

(2020) 11 DEL CK 0229

In the Delhi High Court

Case No : Civil Writ Petition No. 6639 Of 2020, Civil Miscellaneous Application
No. 23125 Of 2020

Ct Tarsem Rana

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 19-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Border Security Force Rules, 1969 — Rule 25
Central Civil Services (Pension) Rules, 1972 — Rule 49

Citation : (2020) 11 DEL CK 0229

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Arun Srivastava, Anupma Srivastava, Raj Kumar Yadav

Final Decision : Disposed Of

Judgement

Asha Menon, J

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the quashing of the order dated 16th May 2020, passed by the Commandant 5th Battalion BSF Khasa, Amritsar, Punjab, whereby he has been invalidated out of service on medical grounds.

2. The brief facts, as relevant for the disposal of the present petition, are that the petitioner had joined the Border Security Force (BSF) as a constable on 31st December, 2001 and remained so till vide the impugned order he was retired. In ordinary course he could have retired after completing 20 years of service on 31st December 2021. He would then have been entitled to full pensionary benefits under the CCS Pension Rules 1972.

3. The case of the petitioner is that soon after joining the BSF he developed anxiety/depression and was diagnosed as suffering from bipolar affective disorder and his medical category was downgraded to SHAPE-2 (S2). He was recommended for light duties without firearms. From the year 2005 the petitioner suffered from severe headaches and was hospitalized from time to time for treatment of his condition. On 15th January, 2020 the petitioner was served with a Show Cause Notice as to why he should not be boarded out on medical grounds with 70% disability. The petitioner submitted a representation on 30th January, 2020 against the proposed retirement, along with the medical certificate of a Govt. Hospital, that his condition was stable.

4. It may be mentioned here that the petitioner had approached the High Court of Punjab and Haryana with a grievance that his representation had not been considered by the authorities who were proceeding to medically board him out in an unjustified manner. This C.W.P. No. 3695/2020 was disposed of on 12th February, 2020 directing the authorities to observe due procedure prescribed under Rule 25 of the BSF Rules, 1969 while noting that it was incumbent upon the authorities to constitute a Review Medical Board before taking a final decision in the matter.

5. The petitioner is also aggrieved that after his name was struck off from the service on 16th May, 2020, he was directed to vacate the government accommodation with effect from 30th June, 2020. Though he had sought permission to continue residing in the government accommodation till his daughter completed her 10th standard from Army School Khalsa, that is, for a period of 6 months, the authorities issued another letter dated 30th June, 2020 asking him to immediately vacate the government accommodation. Vide orders dated 18th September, 2020 this Court had restrained the respondents from ejecting the petitioner from the official accommodation till today, noting the submission of the learned counsel for the respondents that he would try to persuade the respondents BSF to grant time to the petitioner to vacate the official accommodation till 31st December, 2020.

6. Sh. Arun Srivastava, learned counsel for the petitioner has laid emphasis on the BSF Circular dated 2nd March 1981 on the subject of Disposal of Permanent Low Medical Category Personnel placed at page 95 of the electronic file and Clause(e) thereof, which provided that all other

cases of permanent low medical personnel be reviewed immediately or on completion of 2 years of being permanently low medical category

whichever is later and those who cannot be upgraded should be invalidated out of service. According to the learned counsel as the petitioner was

declared of permanent low medical category only on 26th November 2019, therefore, the petitioner could not be boarded out till the lapse of 2

years from the said date in terms of the said Circular, that is, till the 26th November 2021. It was pointed out that the previous medical examination

dated 27th March, 2012 had not declared the petitioner to be in permanent low medical category as it was described as S2 (T-48) H1A1P1E1 which

was for a period of 48 weeks. It is also submitted that if the petitioner stood retired now, he would lose all pensionary benefits, instead of getting the

full pension after 20 years service. Also, in the absence of any observation that the health condition of the petitioner was on account of his

service conditions, he would be deprived of special benefits of disability pension and other disability benefits and thus, he would be getting only a

pittance. The learned counsel also assured the Court that the petitioner was agreeable to take voluntary retirement as soon as he completed 20 years

in service. Learned counsel also relied on the judgement of the Division Bench of this court in Rati Ram vs. Union of India and Ors. 2016 SCC

OnLine Del 1705 and submitted that without a rehabilitation package being worked out the petitioner as a person with disabilities could not be

deboarded from service.

