

SUPREME COURT OF INDIA

Union of India

Vs.

Sukhen Chandra Das

C.A.No.6110 of 2008

(R.V.Raveendran and Lokeshwar Singh Pantia JJ.)

15.10.2008

JUDGMENT

Lokeshwar Singh Pantia, J.

1. Leave granted.

2. This appeal arises out of the judgment and order dated 23.03.2005 passed by the Division Bench of the High Court of Gauhati Bench at Agartala in Writ Appeal No. 88/2002 dismissing the appeal of the Union of India and Others against the order dated 01.08.2001 of the learned Single Judge of the High Court in Civil Rule No. 139/1996.

3. Briefly stated, the facts of the case are that the writ petitioner-respondent herein was enrolled as Constable on 08.11.1991 in Central Reserve Police Force (for short 'the CRPF'). Thereafter, the appellants started the process of verification of the character and antecedents of the respondent from civil authorities as required under the provisions of the relevant rules. The District Magistrate-cum-Collector (West Tripura) by its letter dated 03.06.1994 informed the appellants that the respondent along with six others was charge-sheeted by Sonamura Police Station Case No. 91 dated 24.12.1990 for offences under Sections 148/149/380 and 436, IPC. The respondent, at the time of enrolment in CRPF, did not disclose the said fact in column No. 12 (a) and (b) of Verification Roll of CRPF [see Rule 14(B)]. On receipt of the reply from the District Magistrate-cum-Collector, the Commandant 9th Battalion CRPF vide order dated 23.06.1994 in purported exercise of the power under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 terminated the services of the respondent.

4. The respondent preferred an appeal before the Appellate Authority. The IGP N/S, having heard the respondent and having examined and verified the record, has found no substance in the defence of the respondent and by reasoned order dated 12.07.1995 rejected the appeal. Aggrieved thereby, the respondent preferred Civil Rule No. 139/1996 which was decided by the learned Single Judge on 01.08.2001 holding that the order of termination of the respondent was passed on alleged misconduct and the same could not be treated as an order

simplicitor covered by the *CCS (Temporary Services) Rules, 1965*. The learned Single Judge, however, while allowing the writ petition of the respondent, reserved liberty to the appellants to initiate departmental proceedings against the respondent for alleged misconduct as revealed in the order of the appellate authority.

5. Being aggrieved against and dissatisfied with the order of the learned Single Judge, the Union of India and others filed Writ Appeal No. 88/2002 which came to be dismissed by the Division Bench by impugned judgment by holding that the order of termination was passed on alleged misconduct as a foundation not motive and as such the same cannot be treated as an order of simplicitor under Rules, 1965. Hence, the Union of India and others have filed this appeal by special leave challenging the correctness and validity of the order of the Division Bench of the High Court. The respondent has remained *ex parte*.

6. In the absence of the respondent, we have heard the learned counsel for the appellants and with his assistance perused the entire material on record. It is not in dispute that in terms of clause 12 (a) of the CRPF [see Rule 14(B) Verification Roll [Annexure (P-2)] the respondent was under obligation to inform the appellants in regard to the pendency of the criminal case against him. The appellants started the process of verification of character and antecedents of the respondent in terms of the relevant service rules. The District Magistrate-cum-Collector informed the Additional DIG, Group Centre CRPF, Bhubaneswar (Orissa) by registered post letter dated 03.06.1994, that as per the report submitted by OIC Melaghar Police Station, the Police Case No. 91/90 dated 24.12.1990 was registered against the respondent and others under Sections 148/149/380/506 and 436 of the Indian Penal Code. On receipt of the report, the Commandant 9th BN CRPF Chandigarh (UT) vide OO No. DV-1/94-EC-I dated 23.6.1994 recorded the following order:-

"In pursuance of the provisions to Sub Rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 I hereby terminate the service of No. 911263026 constable Sukhen Chandra Das of this unit with effect from 25.06.1994 AN and direct that he shall be entitled to claim pay and allowances for the period of Notice at the same rate at which he was drawing them immediately before the termination of service or as the case may be for the period by which such notice falls."

7. Undisputedly, the above-extracted order was passed by the competent authority under Rule 5 (1) of *CCS (Temporary Service) Rules, 1965*, as the respondent was a temporary employee and was not a confirmed Constable. The record shows that at the time of enrollment in the CRPF, it is obligatory upon the candidate to fill up Verification Roll (See Rule 14(B)) of CRPF [Annexure-P2 (Colly.)]. Para 3 of the Verification Roll mandates "if the fact that false information has been furnished of that there has been suppression of by factual information in the Verification Roll comes to notice at any time during the service of a person, his service would be liable to be terminated." Para 12(a) states that the candidate has to give the information if he has ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a court of law for any offence/disqualified by any Public Service Commission from appearing at its examination/selections or debarred from taking any examination/rusticated by any University or any other educational

authority/institution. In answer to Para 12(a) of the Verification Roll submitted by the respondent, he said "No". In terms of Clause 1.12(a) of the Central Reserve Police Force Recruitment Manual, 1975 as amended from time to time, as soon as a man has been enrolled, his character, antecedents, qualifications and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time from through the District Magistrate/Deputy Commissioner of the District concerned or such other authority as may be deputed by the Central Government. Sub-para (d) whereof prescribes that if a person is adversely reported upon in the attestation form by the local authorities, his services will be terminated by giving him one month's notice or one month's pay in lieu thereof under CRPF Rule 16 read with Rule 5 of *CCS (Temporary Services) Rules, 1965*.

8. In the light of the above-stated facts and provisions of rules, the termination order dated 23.06.1994 was passed by the Commandant in purported exercise of power under Rule 5 (1) of the *CCS (Temporary Services) rules, 1965*. The order of the Appellate Authority dated July 12, 1995 marked [Annexure-P3] reveals that the grievance of the respondent was that the termination order was served to him without any show-cause notice of opportunity which would amount to breach of natural justice. He also contended that a false case was registered against him in Tripura. The Appellate Authority in its detailed reasoned order has recorded the finding that from the police verification report received from Sonamura Police Station West Tripura it has been established beyond doubt that a criminal case was registered against the respondent during December, 1990 which was pending in the court in which six more accused were reported as absconders. The Appellate Authority in its order concluded that since the respondent wilfully suppressed the true facts at the time of filling in the Verification Roll, the termination order recorded by the Commandant is held to be fully justified and in conformity with the existing rules and instructions on the subject.

9. On an independent scrutiny of the relevant documents on record as discussed above, we are of the considered view that the order of termination of the respondent recorded by the competent authority is innocuous on its face and purports to be an order of discharge in accordance with the terms and conditions of the appointment of a temporary Government servant. Such termination is neither punitive nor stigmatic in nature, nor it is, in any event, actuated with any motive. The language of the order clearly and plainly shows that it is termination simplicitor, rightly based under Rule 5 (1) of *CCS (Temporary Services) Rules, 1965* during the period when the respondent was a temporary employee of CRPF and it does not cast any stigma to the conduct of the respondent. Thus, the finding of the High Court that the order of termination of services of the respondent will cast stigma and could not have been recorded unless the respondent is proceeded in the regular departmental proceedings for the alleged misconduct, in our considered view, cannot be sustained. The decisions relied upon by the High Court in support of its order are not applicable in the facts and circumstances of the case in hand.

10. In the result, for the aforesaid reasons, the judgment and order of the High Court dated 23.03.2005 passed by the Division Bench in Writ Appeal No. 88/2002 upholding the judgment and order of the learned Single Judge dated 01.08.2001 in Civil Rule No. 139/1996 is quashed and set aside. The appeal is accordingly allowed with no order as to costs.