

**Sandeep Kumar Vs. Union of India Through Chairman Senior Commandant Central Industrial Security Force and Ors**

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**Court :** Jharkhand

**Decided On :** Oct-30-2015

**Appellant :** Sandeep Kumar

**Respondent :** Union of India Through Chairman Senior Commandant Central Industrial Security Force and Ors

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 2779 of 2014 Sandeep Kumar, S/o Rama Shankar Rajak, Resident of Village-Dhuwnha, P.O.-Chhatai, P.S.-Khajani, District-Gorakhpur (Uttar Pradesh). .... Petitioners Versus 1. The Union of India through Chairman/Senior Commandant, Central Industrial Security Force, Ministry of Home Affairs, CISF5th RB, Ghaziabad, P.O. & P.S.-Shipra Sun City, Ghaziabad, (U.P).

2. Deputy Inspector General, Central Industrial Security Force, Ministry of Home Affairs, BCCL Unit, P.O. & P.S.-Koyla Nagar, District:-Dhanbad.

3. Senior Commandant, Central Industrial Security Force, BCCL Unit, Ministry of Home Affairs, P.O. & P.S.-Koyla Nagar, District:-Dhanbad. .... Respondents ---

CORAM : HON'BLE MR. JUSTICE PRAMATH PATNAIK --- For the Petitioner : Md. A. Khan, Advocate For the Respondents-UOI : Mr. Prashant Vidyarthi, C.G.C.

----- Dated:

30. 10.2015 Per Pramath Patnaik, J.

In the accompanied writ application, the petitioner has inter-alia prayed for quashing of the order dated 07.05.2014 pertaining to termination from services and for direction to respondents to reinstate the petitioner on the post of constable with all consequential benefits.

2. Sans details, the facts as emanated from the averments of the writ application, in short is that, in pursuance to a selection, the petitioner got offer of appointment as constable on 10.01.2013 and in pursuance to said appointment order the petitioner joined on 05.02.2013, thereafter he was sent for training and completed his probation period successfully. Subsequently, when the petitioner was performing his duties under respondent no.3, a letter 2 dated 29.11.2013 was issued by the respondent no.3, asking for some documents. Pursuant to the aforesaid query, the petitioner submitted the entire documents including his acquittal by the Competent Court of law vide judgment dated 21.12.2010 but to the utter surprise and consternation, the respondent no.3 without issuing any show cause notice or conducting any preliminary inquiry or regular inquiry suddenly on 07.05.2014 passed an order terminating the services of the petitioner, vide Annexure-4 to the writ application. Being aggrieved by the impugned order of termination, the petitioner left with no other alternative efficacious and speedy remedy has approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Per-contra the respondents have filed counter-affidavit controverting the averments made in the writ application. In the counter-affidavit, it has been submitted that the petitioner was on probation for a period of two years but in the event of his being found unsuitable for retention in the Force at any time either during the period of his initial training or the period of his probation, his services was liable to be terminated in accordance with provision of Rule 25 (2) of CISF Rules 2001 (Now amended Rules-2003). It has further been submitted that the petitioner has been acquitted from all the charges by Learned Court, ACJM, Gorakhpur owing to benefit of doubt vide judgment dated 21.12.2010 and the Standing Screening Committee found the petitioner not suitable for appointment in

CISF which was circulated vide order dated 11.04.2014. As per the decision of the Standing Screening Committee, the petitioner was terminated by the competent authority in terms of Rule 25(2) of CISF Rules, 2001 (amended Rules 2003) vide order dated 3 07.05.2014. It has further been submitted that the case of the petitioner was examined in depth as per the guidelines in the light of Ministry of Home Affairs vide order dated 01.02.2012, he was found not suitable for further retention in the force. It has further been submitted that as per Rule-16 of CISF Rules-2001 (Now amended Rules-2003) Commandant is the appointing authority of Constable. Since, the petitioner was serving in CISF Unit BCCL Dhanbad, the Commandant, CISF Unit BCCL Dhanbad was the appointing authority of the petitioner and was competent enough to terminate the services of the petitioner under Rule-25 (2) of CISF Rules-2001(Now amended Rules-2003) and the action of the respondent in terminating the service of the petitioner is in accordance with Rule 311(2) of the Constitution of India.

4. Heard Md. A. Khan, learned counsel appearing for the petitioner and Mr. Prashant Vidyarthi, learned counsel appearing for the Central Government and perused the records.