7. Per contra, the learned counsel for the respondent Sh. Raj Kumar Yadav submitted that due procedure had been followed as the medical board had

been properly constituted and the DG had referred the matter to the Review Medical Board as per the directions issued in the previous round of

litigation by the High Court of Punjab and Haryana. It is further submitted that since 2005 the petitioner had been in the disabled category and had

been shown great leniency and accommodation as he had been given very mild duties as has been admitted by the petitioner himself in his petition. It

was further submitted, by Sh. Vinod Kumar, Deputy Commandant BSF, that the learned counsel for the petitioner was relying on the wrong policy, as

under the new policy of 2014, where the member of the Force was found to be not in good psychiatric shape, he was to be invalidated within one

year. The petitioner was below S3 as he was placed at S5, that is with no scope for improvement of his status. It is also submitted that the petitioner would not lose on pension except for probably increment for one year, as under the current policy, the minimum qualifying service had been waived off in cases of disability and as he had almost 19 years of service to his credit, he would get 50% of the last emoluments along with about 25% disability element.

8. Pursuant to our orders, the learned counsel for the respondents^Â has e-mailed to us the BSF Medical Manual 3rd edition, the record of both the medical proceedings and the extract of the CCS Pension Rules. We have considered these as well as the material placed on record by the petitioner.

We have also heard learned counsels at length. Before proceeding further, we record that the judgement of this court in Rati Ram (supra) has no relevance to the matter at hand as in that case the petitioner had sustained blast injuries during patrolling duty when mines placed by insurgents exploded. The court in fact noted that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 does not apply to the paramilitary forces. Nor did it hold that before a person could be retired from service on account of permanent disability the Force was obligated to formulate a rehabilitation package for him, as urged by the learned counsel for the petitioner. The court had recommended to the BSF that they explore the possibility of employing the injured petitioner before it in sedentary duties. In the present case the petitioner admittedly was already on very mild duties since 2005.

9. The present case is to be considered in the context of the BSF Rules as well as the CCS Pension Rules and CCS (Extraordinary Pension) Rules, as amended in 1996, to determine whether the petitioner is entitled to relief.

10. It is evident from the Medical Manual that elaborate procedures have been laid for the medical examination of the personnel of the BSF to determine their physical and mental fitness and functional capacity. The assessments are required to be carried out in a timely manner at prescribed intervals both for promotion and retention in service. Parameters have also been prescribed for the classification of personnel as per their health and fitness status, for better cadre management in order to utilise the functional capacity of the personnel optimally. This is also a means to incentivize

those who are able to maintain their health and disincentivize those who are careless. SHAPE itself is an acronym for assessment of: psychological, hearing, appendages, physical capacity and eyesight of the personnel. Elaborate assessment has been provided under each head. The personnel are placed in different categories ranging from SHAPE1 to SHAPE 5. Personnel are also placed in "temporary low medical category" or "permanent low medical category" and the personnel who are "permanently low medical category" are usually to be reviewed after 2 years unless the Commandant requires an early review.

11. Though the learned counsel for the petitioner has relied on the Circular of 1981, with the notification of the BSF Medical Manual in 2014, such a reliance is misplaced. In chapter 2 paragraph 27.9.1 of the BSF Medical Manual notified in 2014, it is provided as follows:

"27.9.1 Disposal of Psychiatric Cases

All cases of psychiatric illness who are placed in medical category S " 3, if do not show improvement within one year will be invalidated out of service."

