

(2023) 07 DEL CK 0070

In the Delhi High Court

Case No : Civil Writ Petition No. 6906 Of 2016

Kamlesh Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-07-2023

Acts Referred:

Indo-Tibetan Border Police Force Rules, 1992 — Rule 26(3), 26(5)
Central Civil Services (Medical Examination) Rules, 1957 — Rule 2(2)

Citation : (2023) 07 DEL CK 0070

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Shefali Kishore, Rajesh Gogna

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The present petition has been preferred by the petitioner seeking quashing of order dated 13.05.2016 vide which his services have been terminated on the recommendations of the Invalidation Medical Board.

2. The facts giving rise to the present petition are that petitioner was working as Head Constable ('HC')/GD in Indo Tibetan Border Police (ITBP) since 28.02.1992. On 17.06.2015, he was served with a Memorandum dated 28.05.2015 mentioning that he is completely and permanently incapacitated for further service of any kind in the department on account of indulgence in drugs and drinks and has been suffering from 'Alcohol Dependence Syndrome'.

3. According to petitioner, his Invalidation Medical Board was conducted on 13.08.2013. His health condition though was shown improved vide medical examination dated 22.02.2014, despite this, his next medical examination was conducted on 06.02.2015, however his condition was static. Yet again, after 19 days, his medical examination was conducted on 25.02.2015. The status of above Invalidation Medical Board is as under:

"1. S3 (T-24) w.e.f. 14/08/2013

2. S2 (T-24) w.e.f. 22/02/2014

3. S2 (T-24) w.e.f. 06/02/2015

4. S5(P) w.e.f. 25/02/2015"

4. Petitioner has averred that in the discharge slips dated 13.08.2013, 21.02.2014 and 06.02.2015, it was mentioned that petitioner can be deputed on service without arms and ammunition. However, he was deputed as Incharge of Store Room where heavy arms and ammunitions were stored. Petitioner has alleged that on 19.06.2015, he was forced to sign undated application for grant of 22 days' leave and was thus, sent on 'Forced Leave'. Petitioner went to the Institute of Human Behaviour and Allied Sciences (IHBAS) and consulted a Doctor vide OPD CRF No.2015-6-33774 dated 25.06.2015, where various tests were conducted and on 06.07.2015 he was referred to RML Hospital, New Delhi for further medical evaluation and he was informed in writing that without any request from his department, he could not be evaluated.

5. Petitioner claims to have thereafter approached the higher authorities, including IG and DIG at Guwahati and made a request for his re-medical examination but his request was rejected. Also, because he was undergoing treatment for his illness, he could not file an appeal within time. In the meanwhile, petitioner's wife vide letter dated 07.07.2015 requested the respondents not to board out the petitioner on the basis of Memorandum dated 17.06.2015.

6. On 20.07.2015, petitioner requested the respondent-Department for Review Medical Examination but no effective action was taken. Petitioner after making request to the higher authorities including IG and DIG, preferred an appeal on 20.07.2015 wherein he requested for his Review Medical Examination. In view of request of petitioner's wife, petitioner's case was forwarded to Sector Headquarter, Tezpur for consideration on compassionate grounds, and vide letter No.4875-76 dated 21.07.2015 of the respondents, the competent authority extended time for boarding out by six weeks w.e.f. 17.07.2015, directing the petitioner to submit his relevant medical documents.

7. Thereafter, petitioner made a request to the respondents for his Review Medical Examination but his request was not considered. However, petitioner got himself examined by doctor at a Government Civil Hospital on 20.08.2015, who opined that petitioner was physically and mentally fit for Armed Forces service. On 29.08.2015, petitioner submitted his medical documents and on 02.09.2015, he was transferred to 39th Battalion on compassionate grounds vide order No.19421-35 dated 01.09.2015. His boarding out time was further extended w.e.f. 28.08.2015 to 15.10.2015.

8. Case of petitioner was thereafter referred to the higher authorities vide letter No.1038 dated 10.02.2016 for further decision. The Director (Medical) vide Office

Memorandum dated 31.03.2016 opined that there was no requirement of constitution of Re-medical Board under the ITBP Rules, 1992 and invalidated services of petitioner w.e.f. 13.05.2016 (F/N).

