
(2008) 05 RAJ CK 0105
In the Rajasthan High Court

Jetha Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-05-2008

Acts Referred:

Citation : (2008) 4 RLW 3326 : (2009) 1 SLR 529

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—In this petition petitioner has prayed for quashing the impugned order of termination dated 31/3/2006 (Annex.5).

2. The facts leading to this case are that petitioner was recruited in BSF and directed to report at STC on 31/10/2005 for basic recruitment training. While attending the weapon lecture class on 16/11/2005 petitioner became unconscious and he was taken to MI Room of STC, BSF, Kharkan, Hoshiarpur (Punjab) where he remained under treatment. On 18/11/2005, petitioner was referred to Medical Specialist Civil Hospital, Hoshiarpur where he was advised CT Scan of Brain. Thereafter, on 23/11/2005 petitioner suffered two attacks of fits within an interval of 5-6 hours. On 24/11/2005 he was again referred to Psychiatrist, Civil Hospital Hoshiarpur along with CT Scan report where he was diagnosed as a case of G-40 and advised necessary treatment for ten days. As per opinion of Specialist, petitioner is a case of Epilepsy, therefore, his case was taken up with Frontier HQ, Jalandhar medical board to assess his suitability. As per opinion of medical board, petitioner was suffering from seizure disorder (Epilepsy) and was considered unfit for further retention in service. The proceedings of medical board were approved by the competent authority on 9/12/2006. thereafter a show cause notice was served upon the petitioner wherein, findings and decision taken by the medical board regarding proposed removal from service were conveyed to him. Against the said notice, a representation was made by the petitioner and his representation was forwarded

to next higher authority, which is Frontier HQ, BSF, Jalandhar for decision vide STC, Kharkan letter dated 28/2/2006. Frontier HQ, B.S.F, Jalandhar vide letter dated 8/3/2006 directed the STC to take necessary action as per the instructions and in compliance of said communication the services of petitioner Jetha Ram were terminated w.e.f. 31/3/2006.

3. Petitioner is challenging the validity of termination order on various grounds. The main ground of challenge is that termination is illegal, unjust and arbitrary because after one incident and CT Scan, EEG nothing unusual was found and all the faculties were found to be normal, therefore, there being no adverse medical board under which adverse opinion could be given but medical board has given opinion contrary to the medical report.

4. It is also submitted that as per law, an employee against whom notice has been issued is required to be given finding of medical board in accordance with Rule 25 Sub rule (3) of the BSF Rules but said finding of medical board was not supplied to the petitioner along with the show cause notice. Further, it is contended that unless action is taken as per Sub rule (5) of Rule 25 of the Rules no termination order can be passed and said termination order is required to be confirmed by the Superior Officer, therefore, unless the termination order is confirmed an employee cannot be thrown out of job, but in the instant case without observing the provisions of Sub-rule (5), (6) and (7) of Rule 25 effect to termination order has been given, which is illegal, therefore, the termination order is required to be set aside.

5. Per contra, Learned Counsel for the respondents has raised an preliminary objection that this Court has no jurisdiction to hear the present writ petition because no cause of action has arisen under the jurisdiction of this Court as admittedly petitioner's services were terminated in Punjab. Therefore, this Court has no jurisdiction to hear the writ petition against the termination order which is admittedly passed at Hoshiarpur, Punjab.

6. It is next contended by learned Counsel for the petitioner that this writ petition is premature because the petitioner has not availed the alternative remedy available to him under the BSF Act and Rules under which petitioner has right to represent against the impugned order under Rule 28A, therefore, this writ petition deserves to be dismissed on this ground also.

7. In rejoinder, petitioner has tried to meet with the aforesaid contentions of respondents and submitted that although the termination order was passed at Hoshiarpur, Punjab but he was duly selected after physical and medical test within the jurisdiction of this Court and further that he could not have represented against the impugned order under Rule 28A because the higher authority to whom representation could be filed under Rule 28A has already rejected the representation on 8/3/2006, therefore, this writ petition has been filed without filing any representation under Rule 28A. In support of his contentions, learned Counsel for the petitioner has brought to the notice of this

Court judgment reported in *Dinesh Chandra Gahtori v. Chief of Army Staff* and 2005 (8) RDD 3385 (*Chhotu Singh Naruka v. Union of India and Ors.*) and prayed that this writ petition is maintainable before this Court.

8. I have heard learned Counsel for the parties and gone through the material on record.

9. In this case admittedly petitioner was undergoing training in State of Punjab and he was examined by the medical board in Punjab and his services were also terminated vide impugned order at Hoshiarpur by the Deputy Inspector General, STC, BSF, Kharkan, Punjab. Meaning thereby, occurrence took place when petitioner was under training at Kharkan, Punjab. Similarly, he was medically examined at Hoshiarpur and he was given notice at Hoshiarpur and finally order of termination was also passed at Hoshiarpur, Punjab, therefore, obviously, petitioner ought to have filed writ petition before Punjab and Haryana High Court against the termination order passed at Hoshiarpur and this Court has no jurisdiction to hear the case against termination which was initiated and attained finality at Hoshiarpur, Punjab.

10. With regard to judgment of Hon^{ble} Supreme Court cited by the petitioner reported in *Dinesh Chandra Gahtori v. Chief of Army Staff* in my opinion, facts of that case were altogether different. In that case, proceedings of summary court martial was under challenge which is said to be conducted in State of Punjab and writ petition filed in the year 1992 was dismissed in 1999 on the ground of territorial jurisdiction. But in present case petitioner was boarded out from service on medical ground and admittedly after selection he was undergoing training and during training he was found medically unfit to be retained in service of BSF. Further, in *Dinesh Chandra's* case (*supra*) petition was filed against Chief of Army Staff and Hon^{ble} Apex Court held that Chief of Army Staff can be sued anywhere in the Country but here in this case petitioner is challenging the order of Deputy Inspector General, STC, BSF, Kharkan, Punjab and that authority is sitting within territory of State of Punjab. Therefore, facts of above case do not apply in the present case. The petitioner is maintaining his writ petition before this Court only on the ground that he was selected in Rajasthan, which in my opinion, cannot be accepted for the purpose of territorial jurisdiction. With regard to another judgment cited by learned Counsel for the petitioner in case of *Chhotu Singh Naruka v. Union of India and Ors.* 2005 (8) RDD (Raj.) 3325, in my opinion, facts of that case are also altogether different and, therefore, said judgment is not applicable in present controversy.

11. Further, I am in agreement with the argument of respondents that there is a remedy provided under Rule 28A of the Rules but petitioner on baseless reasons has not availed the said remedy.

12. In these circumstances, I see no reason to interfere with the impugned order of termination which is passed by the Deputy Inspector General, STC, BSF, Kharkan (Punjab) on the ground that this Court has no jurisdiction to entertain

this writ petition against the impugned order which is admittedly passed outside the territory of State of Rajasthan at Hoshiarpur, in the State of Punjab, so also according to facts of the case no part of cause of action arose within the territory of state of Rajasthan. However, petitioner is free to avail alternative remedy by way of filing appeal under Rule 28A of the Rules and can challenge the order impugned before Punjab & Haryana High Court.

13. Accordingly, this writ petition is dismissed.