IN THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BANGALORE

DATED, THIS THE 17th DAY OF MARCH, 2020

PRESENT

HON'BLE Dr. JUSTICE K.BHAKTHAVATSALA, CHAIRMAN

AND

HON'BLE Mrs. G.LATHA KRISHNA RAO, ADMINISTRATIVE MEMBER

APPLICATION NO.9085/2018

BETWEEN

GURUSIDHA KENCHAPPA KALYAGOL,
Son of Kenchappa,
Aged about 29 years,
Working as APC 194,
DAR, Ramanagar, District Ramanagar,
Residing at E-Block, 11, DAR Police Quarters,
Channapattna,
Ramanagar District – 591 307 APPLICANT

(By Sri A.Vishwanatha Bhat, Advocate)

AND

1. THE DIRECTOR GENERAL & INSPECTOR GENERAL OF POLICE, Karnataka State,
No.2, Nrupathunga Road,
Bengaluru – 560 001

2. THE SUPERINTENDENT OF POLICE,
Ramanagar,
Ramanagar District – 562 159 RESPONDENTS

(By Sri T.S.Mahantesha,
Additional Government Advocate)

This Application is filed under Section 19 of the Administrative Tribunals Act, 1985, praying to quash order of discharge dated 30.8.2018 (Annexure A6) on the file of Respondent No.2 and for direction to Respondents to reinstate the Applicant into service and to grant him all consequential benefits.

This Application coming up for Hearing and the same having been heard and reserved for pronouncement of order, this day, the **Hon'ble Chairman** made the following

ORDER:

The case of the Applicant is that he was appointed as Armed Police Constable on probation on 14.8.2017 and posted to District Armed Reserve (DAR), Ramanagar; that on 29.6.2018 the Superintendent of Police, Mysore, addressed a letter to Commissioner of Police Mysore stating that it is decided to introduce Police Band in Mysore District and to confirm date of training so as to send 13 DAR staff from Ramanagara District; that in reply to the said letter, on 10.8.2018 the Deputy Commandant, Karnataka State Reserve Police, Mysore confirmed date and tenure as 27.8.2018 and onwards for a period of three months; that on 27.8.2018 the Superintendent of Police, DAR, Ramanagar, forwarded names of 14 Police Constables, including the Applicant (vide serial No.4) for undergoing Police Band Training at Mysore, and the 14 Police Constables were ordered to undergo the Training;

that on 28.8.2018 the Deputy Superintendent of Police, DAR, Ramanagar, sent a report to Superintendent of Police, Ramanagar (Respondent No.2) for taking action against the Applicant for his unauthorized absence; that on the basis of the said report, on 30.8.2019 (Annexure A6) Respondent No.2 has discharged the Applicant from service on the ground that he is unfit for the post, invoking Rule 6 of the Karnataka Civil Services (Probation) Rules, 1977 (for short, 'Probation Rules'). Hence, the Applicant has filed this Application praying for quashing order of discharge dated 30.8.2018 (Annexure A6) on the file of Respondent No.2 and for direction to Respondents to reinstate the Applicant into service and to grant him all consequential benefits.

2. Learned counsel for the Applicant contended that the order of discharge is stigmatic in nature, as the conclusion drawn that the Applicant is unfit for service is not supported by any material; that the order of discharge is not submitted to and confirmed by the next higher authority as mandated by Rule 6(2) of the Probation Rules; that Respondent No.2 solely on the basis of report of Deputy Superintendent of Police and

without holding inquiry has passed the order of discharge and hence the order of discharge is liable to be set aside on the ground of not holding inquiry and not obtaining confirmation by the next higher authority. He placed reliance on decision of the Hon'ble Supreme Court in the case of **DIPTI PRAKASH BANERJEE v. SATYENDRA NATH BOSE NATIONAL CENTRE FOR BASIC SCIENCES, CALCUTTA, reported in (1999) 3 SCC 60** and order dated 17.11.2015 passed by the Allahabad High Court in the case of **PRABHAKAR RAI v. UNION OF INDIA**, on the point that recourse to discharge a probationer in terms of relevant probation rules cannot be taken, if order refers to misconduct or indiscipline but no regular enquiry has been conducted. He also referred to decision of this Tribunal in the case of **ANIL RAMAKRISHNA SAVANT v. DEPUTY CONSERVATOR, reported in 1991 KSLJ 1327** for the proposition that Application is maintainable even though the Applicant has not exhausted alternative remedy, when an order is made in contravention of statutory rules etc.

3. On the other hand, learned Additional Government Advocate submitted that the Applicant disobeyed the orders of superiors by not reporting for training; that the Applicant allegedly told the Deputy Superintendent of Police that he would pay bribe of Rs.20,000/- if he is dropped from the list of officials deputed for training and Applicant also threatened that he would commit suicide if he were to compel to attend training; that the Applicant failed to prove his ability and integrity by disobeying lawful orders of higher authority; that the Appointing Authority after satisfying that the Applicant was unfit for the post of Police Constable has discharged him from service invoking power under Rule 6 of the Probation Rules and there is no merit in the Application. As regards confirmation of order of discharge by next higher authority, he contended that the Appointing Authority has obtained the approval of next higher authority, i.e., Inspector General of Police, Central Range, Bangalore, vide Order dated 15.9.2018 (Annexure R1) and hence there is no merit in the contrary averment. He referred to decision of the Hon'ble Supreme Court in the case of **PAVANENDRA NARAYAN VERMA v. SANJAY GANDHI PGI OF MEDICAL SCIENCES, reported**

in AIR 2002 SC 23 on the point that generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be.