9. During the course of hearing, learned counsel for petitioner submitted that though the petitioner has been classified as 'Alcoholic Dependence Syndrome', however, petitioner was never negligent, careless or malicious towards his duties. It was submitted that petitioner is not having even a single red entry in his service book which shows that he has been working with sincerity, honesty and dedication.

10. It was further submitted that the petitioner's request for Review Medical Examination was not acceded to by the respondents which clearly shows their mala fide intention not to grant relief to him. Even appeal preferred by him regarding obtaining his forged signatures has not been decided by the respondents.

11. Learned counsel for petitioner submitted that the delay in filing the appeal against the Memorandum dated 17.06.2015 was bona fide as petitioner was under depression and was undergoing treatment for his ailment.

12. Learned counsel further submitted that on 20.08.2015, when petitioner was examined by a doctor of Government Hospital, it was opined that he was physically and mentally fit for Armed Forces Services. Even vide his Medical Examination dated 01.03.2014, he was recommended to be posted for duty without firearm and ammunition and not above the height of 9000 feet. It was nowhere mentioned that he was not fit for performing his duties. In support of his case, reliance has been placed upon a judgment of this Court in Mukesh Chand Bhatt V. DG, ITB Police: W.P.(C) 1770/2001 dated 17.01.2008 wherein the petitioner was suffering from Alcoholic Dependence Syndrome but the orders of various authorities were set aside and he was reinstated with 25% back wages.

13. Learned counsel for petitioner further submitted that petitioner's family is wholly dependent upon him and he has to support school education of his daughters and, therefore, termination of his services deserves to be set aside. Lastly, quashing of impugned termination order dated 13.05.2016 and reinstatement of petitioner with full back wages and consequential benefits is sought by petitioner.

14. On the other hand, the stand of respondents in their counter-affidavit is that petitioner was posted in 39th Battalion w.e.f. 07.10.2015 to 13.05.2016 (F/N) and he was struck off from the strength from the date of his invalidation i.e. 13.05.2016 (F/N) on medical grounds. It has been contended that petitioner was admitted in CH, CRPF, Guwahati w.e.f. 13.02.2015 to 25.02.2015 and the doctor has given the remark in diagnosis as "ADS (Alcohol Dependence Syndrome)-poor motivation and unfit for duty as a combatant in Armed Forces".

15. Learned CGSC appearing on behalf of respondents submitted that on

25.05.2015, 4th Battalion requested the Invalidation Medical Board for petitioner's medical examination and necessary orders in this respect were passed on 26.05.2015. Accordingly, Invalidation Medical Board was held on 28.05.2015 wherein petitioner was recommended as a case of 'Alcohol Dependence Syndrome'. Petitioner was declared completely and permanently incapacitated for further services of any kind in the Department. Accordingly, he was served with notice under Rule 26(3) of ITBP Rules 1994 read with Rule 2(2) of CCS (Medical Examination) Rules, 1957 for termination of his services on medical grounds. Petitioner was given time and opportunity to file reply to the aforesaid notice/Memorandum or to prefer an appeal for further examination before the Review Medical Board. However, petitioner applied for 22 days' leave and undertook to join on 13.07.2015. Petitioner, while applying for leave, stated that he is not interested in making any representation/appeal against the Memorandum dated 17.06.2015. However, later on, at his request and that of his wife, show cause notice was extended from time to time, directing him to submit his relevant medical documents. Petitioner, who was a case of Alcohol Dependence Syndrome, submitted a Certificate from Sadar Hospital, Baxar, Bihar which was reviewed by Medical Officer of Unit Hospital who observed and opined as under-:

"1. OPD paper and the certificate issued by Deputy Superintendent have different registration number.

2. All test of individual is done in private lab.

3. Individual is ADS patient but no information about ADS mentioned in his report.

4. Ultra Sound report of individual not stated in holistic manner. Whereas mild Hepatomegaly was found in his medical report.

5. Psychology certificate issued only one day after of OPD even knowing that individual is an ADS patient. Whereas minimum 07 days to 30 days are required to study the behaviour and thereafter certificate is issued.

6. Psychology certificate must be issued by a psychologist Doctor, but in the certificate of Deputy Superintendent, of Sadar Hospital, Baxar neither the name of Doctor is mentioned nor his degree.

