

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble Dr. A. K. Chanda
Member (A)**

**J U D G M E N T
-of-**

Case No. 513 of 2016

Peter Nelson HemromApplicant.

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. A.B. Mahapatra,
Ld. Adv.**

**For the State Respondents:-Mr. A.L. Basu,
Ld. Adv.**

Judgment delivered on : 19th March, 2018

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

- “ a) Order / Orders be passed to quash the discharge Order of Spl. Addl. Commissioner of Police & Joint Commissioner of Police (HQ) Kolkata vide Order no. 15 dt. 05.01.16 read with Memo. No. 48/2/CRO dt. 05.01.16.
- b) Order / Orders be passed to restore the position as prevailing before 05.01.16.
- c) Order / Orders be passed directing the respondent authority to release all consequential benefits.
- d) Order / Orders be passed as deemed fit & proper by this Hon’ble Tribunal.”

2. According to the applicant being selected by the Public Service Commission, he was allotted for the temporary post of sergeant of Kolkata Police by order dated 31.3.2004 and was subsequently directed to report for training by order dated 24.6.2004 (Annexure - P collectively). However, instead of being confirmed by the department, his probation period was extended from time to time as would be evident from the different extension orders (Annexure P/7 collectively). In the mean time, he was suspended vide WBDO NO. 889 Dated 24.10.2007 as well as had faced four departmental proceedings. However, since 2012, he was working satisfactorily and also earned annual increment as well as rewards in the year 2015. In the mean time, D.D.O., RAF was asked by

Assistant Commissioner of Police, Specialized Force P.T.S., Kolkata to direct the applicant to submit his self declaration whether any criminal cases(s)/ complaint case is pending or not against him and also requested to the DDO to submit a working report (Annexure P/8). But unfortunately instead of being confirmed, the applicant was served with a communication order No. 15 dated 5.1.2016 issued by Special Additional CP and Joint CP, Headquarters, Kolkata whereby he has been discharged from service w.e.f. 6.1.2016 in terms of provision of Regulation 47(2), Chapter XV of the Police Regulations of Calcutta, 1968(Annexure P/9). Being aggrieved, he filed one appeal before A.C.P. (III), Kolkata on 15.3.2016 (Annexure P/10), which was turned down by the Additional Commissioner of Police (III), Kolkata on the ground that he was simply discharged from service in terms of extant provision of Regulation 47(2), hence no appeal lies against such order of discharge from service under Regulation 10 of Police Regulations of Calcutta, 1968 vide his order dated 15.4.2016. Being aggrieved with, he has filed the instant application.

According to the applicant, this is not a case of termination simpliciter as claimed by the authority but contrary to the extant provision of Regulation 47(2) of Police Regulations of Calcutta, 1968 wherein there is a specific provision to give reasons for such termination. As per the applicant, any termination without giving proper reasoning is clear violation of Article 311 (2) of Constitution of India.

3. The respondents have filed their reply, wherein it has been stated that though the applicant was appointed as sergeant on 29.6.2004 and supposed to be confirmed in the said post by 2007, however he could not be confirmed due to his unsatisfactory performance. Probation period of the applicant was extended for the first time

for six months by the appointing authority by DC Headquarters order No. 573 dated 25.7.2007, however he was placed under suspension with effect from the afternoon of 24.10.2007 and during his probation period he was punished with the following major and minor punishments.

- i) Proceeding No. 22 dated 18.1.2008, wherein he was punished by reduction of pay Rs. 150/- per month for a period of five years with immediate effect and due to the pendency of the said departmental proceeding the probation period of the applicant was again extended for another six months vide order dated 4.2.2008.
- ii) After expiry of the extended period, the applicant could not be confirmed due to his continuing unsatisfactory performance/ poor service record. However, instead of being discharged from the service, he was granted reasonable opportunity to rectify himself by way of granting of extension of probation period for further one year vide order dated 15.1.2009. In the mean time, the applicant was further implicated under departmental proceedings No. 18 dated 17.2.2010, proceeding No. 106 dated 28.10.2010 and Proceeding No. 51 dated 9.5.2011 and respective penalty was imposed upon him.
- iii) As per the respondent from the above facts and circumstances, it would be evident that the applicant was granted enough opportunity to rectify himself but he failed to do so. Therefore, the Assistant Secretary, the Govt. of W.B. vide his order dated 16.1.2013 had intimated that the applicant cannot be considered for the confirmation. Further the Deputy Secretary, Govt. of W.B. vide order dated 4.12.2015 had communicated that the applicant may be discharged from service in terms of Regulation 47(2), Chapter XV of Police Regulations of Calcutta, 1968. Thus in compliance to the State Govt. directives, the temporary sergeant i.e. the applicant was

discharged from serviced with effect from 6.1.2016 in terms of provision of Police Regulations of Calcutta, 1968.