12. Even if under clause (e) of the Circular of 1981 it is provided, that in all other cases, excluding personnel with less than 10 years of service or who had sustained mine blast injuries and the disability was attributable to service, permanent low medical personnel were to be reviewed immediately or on completion of 2 years of being in permanent low medical category, whichever is later and those who cannot be upgraded should be invalidated out of service, it will have to be read with the provisions in Chapter 2, Para 27.9.1 in the Medical Manual of 2014, which makes an express provision for those suffering from psychiatric illnesses, from amongst the "other cases" mentioned in Clause (e) of the Circular of 1981. There is no contradiction between the two. The Circular need not be withdrawn to give effect to the Medical Manual as urged by the learned counsel for the petitioner.

13. Admittedly, the petitioner has been in "low medical category" since 2005. The petitioner has himself filed his medical records which show that since then he has been in and out of hospital in serious condition of the mental illness he suffers from. No doubt the Medical Board held on 27th March, 2012 had placed him in a "temporary low medical category" for 48

weeks. They should however have been a regular follow-up and review of the status of the petitioner thereafter. Probably those records are not there in view of the fact that in interregnum, the petitioner has been hospitalised for various periods of time on account of the aggravation in his illness. The petitioner was examined by the Medical Board of Officers held on 26th November, 2019 when he was placed under permanent medical category S5H1A1P1E1 with effect from 26th November, 2019. After the directions issued by the High Court of Punjab and Haryana, the Review Medical Board was held on 13th May, 2020. The procedural requirements have been met. The impugned order dated 16th May, 2020 was passed after due consideration of the assessments by both the Medical Boards and in view of the fact that the petitioner being in S5 has no chance of improvement. It is to be noted that Para 27.9.1 of the Chapter 2 of the Medical Manual recommends the invalidation out of service of those whose medical category is S3 and do not show improvement within one year.

â??Withinâ? one year cannot be read as â??beyondâ? one year. Reckoning from 2012, the petitioner has been reclassified from S2 to S5, suggesting deterioration rather than improvement in his condition. There is, therefore, no force in the submission of the learned counsel that the petitioner could not have been boarded out unless two years had elapsed from the declaration of his â??permanent low medical categoryâ?? status on 26th November, 2019.

14. There is also no force in the argument of learned counsel for the petitioner that if the petitioner is retired now, he would get only a pittance. The Medical Board on 26th November, 2019 had itself opined that the condition of the petitioner had been aggravated due to conditions of service by â??Stress & Strainâ?. He is thus covered under the Office Memorandum dated 3rd February, 2000, granting special benefits in cases of death and disability in service and payment of disability pension under the category â??Bâ??, and in terms of the CCS (Extraordinary Pension) Rules. This OM has been placed on the electronic file at page 97. It has also been incorporated in the BSF Medical Manual. The petitioner having served for about 19 years, is also entitled to pension in terms of Rule 49 of the CCS Pension Rules, 1972.

15. In the light of the foregoing discussions, the relief as claimed by the

petitioner cannot be granted and there is no ground made out for quashing the impugned order dated 16th May, 2020 striking the petitioner off from the strength of the unit i.e. the 5th Battalion of the BSF. However, in order to remove any doubt, in view of the submissions made on behalf of the BSF, it is recorded that the petitioner is entitled to the benefits of OM dated 3rd February 2000, as also pension under Rule 49 of the CCS Pension Rules, 1972. Further in view of the rules in relation to retention of accommodation placed at page 86 of the electronic file, which permits the retention of accommodation for 6 months on normal license fee where retirement is on medical grounds, the respondents are directed to permit the petitioner to retain the government accommodation allotted to him on normal license fees till 31st December, 2020. In case the petitioner continues to retain the accommodation even thereafter, it will be subject to the extant rules in this regard.

16. The petition is disposed of on these terms.