7. After viewing the above facts it is clear that the certificate is issued without proper examination of patient and issuing authority is not a Psychologist. Hence the certificate is not valid."

16. However, again petitioner's case was referred to the higher authorities, who opined that there was no requirement of Review Medical Board and invalidated the petitioner from services w.e.f. 13.05.2015.

17. Learned counsel for respondents submitted that the respondents gave full opportunity to petitioner for treatment and to prove his fitness for Armed Forces,

however, petitioner failed to do so. Hence, the present petition deserves to be dismissed.

18. This Court had meticulously heard the submissions advanced by learned counsel representing both the sides. Upon perusal of material placed before this Court, we find that vide Discharge Slip dated 13.08.2013 issued from Composite Hospital, CRPF, Guwahati-23 (Assam) it is specified as under:-

"COMPOSITEHOSPITAL.CRPF,GUWAHATI-23 ASSAM)

DISCHARGE SLIP

XXXXX

XXXXX

Diagnosis ADS (Alcohol Dependence Syndrome)

Condition on Discharge: Improved

XXXXX

Advice on Discharge: S3(T-24), WITHOUT FIRE ARMS"

19. Thereafter, petitioner was once again examined on 21.02.2014 at Composite Hospital and the Discharge Slip noted as under:-

"COMPOSITEHOSPITAL.CRPF,GUWAHATI-23 ASSAM)

DISCHARGE SLIP

21/2/14

Condition on Discharge: Improved

XXXXX

Advice on Discharge: CAT S2 (T-24). WITHOUT FIRE ARMS"

20. Yet another examination at Composite Hospital on 06.02.2015 shows as under:-

"COMPOSITEHOSPITAL.CRPF,GUWAHATI-23 ASSAM)

DISCHARGE SLIP

06/02/2015

Condition on Discharge: Improved

XXXXX

Advice on Discharge: CAT S2 (T-24). WITHOUT FIRE ARMS".

21. Even though in the opinion of the Medical Board dated 13.08.2013; 21.02.2014 and 06.02.2015, the petitioner was found not fit for duties above

altitude of 9000 ft and 14,600 ft and he was not fit for cold weather, Unit for Independent command yet he was deputed to high altitude post and was also given duty of 'Kate Ancoi' means a person who takes care of weapons, arms and ammunition. Also, as per all the above noted Discharge Slips dated 13.08.2013; 21.02.2014 and 06.02.2015, petitioner was recalled for Review after six months by the same Doctor i.e. CMO (OG), CH, CRPF. However, it is only after a few days i.e. on 25.02.2015, the petitioner was examined at Composite Hospital and the Discharge Slip notes as under:-

"COMPOSITE HOSPITAL.CRPF,GUWAHATI-23

DISCHARGE SLIP

25/02/2015

Condition on Discharge: Improved if withdrawals symptoms

XXXXX

Advice on Discharge: Unfit for duty as a Combatant in Armed Forces

Recommended invalidation from services as per existing standing order

Percentage of disability of his illness is XXXXX (Invalidation on account of indulgence in drugs and drinks".

22. Immediately thereafter, vide Invalidation Medical Board Proceedings dated 28.05.2015, the following Medical Certificate was issued in respect of petitioner:-

"FORM-(23)

[SEE RULE-38(3)]

FORM OF MEDICAL CERTIFICATE

Certified that we have carefully examined No.-920080027 Rank-HC/GD Name-KAMLESH KUMAR Son of Sh.-L.S. CHAUHAN of 4th Bn ITB Police. His age by his own statement is 43 years and by appearance about 45 years.

We consider No.-920080027 Rank-HC/GD Name-KAMLESH KUMAR Unit-4th Bn to be completely and permanently incapacitated for further service of any kind in Department to which he belongs in consequence of Alcohol Dependence Syndrome.

Percentage of disability of his illness is ZERO (NIL) - as per CCS (EOP) rules (Invalidation on account of indulgence in drugs or drinks.)