4. In view of the above contentions, the points that arise for our consideration are:

(i) Whether the impugned order of discharge is stigmatic warranting an inquiry?

(ii) Whether the impugned order of discharge is vitiated, for passing of the same before confirmation by next higher authority?

5. Our answers to the above points are as per the final order for the following reasons:

6. Reg. Point No.1 : Admittedly, the Applicant was appointed as Police Constable on 14.8.2017. During the period of his probation, he (along with 13 others) was directed to undergo Police Band Training for three months at

Mysore from 27.8.2018. As can be seen from the report dated 28.8.2018 given by the Deputy Superintendent of Police, DAR, Ramanagara, though the Applicant proceeded from Ramanagara to Mysore in Police Van along with his colleagues, he did not get down from the Van and refused to attend band training stating that he was not interested in undergoing training and instead he can pay Rs.20,000/- to the Deputy Superintendent of Police as bribe for exempting him from attending training and if he were to compel to attend training he would commit suicide. The Applicant being a probationer ought to have been obedient and diligent in discharging his duties. If such disobedient person, that too in disciplines force like Police, were to be shown leniency, it would send a wrong signal to other employees and it would become impossible for higher authorities to run administration. In view of disobedience of lawful orders of higher authority by the Applicant, the Appointing Authority after coming to conclusion that Applicant is not suitable for the post of Police Constable has discharged him from service invoking Rule 6 of Probation Rules. Rule 6 of Probation Rules

provides for discharge of a probationer on account of his unsuitability. Rule 6 of the Probation Rules reads as under:

> "6. Discharge of probationer during the period of probation:- (1) Notwithstanding anything in rule 5, the appointing authority may, at any time during the period of probation, discharge from service a probationer on grounds arising out of the conditions, if any, imposed by the rules or in the order of appointment, or on account of his unsuitability for the service of post, but the order of discharge except when passed by the Government shall not be given effect to till it has been submitted to and confirmed by the next higher authority.
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> (2) An order discharging a probationer under this rule shall indicate the grounds for the discharge but no formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, shall be necessary."

It is pertinent to note that rule 6 contemplates a probationer being discharged from service on one or more of the following grounds: (i) in terms of a condition imposed by the rules, (ii) in terms of the order of appointment, or (iii) on account of unsuitability of the appointee for the service or post. Sub-rule (2) of rule 6 requires an order discharging the probationer to indicate the grounds for the discharge. It also provides that such indicating of the grounds for the discharge in the order would not require any formal proceedings under the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 being held. Further, a perusal of order of

discharge shows that it is a *discharge simplicitor*. In other words, it is a simple order of discharge of probationer on ground of unsuitability passed before completion of his probation period. It is well settled that court can go behind the formal order of discharge to find the real cause of action. As can be seen from records, the reason for discharge is that the Applicant disobeyed lawful orders of superiors to attend band training at Mysore. Though rest of the colleagues attended training Applicant refused to attend training and went back to Mandya; thereby he exhibited that he was not interested in the training and he had no respect for discipline. Thereafter also he did not show any sign of repentance. Considering this aspect the Applicant is discharged from service. In order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. 'Stigma' in the wider sense of the word is implicit in every order of termination during probation. It is only when there is

something more than imputing unsuitability for the post in question, that the order may be considered to be stigmatic. Language quoted in the discharge order cannot be said to be stigmatic as it neither alleges any moral turpitude or misconduct on the part of the Applicant. (Relied on **STATE OF WEST BENGAL AND OTHERS v. TAPAS ROY, reported in (2006) 6 SCC 453**). In the case on hand, the language used in the order of discharge does not amount to allegations involving moral turpitude or misconduct. The order of discharge is not founded on any misconduct, but the disobedience on the part of the Applicant was considered to determine his suitability for the job in the light of standards of discipline expected from police personnel. The impugned order of discharge has been passed in strict compliance with the requirements of Rule 6 of the Probation Rules. The order does not cast any stigma on the Applicant nor is it punitive. There was, thus, no requirement to comply with the principles of natural justice much less to be preceded by any formal proceedings of enquiry before making the order. It is well settled that a probationer has no right to hold post and his services can be terminated at any time on grounds of

unsuitability. Accordingly, we answer point No.1 in the negative.

7. So far as point No.2 is concerned, as stipulated in Rule 6 of the Probation Rules, the order of discharge except when passed by the Government shall not be given effect to till it has been submitted to and confirmed by the next higher authority. In the case on hand, the order of discharge is passed by the Superintendent of Police, Ramanagar, on 30.8.2018. The next higher authority, i.e., Inspector General of Police, Central Range, Bengaluru has confirmed the order of discharge on 15.9.2018. Thereafter the order of discharge was served on the Applicant on 20.9.2018. This fact is evident from the *shara* made in the order of discharge at the end of the order. Therefore, the contention of the Applicant that the order of discharge is given effect to before its confirmation by next higher authority is rejected. Accordingly, we answer point No.2 also in the negative.

8. The decisions on which the learned counsel for the Applicant has placed reliance do not advance the case of the

Applicant, as the facts are different. The Application is devoid of merit.

9. In the result, we pass the following Order:

Application fails and the same is hereby rejected.

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