of M.P. No. 1467 of 1989, it is not disputed, was appointed as a Naik/Radio Operator, vide order dated April 23, 1988. It is also not disputed that services of both petitioners under orders of appointment are to be governed by the provisions of Central Reserve Police Force Act, 1949, for short, the 'Act' and the Rules framed thereunder in 1955, for short, '1955 Rules' or the 'Rules'. Both petitioners are aggrieved as their services have been terminated, in the case of Sushil Kumar, under Order, Annexure P/3, dated November 8, 1989 and in the case of petitioner Virendra Singh, under Annexure P/l, dated October 11, 1989, extracted as (A) and (B) below:

(A) 'No. 887012883 Const/Lineman Sushil Kumar of this unit is hereby discharged from service with effect from November 8, 1989 (AN).He is SOS of this unit from November 8, 1989 (AN)'.

(B) 'In pursuance of Rule 16 of the Central Reserve Police Force Rules, 1955, the undersigned hereby gives notice to No. 887010399 NK (Radio Operator) Virendra Singh that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on him.'

3. The admitted position on facts is that both petitioners had duly rendered one year's service in the respective unit in which they were attached and as is obvious from order dated November 8, 1989, petitioner Sushil Kumar was given a marching order without any notice whatsoever. In the returns, the stand taken by the respondent is that the two petitioners are not entitled to any protection and any relief under the Constitution or the law in any manner because they had suppressed material information in the form meant for their enrolment. Interestingly and indeed, admittedly, it is not, and cannot be, disputed that both petitioners were duly 'enrolled' as contemplated under the provisions of the Act and the Rules aforesaid. In the return, at para 3, in Sushil Kumar's case, it is

stated that on verification being made of the forms, the District Magistrate, Shivpuri, reported on October 8, 1989 that on November 1, 1984, the petitioner was arrested under Sections 151/107/116(3), Criminal Procedure Code, but that fact, the petitioner did not disclose in the enrolment form. In the other return, filed in the case of Virendra Singh, the averment made is that it was disclosed in the report received from D.I.G., C.I.D., Lucknow, that a criminal case had been registered against the petitioner under Sections 323/324, Criminal Procedure Code and that fact he has suppressed in the enrolment form.

4. Reliance is placed by counsel for parties, on both sides, on Rule 16(a) of the aforesaid 'Rules' which we quote:

'16. 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'.

5. Central Government Standing Counsel Shri Mittal, who appears for the respondents in both cases, has submitted, however, that even petitioner Sushil Kumar, summarily 'discharged', can have no compliant in terms of Rule 16(a) aforesaid, or of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965, for short, 1965 Rules', because that petitioner, like the other petitioner, could not claim that he had been duly 'enrolled' for any period to claim any vested right in terms of Rule 16 aforesaid or said Rule 5. We extract also relevant portions of Rule 5 as it is necessary to do so for dealing with the controversy and disposing of these two petitions:

'5. Termination of temporary service.- (l)(a) The service of a temporary Government servant who is not in quasi- permanent service shall be liable to termination at any time by notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the Government Servant;

(b).... .....

(2)(a) Where a notice is given by the appointing authority terminating the services of a temporary Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowances, the Central Government or any other authority specified by the Central Government in this behalf may, of its own motion or otherwise, reopen the case, and after calling for the records of the case and after making such enquiry 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 order in the case as it may consider proper....'

6. Before we refer to or deal with the case law cited on both sides, we would like to observe immediately that the 1955 Rules, framed under the Act, are to be read along with and subject to the provisions of the Act. It cannot be disputed that the Assistant Commandant making appointment of the petitioners did have competence in that regard in virtue of the provisions of Sub-rule 4(ii) of Rule 5 of 1955 Rules but Section 5 of the Act has a signal bearing on the controversy and we extract in extenso that provision:

'5. Enrolment- Before a person is appointed to be a member of the Force, the statement contained in the recruiting roll set out in the Schedule shall be read out and if necessary, explained to him in the presence of an officer appointed under Sub-section (1) of Section 4, and should be signed by such person in acknowledgment of its having been so read out to him:

Provided that any person who has for a period of six months served with the Force, shall, on appointment to the Force thereafter, be deemed to be a member of the Force notwithstanding that the provisions of this section have not been complied with in his case'.

7. In our view, the proviso aforequoted has a compelling force blunting effectively the stand taken in both matters by the respondents that belatedly, beyond the period of six months contemplated thereunder, summarily services of the two petitioners could be dispensed with in the manner done. The deeming provision which the proviso contemplates makes the enrolment, even when it is irregularly made, of the person appointed, impervious against prenatal infirmity on the expiry of the specified period of six months. It is obligatory on the part of the authorities concerned to complete verification of the information furnished in the enrolment form within the period of six months and if that is not done, as a result of satisfactory service rendered during that period, the person enrolled will be supposed to acquire a right to be informed of the penal action proposed to be taken against him on the basis of verification belatedly made. That is the clear contemplation of the proviso though that is not explicitly articulated. Otherwise, a person who has, for a period of six months, 'served with the Force', cannot claim to have become a 'member of the Force notwithstanding that the provisions of the section (contemplating the formalities of the enrollment) have not been complied with' and the purpose of the Proviso will be defeated, rendering it otiose. Such a situation is to be avoided at all costs. Once a person enrolled gets a right to be treated as a 'member of the Force', he acquires part passu in terms of Rule 16 of 1955 Rules right to continue in service ordinarily for a period of three years. The Proviso obviously contains a valuable substantive right. See, in this connection, CIT v. P. Krishna (AIR 1965 SC 59) S. Sundaram Pillay (AIR 1985 SC 582). Maxwell warily underlines the abiding force of the time-honoured legal adage that proviso in an enactment 'speaks the last intention of the makers' (Twelfth Edi-tion-P. 190).