Place:- Shillong

Date:- 28/05/15"

23. In view of aforesaid Medical Certificate, the Invalidation Medical Board on even date i.e. 28.05.2015 recommended as under:-

"CONFIDENTIAL

INDO-TIBETAN BORDER POLICE

MEDICAL BOARD PROCEEDINGS

XXX

(17) SPECIALIST OPINION

BOARD AGREES WITH SPL. OPINION GIVEN BY

DR. I. NARZARI MBBS, DDM CMO(O.G)

PSYCHIATRIST, C. HOSP CRPF (GHY) AND

PLACED INDIVIDUAL IN S-5 (P) BOARD,

RECOMMENDS TO INDIVIDUAL INVALIDATE

OUT OF SERVICE."

24. Vide Invalidation board proceedings dated 28.05.2015, the Board declared the following opinion:-

"INVALIDATION MEDICAL BOARD PROCEEDING

IN R/O REGT NO. 920050027 HC/GD KAMLESH KUMAR OF 4th Bn ON DTD 28-05-2-2015 AT NE FTR

HQ. SHILLONG

XXXXXX

(23) Remarks INVALIDATE OUT INDIVIDUAL BOARDED OUT OF SERVICE"

25. Based upon the aforesaid recommendations, the respondents vide Memorandum dated 17.06.2015 gave one month's notice to petitioner under Rule-26(3) of ITBPF Rules, 1994 read with Rule-2(2) of CCS (Medical Examination) Rules, 1957 for termination of his service on medical ground. The relevant extract of aforesaid Memorandum dated 17.06.2015 is as under:-

"MEMORANDUM

No. 920080027 HC(GD) KAMLESH KUMAR 'SPT' Coy, 4th Bn ITB Police who is a case of 'ALCOHOLIC DEPENDENCE SYNDROME' has been declared to be completely and permanently incapacitated for further service of any kind in the ITBPF as per the recommendation of Invalidation Medical Board held on 28/05/15 at HQ(NE) FTR, ITBPF, Shillong (Meghalaya).

2. Accordingly, he is hereby given one month notice under rule-26(3) of ITBPF Rules, 1994 read with rule-2(2) of CCS (Medical Examination) Rules 1957 for termination of his service on medical ground.

3. No. 920080027 HC(GD) KAMLESH KUMAR 'Spt' Coy, 4th Bn ITBPF is further

informed that:-

a) Subject to the provisions of rule-26(3) of ITBPF Rules, 1994 read with rule-2(2) of CCS(ME) Rules, 1957, SR-233(1)(b) and sub clause (2) of rule-20 of CCS (Leave) Rules 1972. His termination from service on account of being medically unfit for further service in the ITBPF will have effect on expiry of a period of one month notice i.e. 30 days from the date of receipt of this memorandum unless he desires to be termination for any earlier date.

b) He may submit, if he so desires within the period of one month a request/appeal to be further examined by Medical Review Board supported by prima facie evidence that good ground exists for doing so and such evidence should be from a Govt. Doctor not below the status of Civil Surgeon and should contain specific mention that he has taken into consideration the findings of the Medical Board before giving his opinion.

c) If he prefers a request for examination by the Medical Review Board, he shall be liable to pay the fees prescribed under para-7 of the CCS (Medical Examination) Rules, 1957.

4. In case no request/appeal is received within 30 days from the date of receipt of this notice from him. 20080027 HC(GD) KAMLESH KUMAR 'SPT' Coy, 4th Bn, ITBPF will be terminated from service on medical ground on expiry of said period of one month under rule-2(2) of the CCS(ME) Rules, and Rule-26(5) of ITBPF Rule-1994."

26. According to respondents, the petitioner instead of replying to the aforesaid Memorandum or filing an appeal, the petitioner proceeded on 22 days' leave and undertook to join on 13.07.2015 and also stated in his application that he was not interested to make any representation or appeal against the aforesaid Memorandum dated 17.06.2015.

27. Apparently, petitioner's wife vide letter dated 07.07.2015 requested the respondents not to invalidate the petitioner from his service, which was acceded to and invalidation of petitioner was deferred for a period of six weeks from 17.07.2015. An appeal dated 20.07.2015 was filed by the petitioner to the respondents seeking his Review Medical Examination, specifically stating that he had already approached IBHAS and RML Hospital, but in the absence of any recommendation from the competent authorities, he was refused to be examined. Besides praying for constitution of Review Medical Board, the petitioner has made the following averments in his appeal, which are noteworthy for just disposal of this petition:-

"2) That on 19/06/2015 i.e within 2, days of the receipt of this Memorandum I was forced to sign undated application for grant of 20+2 days E/L, Not only this in the said application I was also coerced to right that I was not interested in filing any appeal. Thus, indirectly right given to me to file appeal was curtailed within two days, making the 30 days time period only an eye wash and only a

mere formality. In the circumstances it can well be presumed that no person loosing his service mid way of his carrier would never agree to forgo his right to file appeal within two days against the 30 days time permitted for the same.

