
(2003) 04 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 23767 of 1995

Brij Mohan Verma

APPELLANT

Vs

State Public Service Tribunal and Others

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Citation : (2003) 5 AWC 3934

Hon'ble Judges : V.M. Sahai, J; Mukteshwar Prasad, J

Bench : Division Bench

Advocate : Girja Shanker Srivastava, for the Appellant; Vinod Misra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Mukteshwar Prasad, J.—We have heard learned Counsel for the Petitioner and Standing Counsel appearing for the Respondents.

2. By means of this petition, the Petitioner has challenged the order dated 23.5.1995 passed by State Public Services Tribunal, Lucknow, (Annexure-4 to the writ petition) and termination order dated 21.7.1990 passed by Senior Superintendent of Police, Etah (Annexure-3 to the writ petition). In brief, the Petitioner's version is that he was recruited as a Constable (Fireman) in State Fire Service by Respondent No. 4 on 3.5.1988 and after selection he was sent for training on 15.9.1988. He passed in the physical test but failed in the written examination. He was, therefore, sent again for training at Fire Service Station Fazal Ganj, Kanpur. During training, he fell ill on 28.3.1990 and consulted his Doctor, who advised him rest for two days. He again visited the hospital on 30.3.1990 and was advised rest for six weeks. He was sanctioned medical leave for 45 days w.e.f. 30.3.1990. However, the medical leave sanctioned to him was not entered into general diary. He gave joining report on 13.5.1990, but he was not permitted to join the training on the ground that he was absent since 30.3.1990. Again, he went to the hospital and was discharged from the Police Hospital on 23.5.1990. He again tried to join his duty, but he was not allowed

and was orally directed to join duty at Etah. On his application, no order was passed by the Respondent No. 4. On 7.6.1990 the S.S.P., Etah, passed an order to join the duty at Fire Service Training Centre, Fazal Ganj, Kanpur and complete his training. He took training till 28.6.1990 and thereafter joined the duty at Fire Station, Etah. Suddenly, he was served with an order dated 21.7.1990, terminating his service from the date of service of the notice.

3. The Petitioner has challenged his order of termination, mainly on the grounds that training period ought to have been for six months under rules, but he was given training for a period of four months only. He should have been given training for a period of two months more but he was deprived of his valuable right. The Respondent No. 4 had no authority to terminate the service of the Petitioner under U.P. Temporary Government Servants (Termination of Service) Rules, 1975 and as such, the termination order is illegal and liable to be quashed. No notice was served on the Petitioner before terminating his service and he was afforded no opportunity of hearing. Moreover, he was given no opportunity to furnish his explanation. The impugned order was passed by way of punishment and as such the order is illegal and void.

4. We have considered the submissions made on behalf of the Petitioner. Learned Counsel for the Petitioner has submitted with vehemence that the Petitioner was not sanctioned medical leave from 13.5.1990 to 23.5.1990 and his service was terminated on the ground of absence from duty. According to him, the Petitioner was ill and as such the leave should have been sanctioned as was done earlier. It was contended that the punishment passed against the Petitioner is too harsh and disproportionate to his misconduct. Reliance was placed on the following decisions :

(1) Senior Superintendent, R.M.S. Cochin and Anr. v. K.V. Gopinath Sorter AIR 1972 SC 1437;

(2) Commodore Commanding, Southern Naval Area, Cochin Vs. V.N. Rajan, ;

(3) The Manager, Government Branch Press and Another Vs. D.B. Belliappa, .

5. After having considered the arguments advanced on behalf of the parties, we find no force in the contention of the learned Counsel for the Petitioner. Admittedly, the Petitioner was appointed as a Constable (Fireman) in Fire Service. During training, he failed in the written examination and as such he was given another chance and was sent for training. During training, he proceeded on medical leave and did not care to join his training after recovery/discharge from the hospital. He was again asked to join the training and complete his training. He was not found suitable to the post for which he was recruited. He did not behave properly as a member of the disciplined force. After having gone through the impugned order dated 21.7.1990, we find that the order of termination is simpliciter and does not cast any stigma on the Petitioner. Therefore, there was no question of holding any enquiry or providing any opportunity of hearing. Further, the Petitioner's learned Counsel failed to show the Fire Service Training

Manual. In this view of the matter, we are of the opinion that the Petitioner being a temporary employee was rightly terminated from the service through the impugned order passed by Respondent No. 4 and his claim petition was rightly dismissed by the Tribunal.

6. For the aforesaid reasons, we find no merit in the petition and the same is accordingly dismissed. No order is made as to costs.