5. Learned counsel for the petitioner has strenuously urged that the action of the respondents is punitive in nature since no notice has been issued before termination of petitioner. Learned counsel further submits that Rule 36 of the Central Industrial Security Force Rules, 2001 has been violated thereby imposing major punishment on the petitioner. In the instant case, the petitioner counsel further submits that the petitioner has been acquitted in criminal case vide order dated 21.12.2010 much prior to his joining as constable i.e. on 05.02.2013. The grounds on which the order of termination has been passed is not legally sustainable being violative of Article 311(2) of the Constitution of India. Learned counsel for the petitioner further submits that the order of punishment of termination has been passed by the 4 respondents cannot be sustained in the eye of law because no show cause notice has been given, no departmental proceeding initiated, no charge sheet given, no opportunity of hearing given at any relevant time thereby rendering in the impugned order of termination a nullity.

6. As against this submission of learned counsel for the petitioner, learned counsel for the Union of India has assiduously submitted that as per Annexure-A to the counter-affidavit, the petitioner was appointed as temporary Constable as per Clause 3 of the said appointment order. It has been stated in para 3 of the said appointment order/ rules which is as follows:

3. They will be on probation for a period of two years but in the event of their being found unsuitable for retention in the Force at any time during either the period of their initial training or the period of their probation thereafter their services will be terminated in accordance with the provisions of Rule-25 of CISF Rule 2001. Learned counsel for the respondents has further submitted that on Annexure-J to the counter-affidavit, the Government of India, Ministry of Home Affairs guidelines, dated 01.02.2012 relates to the considering cases of the appointment in CRPF and pendency of criminal cases against candidates. Learned counsel for the respondents further submits that the CISF is armed force of Union of India. The force requires to maintain discipline for highest order, since the involvement of the petitioner in a criminal case was found, the services was terminated in terms of Rule 25(2) of CISF Rules, 2001(amended Rules 2003) by the competent authority vide order dated 07.05.2014 as per the decision of the Standing Screening Committee and action of the respondents is in accordance with the existing rules and relevant circulars of the Government of India. 5 7. Having heard learned counsel for the respective parties and on perusal of the relevant documents on records, I do find that the impugned order of termination vide Annexure-4 dated 07.05.2014 pertaining to termination of the petitioner is not legally sustainable due to the following facts, reasons and judicial pronouncements:- - (i) Admittedly, the petitioner has been acquitted in criminal case vide judgment dated 21.12.2010 much prior to his joining as a constable in the year 2013, therefore, the action of respondents in terminating the services by following Rule 25(2) of CISF Rules, 2001 (amended Rules 2003) is not tenable in the eye of law. (ii) Learned counsel for the petitioner while assailing the order of termination dated 07.05.2014 has vehemently submitted that even the petitioner was on probation during the relevant time is entitled to be protected by providing opportunity of adhering to the principles of natural justice before infliction of major punishment. The impugned order of termination is not a simpliciter rather the said order is stigmatic and

punitive one. (iii) Hence, in my view the ground taken by the respondents- Union of India that since the petitioner was on probation during the relevant time he has rightly been removed, is without any force. In view of the judicial pronouncements in the case of Anoop Jaiswal Vs. Government of India and Another as reported in AIR 1984 SC636 wherein it has been held that: In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the Gymnasium and acting as one of the ring leaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ring leaders were not seriously taken note of. Even though the order of discharge may be non-committal, it can not stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Art. 311 (2) of the Constitution. Further in the case of V.P.Ahuja Vs. State of Punjab and Others reported in 2000(3) SCC239, it has been held that if the order is stigmatic or punitive the rules of principles of natural justice ought to have been followed by the respondents authority as because in paragraph 7 of the said judgment it has been held that a probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice. (iv) From the impugned order dated 07.05.2014 it is quite apparent that no notice has ever been issued to the petitioner, before removing the petitioner from services which leads to civil consequence, since the order of termination is punitive in nature the same is not sustainable and as such

same is hereby set aside. Resultantly, the impugned order dated 07.05.2014 passed by respondent no.3 is hereby quashed.

8. However, the matter is remitted before the competent authority to take a fresh decision after observing principles of natural justice and take afresh 7 decision within a reasonable period preferably within a period of three months from the date of receipt of copy of this order. With the aforesaid observation/direction the writ petition is disposed of. (Pramath Patnaik, J.) RKM/-

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