
(2019) 07 JH CK 0191
In the Jharkhand High Court
Case No : Writ Petition(S) No. 636 Of 2012

Gopal Oraon

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Central Civil Service [Temporary Service] Rule 1965 w — Rule 5(1), 16

Citation : (2019) 07 JH CK 0191

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ranjit Kumar, Leena Mukherjee

Final Decision : Dismissed

Judgement

Per Sanjay Kumar Dwivedi, j

1. Heard Mr. Ranjit Kumar, appearing for the petitioner and Mrs. Leena Mukherjee for the respondent Central Reserve Police Force.

2. Petitioner has preferred this writ petition for quashing the Order dated 07.10.2011, contained in Annexure 2 to the memo of the writ petition. He has also challenged the order contained in Letter dated 8.11.2011 (Annexure 4 to the memo of the writ petition), whereby services of the petitioner has been terminated in utter violation of the principles of natural justice rejecting the representation of the petitioner without giving opportunity of being heard to him.

3. Petitioner has been appointed as a Constable in the C.R.P.F. on 3.7.2010. After appointment, he was sent to training at Dharampur, Hi-machalpradesh.

Thereafter, petitioner fell ill and was admitted in the hospital and while his treatment was going on, it was detected that he was suffering from BETA Thalassemia Minor. Petitioner was served with the letter dated 7.10.2011, wherein it was stated that the service of the petitioner shall be terminated with effect from the date of expiry of a period of one month from the date on which

the said notice was served. Said notice was served on the petitioner by hand. Petitioner, after receiving that notice, filed representation dated 05.11.2011, praying therein to allow him to continue in service as his treatment was going on and he was improving. His representation was rejected vide order dated 08.11.2011.

4. Learned counsel appearing for the petitioner submits that the afore-said orders were passed without giving him an opportunity of being heard and in violation of the principle of natural justice.

He further submits that the petitioner's treatment has continued and his health has improved and a certificate to that effect is Annexure 5 to the writ petition. On this ground, he submits that since the petitioner has re-covered, he may be reinstated in service.

5. Counsel appearing for the petitioner relies on the decision of this Court in the case of Shantanu Mazumdar vs. Vice-Chairman, Central Administrative Tribunal, Patna & Ors. reported in 2010(3) JLR and the decision of the Hon'ble Supreme Court in the case of V.P. Ahuja v. State of Punjab reported in AIR 2000 SC 1080

6. On the other hand, learned counsel appearing for the C.R.P.F., submits that the said medical certificate cannot be relied upon as in that certificate the name of father of the petitioner is not correct.

She further submits that the petitioner was temporarily appointed, but was likely to continue. As per the advertisement, petitioner has no right to continue in service if he is not medically fit. The petitioner was supposed to discharge the duty of para military force and if he is not medically fit, there is no question of his discharging the duties satisfactorily.

She further submits that as the petitioner is not medically fit the respondents have issued termination notice in exercise of power conferred under Rule [1] of Rule 5 of the Central Civil Service [Temporary Service] Rule 1965 which provides that in case of termination of the services of a temporary employee, the order of termination, which should be passed by the appointing authority, should not mention the reason for such termination. Therefore, order of termination does not violate the principles of natural justice.

She further points out that in the instant case, Rule 16 of the C.R.P.F. Rules of 1955 is applicable, which provides that all members of the Force shall be enrolled for a period of three years and during this period of engagement, they shall be liable to be discharged at any time with one month's notice by the appointing authority.

She further submits that since the C.R.P.F. is a para military force, physical fitness is sine qua non for its employees. After his appointment, the petitioner was undergoing the basic training, which he has to complete successfully as mentioned in his offer of appointment. During his basic training, he has to be hospitalised and it was detected that the petitioner is suffering from BETA

Thalassemia Minor and accordingly a Board of Medical Officers declared him unfit for further service in the C.R.P.F. and therefore, Respondent C.R.P.F., being the appointing authority, has got prerogative right to discharge him with one month notice.

7. So far the decisions relied upon by the learned counsel for the petitioner are concerned, it appears that in *V.P. Ahuja v. State of Punjab* reported in AIR 2000 SC 1080, Hon'ble Supreme Court has allowed the appeal considering the fact that termination of the petitioner was on the ground of failure in the performance of duties and in *Shantanu Mazumdar vs. Vice-Chairman, Central Administrative Tribunal, Patna & Ors.* re-reported in 2010(3) JLJR, this Court was considering the enquiry proceeding which was conducted at the back of the petitioner and the discharge order issued without any notice to the petitioner.

Therefore, the cases relied upon by the petitioner are distinguishable from the facts and circumstances of the present case that the petitioner, being a C.R.P.F. personnel, is required to be physically fit, and as he has been diagnosed with Thalassemia Minor, during his basic training period, which he has to complete satisfactorily as per the terms of his appointment, respondent authorities, in exercise of power conferred under Rule 16 of the C.R.P.F. Rules of 1955, has passed the impugned order.

In view of the matter that the appointing authority has come to a finding that the petitioner has been detected with BETA Thalassemia Minor by a medical board during his basic training period and therefore, is not fit to discharge the duties of C.R.P.F., decision of the appointing authority does not required to be interfered with.

8. Writ petition is, accordingly, dismissed.