

CASE NO.:
Appeal (civil) 3618 of 2000

PETITIONER:
Commandant, 11th Battalion, A.P. Special Police (IR), Cuddapah, Cuddapah District

RESPONDENT:
B. Shankar Naik

DATE OF JUDGMENT: 25/04/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

[With Civil Appeal Nos. 3619, 3620, 4949, 7206-7209, 7080, 7395 and 7394 of 2000]

ARIJIT PASAYAT, J.

These appeals involve common point of dispute and, therefore, are disposed of by this judgment, which shall govern each one of them.

The appeals are directed against judgments of the Andhra Pradesh High Court in several writ petitions by which judgments of the Andhra Pradesh Administrative Tribunal (in short the 'Tribunal') were set aside. A batch of 32 original applications was disposed of by a common order. The applicants in some of those moved the High Court as Tribunal had rejected their applications. They are respondents in Civil Appeals 3618, 3619, 3620, 7206 to 7209, 7080, 7394 and 7395/2000. Six others had filed a joint petition before the Tribunal. They are respondents in Civil Appeal No.4949/2000.

Factual position is almost undisputed and needs to be noted in brief:

The respondents in these appeals were appointed as Constables along with several others, total number being 732. They were placed on probation for a period of three years and were also required to undergo training in the A.P. Police Recruits School under Rule 11(a) of the A.P. Police Subordinate Service Rules (in short the 'Special Rules'). One of the conditions stipulated in the appointment order is that they should pass the language test within a period of probation and in case of failure they shall be discharged from the service. This is in terms of Rule 13-A (a)(i) of the A.P. State and Sub-ordinate Service Rules, 1962 (in short 'the General Rules'). The selected candidates were sent for training to the Police Recruits School and after completion of the training, they were to be posted at different places to work as Constables. In the appointment order it was clearly indicated that they should undergo ten months basic training. Their services were terminated under

Rule 16(f)(i) of the A.P. State and Sub-ordinate Service Rules, 1996 (in short 'the New General Rules') on the ground that they had failed to pass the prescribed test within the prescribed period of probation. Said orders of termination were challenged on the ground that said Rules were not applicable to them as they had passed the SSC examination with Telugu as medium of instruction. They were exempted from passing the language test under Rule 14 and as such the orders of discharge were bad. As this plea was not accepted, the respondents moved applications before the Tribunal. The basic question raised was whether the applicants were required to pass the language test prescribed under Rule 13-A(a)(ii) of the General rules. Reference was made to Rule 14 of the said rules to claim the exemption. The Tribunal upheld the order of dismissal taking note of the stand pressed into services by the State and its functionaries that they had not successfully completed the training. Reference was made to paragraph 10 of the manual for A.P. Recruits School and held that in view of the mandatory requirement of taking training in the recruits schools as laid down under Rule 11 and 2(a) of the Special Rules, there was a requirement to successfully complete the training as the Constables, who were trainees. Their dismissal was claimed to be in order. It was held by the Tribunal that the syllabus prescribed in the manual for the police recruits assumes a mandatory character and the prescriptions in the syllabus under the manual have to be followed and rightly, therefore, the orders of discharge were passed. Orders of the Tribunal were challenged before the Andhra Pradesh High Court which by the consolidated impugned orders held that the orders of dismissal were not tenable, since the concerned Constables had passed SSC examination in Telugu medium with Telugu as one of the subjects. Therefore, they were entitled to exemption and the order of discharge was bad. It was held that the order of appointment did not refer to any other test in which the selected recruits were required to come out successful and, therefore, the orders of discharge were bad.

In support of the appeals, learned counsel for the appellant submitted that the approach of the High Court is erroneous. The orders of discharge were passed on several grounds. Firstly, non-passing the language test and secondly non-success in the training. Even if it is conceded that the recruits were exempted from passing the language test because of the applicable rules, yet it cannot be lost sight of that the very purpose of undergoing training is to successfully complete it. If one does not successfully complete the training, there is no scope for seeking continuance. Statutorily such prescriptions were imposed.

In response, learned counsel for the respondents submitted that the appointment orders only referred to the period of probation and the language test. There was no requirement about coming out successful in the training. That being so, according to him, High Court was justified in setting aside the order of discharge.

The specimen copy of an order of appointment was placed on record. This clearly stipulates, as noted supra, "They should undertake ten months basic training, commencing from 1.11.1994". Obviously, the training which is given cannot be rendered purposeless. If the contention of the respondents is accepted, it would mean that the training was intended to be a meaningless and purposeless exercise without having any relevance. This certainly cannot be the

intention. A person who is sent for training is required to be comprehended as to what is the effect of the training. If after completion of the training, it is found by the authorities that the trainee has not succeeded in the test conducted after training, the inevitable conclusion is that he has not undertaken training successfully. It has to be construed that the requirements stipulated in the appointment orders were not fully complied with. When the recruit was to undertake ten months basic training, it obviously means successful completion of the training. Undisputedly the same has not been done. The authorities were justified in passing the order of discharge. This position gets crystal clear when some of the relevant provisions are considered.