iv) Therefore, according the respondent, the applicant never qualified himself for being confirmed regardless of the extension the period of probation time to time due to his unsatisfactory/poor service record. However, the applicant was provided enough opportunities to rectify himself to be confirmed in the said post. But he failed to do so. As per the Respondent, he has been discharged as simplisiter but not as a punitive measure. It has been further submitted that Article 311(2) is not applicable in the instant case since the applicant is simply discharged from service without any stigma and also such discharge does not constitute dismissal removal or reduction in rank.

4. The applicant has denied the submission made by the respondent by way of filing rejoinder. As per the applicant, reasons for any decision or conclusion is essential features of the decision making process and failing to give such reasons invites anarchy, arbitrariness, which is violative of Rules and Laws. Further the applicant was discharged from service under Regulation 47(2) of Police Regulations of Calcutta, 1968, which itself proved that the authority himself has violated the extant provision of the said regulation by not giving any reasons. Further the word discharge is similar to dismissal and removal thus attract Article 311(2) of the Constitution. Moreover, the applicant has further submitted since he has been granted increment and reward, which itself shows that his service was not unsatisfactory.

5. We have heard the parties and perused the records. It is noted that the applicant has basically two fold submissions: (i) The respondents have violated their own provisions of Regulation

47(2), which itself stipulates that even in case of discharged from service reasoning should be given. (ii) Such non-mentioning of reasons in the discharged order clearly violates the principle of natural justice, which attracts Article 311(2).

Whereas, according to the respondents, this is a case of termination simpliciter, where no stigma has been imposed. Therefore, there is no requirement to show any reasons in the discharged order further since it is not a case of dismissal or removal, it does not attract Article 311(2). More over, since the applicant was in probation and his service period on probation was not satisfactorily, he has been discharged from service.

6. It is further noted that the applicant has been discharged from service under Regulation 47(2) of Police Regulations of Calcutta, 1968, which is as follows:

“The Deputy Commissioner, Headquarters, may confirm a probationary Sergeant on the completion of the period of his probation. He may, for reasons to be recorded in writing, make an order extending the period of probation or discharging him from service. Where such an extension of the period of probation is ordered, such period of extension shall not exceed one year. For further extension, if needed, sanction of Government shall be obtained.”

In view of the above, let us examine whether the Respondents have complied with the provisions of Regulation 47(2), while issuing order of discharge.

7. From perusal of the above provision of the Regulation, it is clear that recording of reasoning in writing is required either for extension of the period of probation or discharging any sergeant from his service. It is further noted that in the instant case, the Special Additional CP and Joint C.P., Headquarters, vide his order dated 5.1.2016 has passed the following order :

“Sergeant Peter Nelson Hemrom of Rapid Action Force, Kolkata Police, appointed on 29.06.2004, on temporary basis is hereby discharged from service with effect from 6.1.2016 in terms of provision of regulation 47(2), Chapter XV of the Police Regulations of Calcutta, 1968.”

Thus from the above, it is clear though the respondents had invoked Regulation 47(2) of Chapter XV of the Police Regulation of Calcutta, 1968 but while discharging the employee from service has not given any reasoning for such discharge /action. Therefore, in our considered view, the respondents have themselves violated their own provisions, which itself is sufficient ground to interfere with the impugned order otherwise it would violate the principle of fair play and natural justice.

In view of the above, we quash and set aside the impugned order dated 5.1.2016.

However, the respondents are not precluded to take any appropriate steps / actions as deemed fit and proper as per Rules.

Accordingly, the O.A. is disposed of with no order as to costs.

DR. A.K. CHANDA
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