8. Section 5, including the proviso, deals with the right of 'enrolment' of a person as a 'member of a Force' and it obviously has a constitutional base rooted in Articles 16 and 21. Indeed, on that edifice are erected several rights of different

dimensions and contents contemplated in Rule 16(a) of the 1955 Rules and Rule 5 of the 1965 Rules. To ignore the statutorily contemplated inter-relationship between the two sets of Rules and pivotal provision of the Parent Act will be a Constitutional hearsay. The minimal safeguard which is contemplated in terms of Sub-rule (2)(a) of Rule 5 is immutable as it contemplates post-decisional hearing and indeed there is no provision in the Act or in 1955 Rules or 1965 Rules which derogates from the right contemplated thereunder. By now, it is well settled that principles of natural justice including the rule audi alteram partem, unless specifically, excluded, are regarded as integral part of the statutory provision dealing with the Constitutional right to livelihood, more so when that right accrues from a public employment. See, in this connection Deshbandhu AIR 1985 SC 722 CIWT v. Brojonath (1986-II-LLJ-171) K.I. Shephard, (1988-I-LLJ-162), State of Haryana v. Ram Kishan, AIR 1988 SC 1301; M.S. Nally Bharat Engineering Co., (1990-II-LLJ-211)

9. Reference may also be profitably made to a recent decision of their Lordships in Kumari Neelima Mishra's case, AIR 1990 SC 1402 wherein the context of a public employment lis they observed : 'all types of non-adjudicative administrative decision-making are now covered under the general rubric of fairness in the administration'. That is the bottom-line which, in our view, is not affected statutorily or constitutionally in terms of the decisions Shri Mittal has cited, catalogued below. They do not impair in any manner the minimal safeguard judicially imperated by the dicta aforecited and in this connection, we hold appropriate reliance on Shri Arun Mishra on Shrawan Kumar Jha's case, AIR 1991 SC 309 which supports the view we have taken. This Court, in Shiv Prakash Mishra, (1990- II-LLJ-416), in dealing with the case of termination of service of a probationer, has held that when service of any citizen is discontinued by the State, the complaint in that regard is to be tested on the anvil of Articles 14, 16 and 21 having due regard to the scope and purport of his appointment and the rights accrued in that respect with reference to the order of appointment in the context of relevant service rules.

10. For the view we have taken, it is not necessary to deal in detail with the case laws which Shri Mittal has cited and are catalogued at the end to do justice to the labour expended by learned counsel. Suffice it to say this much that in one of the

decisions cited, Rule 5 of the 1965 Rules, aforesaid, was considered and that is the case of Union of India v. Mohanlal, 1982 JLJ 723, decided by a learned Single Judge of this Court. This Court had no occasion in that case to juxtapose and synthetise the employee's right under two enactments as in this case and examine the same in Constitutional perspective. In that case, the petitioner was temporarily employed as a labourer in the EME workshop of the Army at Gwalior and his rights and entitlement were marked out in terms of the provisions only of Rule 5 and no other provision. Other decisions which Shri Mittal has cited have no direct bearing on the controversy that has surfaced us in these petitions. They deal with general principles applicable in case of a person 'temporarily' employed by the State which obviously can have no scope to operate in a case covered by specific statutory provisions, like the present one.

11. For all the reasons aforesaid, we have no hesitation to quash the orders impugned in these two petitions, Annexure P/3, dated November 8, 1989 of M.P. No. 1466 of 1989 and Annexure P/2, dated November 11, 1989 of M.P. No 1467 of 1989. It is a clear case of the two petitioners receiving a shabby treatment on account of decision being taken behind their backs on the basis of reports obtained against their character. Indeed, from Annexure P/2 of M.P. No. 1466 of 1989, it appears that a Town Inspector, Police Kotwali, Shivpuri, on enquiry made, had earlier reported to the Commandant commending the character of petitioner Sushil Kumar; similar position is manifested in Annexure P/4 of M.P. No. 1467 of 1989 which is a Certificate of the Superintendent of Police that petitioner Virendra Singh was acquitted of the charge for which he was tried under Section 323/324, Indian Penal Code. In the facts and circumstances of the case, the power contemplated under Rule 16 of the 1955 Rules or of Rule 5(1) of the 1965 Rules could not be legitimately exercised to terminate their services in the manner done. It is a case in which Respondent No. 2, Secretary to the Government of India, Ministry of Home Affairs, must give post-decisional hearing to the two petitioners and deal with their cases in terms of Sub-rule (2)(a) of Rule 5. He is required to reopen the case of the two petitioners as contemplated therein and we are constitutionally obligated to make a direction in that regard.

12. In the result, both petitions succeed and we direct that the said Respondent No. 2 shall reopen the case of the two petitioners and deal with their cases in terms of the provisions of Sub-rule (2)(a) of Rule 5 of 1965-Rules on the petitioners submitting separately representations in that regard within two weeks. An appropriate order shall be passed in the case of each of the petitioners in accordance with law by disposing of that representation but valid and cogent reasons shall be given for the decision made. That shall be done within two months. No costs. Outstanding amount of security shall be refunded to the petitioners.