Rule 11(a) of the Special Rules reads as follows:

"Probationers shall undergo training and examination as within the period of their probation and course of training and their pay during the training period shall be the basic pay of the post plus usual allowances admissible at the time of training.

Probationers

Course of training

xx

xx

xx

4. Constables other (i) Band Constables, Reserve Constables, Buglers and Bellow Boys (Category-5 of Class I) and Categrory-2 months of Class IV).	If appointed otherwise by transfer from the A.P. Special Police Training for a period of not less than six months in a Police Recruit School or in any of the A.P. Special Police Battalions."
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Rule 16(f)(i) and 17(5) of the New General Rules read as follows:

"16(f)(i): If within the period of probation a candidate fails to pass such tests or acquire such qualifications as may be prescribed in these rules or in the special rules, the appointing authority shall, by order, discharge him from the service unless the period of probation is extended under the sub rule (b) of Rule 17 and if within such extended period also, the candidate fails to pass such tests or acquire such special qualifications, the appointing authority shall discharge him from service.

17(5): In the case of any probationer failing to pass the tests or acquire the prescribed qualifications, the appointing authority may extend his probation to enable him to pass the prescribed tests or acquire special qualifications, as the case may be. Such

extension by the appointing authority shall not exceed one year, whether on duty or otherwise in such service, class or category".

Para 10 of the Manual for Andhra Pradesh Police Recruits Schools reads as follows:

"10: Period of training:- Recruit Constables shall undergo training for a period of six months in a Police Recruits School. A recruit who passes his examinations should be passed out at the end of six months irrespective of short leave or sickness, but, if he does not pass his examination, he may be retained for one more-month, examined again and, if successful, passed out, with the next batch of recruits. Men failing to pass after the extra months must be discharged."

Reference may be made also to Rules 6 and 7 of the A.P. Special Armed Police Service Rules (in short 'Armed Police Rules'), which read as follows:

"Rule 6 Probation: Every person appointed a Category shall, from the date on which he joins duty, be on probation for a total period of two years on duty within a continuous period of three years, if recruited direct and for a total period of one year on duty within a continuous period of two years if recruited by promotion or by transfer.

Rule 7 Training: (1)A probationer appointed as otherwise than by promotion shall, within the prescribed period of his probation, undergo training in the Police Recruits School of a period of not less than six months and thereafter advanced training for a period not less than four months in the Andhra Pradesh Special Police battalion, to the satisfaction of the Commandant."

Conspectus of these provisions provides a further basis for the conclusion that successful completion of the training is an inbuilt requirement for continuance. Para 10 of the Manual also throws beacon light by providing for extension by one month for a fresh try.

It may be noted that there is some amount of confusion as to what was the ground for discharge. While the respondents contend that the same was relatable to non-passing of the language test, stand of the appellant is that it related also to failure in passing the test after training. It appears that after the training the indoor and outdoor activities were assessed and marks were also allotted. The assessment is clearly permissible and as

noted above cannot be isolated from the requirements of successful completion of the training. This was highlighted by the appellant before the Tribunal and the High Court. However, no other deficiency has been noted by the authorities. What remains is the failure of respondents to come out successful in the indoor and outdoor subject tests conducted. While the indoor activities related to tests on various subjects, outdoor test related to skill in various activities etc.

However, it does not appear that one month's extension as provided in Para 10 of the Manual was granted. Interest of justice would be best served if chance in terms of Para 10 is granted to the respondents. If the respondents come out successful in the tests to be conducted, their services shall be continued, but in case of their being failure, orders of discharge will be effective.

However few facts need to be noted at this stage.

The original applications filed by the respondents were dismissed by the Tribunal nearly five years back. This Court stayed operation of the High Court's judgment which was in favour of the respondents more than three years back. In other words, the respondents are not in service. If they come out successful in training pursuant to directions in these appeals, they can only be adjusted if there are existing vacancies or against the vacancies that may arise till the end of 2005 in order of seniority-cum-merit inter-se, subject to their satisfying all other eligibility conditions. In case they are adjusted in the vacancies as stated above, they shall not be entitled to claim any back wages or arrears of salary or any other emoluments and the period during which they were out of service shall not be counted for seniority, however, it shall be reckoned only for the purpose of pensionary benefits. This order is confined to the respondents in these appeals only and none else.

The appeals are accordingly disposed of.

However few relevant factors need to be noted at this stage.

The original applications filed by the respondents were dismissed by the Tribunal nearly five years back. This Court stayed operation of the High Court's judgment which was in favour of the respondents more than three years back. In other words, the respondents are not in service. If they come out successful in training pursuant to directions in these appeals, they can only be adjusted if there are existing vacancies. In case there are no vacancies, their cases shall be considered as and when vacancies arise till end of 2006. They shall not be entitled to any pay or other emoluments for the period commencing from the date of their removal from service till restoration of service, if any, and the period shall not count for the purpose of seniority. It can only be reckoned for the purpose of computing pension. This order shall operate only in respect of the

respondents in these appeals and none else.

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JUDIS