3) That in the above stated manner I was sent on forced leave on 19.06.2015 and no other option, I came to my home town at Delhi on 22.06,2015,

XXXXXXXXXX

XXXXXX

5) That, I have been legally advised to file appeal as has been permitted by the afore stated Memorandum. Accordingly I am filing this appeal. I was prevented from filing the appeal by getting my signatures forcibly on 19.06.2015, which paper was already typed and signed by two witnesses at my back. In the circumstances the delay in, filing the present appeal beyond the period, of 30 days may be condoned in the interest of Justice to give me fare and adequate opportunity for redressal of my grievances.”

28. A perusal of afore-noted Paras of the appeal preferred by the petitioner reveals that petitioner had pleaded before the competent authority that he was forced to sign to forego his right to appeal and was sent on forced leave. Also, in the appeal petitioner has averred that he was forced to sign the same within two days of issuance of Memorandum dated 17.06.2015. Infact, as per Memorandum dated 17.06.2015 the period of 30 days for filing appeal ended on 16.07.2015 and petitioner preferred the appeal on 20.07.2015 i.e. if not within time, then also not highly belated, with delay of two days only. Even otherwise, on perusal of aforesaid undated Specimen Letter of Undertaking, based upon which respondents have pleaded that petitioner had foregone his right to appeal; it does not appeal to the Court as to why an officer who is being invalidated from service shall in writing forego his right to file an appeal and probability of obtaining such undertaking by coercion at the hands of respondents cannot be ruled out.

29. This Court has gone through copy of communication dated 14.03.2016 sent from the Office of DIG, SHQ to Director (Medical), ITBP, wherein it has been mentioned that on the request of petitioner’s wife, the validity of notice termination his services has been extended upto 4 to 6 weeks and the petitioner was under treatment in IBHAS and so request for constitution of Review Medical Board was forwarded further action. In response to the aforesaid communication, the Director (Medical), ITBP, vide letter dated 31.03.2016 notified as under:-

“2. In above reference Director (medical) given remarks as follows:-

I agree with the report of Dr. R.R. Gautam, 39th Bn.

A) The fitness issued by the single doctor on OPD basis cannot over ride the invalidation medical board.

B) The psychiatric opinion can only be reviewed by Psychiatric board.

Hence no further action is needed on the basis of the application and medical certificate issued by the individual.

30. In this matter, there is no need to constitute review medical board, hence do needful as contained in provision of ITBP manual.”

31. The fact remains that the appeal preferred by the petitioner has remained unanswered by the respondents and his request for Review Medical Board was also turned down on the ground that the fitness issued by the Single Doctor in OPD could not over ride the Invalidation Medical Board. Pursuant to issuance of Memorandum dated 17.06.2015, petitioner had got himself examined at (IHBAS) and consulted a Doctor vide OPD CRF No.2015-6-33774 dated 25.06.2015. Also on 06.07.2015 he was referred to RML Hospital, New Delhi for further medical evaluation but he was informed in writing by the concerned Doctors that without any request from his department, his complete medical evaluation could not be done.

32. In view of the above, this Court finds that in such circumstances when petitioner was unable to get himself evaluated from a Government Hospital, it was too harsh of the respondents to have refused to conduct his review medical examination. By saying so, this Court certainly is not observing upon the medical health condition of the petitioner at the relevant time. However, we find that interest of justice would have been met if respondents had permitted for review medical board. Since much water has flown by now, it would not be prudent to pass any such direction. Therefore, keeping in mind that till the time of invalidation from service in the year 2015, petitioner had given 24 years of his life serving the armed Forces, this Court is inclined to take some lenient view.

33. In the light of aforesaid, it is directed that instead of treating the case of petitioner as invalidation from service, he shall be treated as ‘compulsorily retired from service’ thereby entitling him to pension, medical and other consequential benefits. Respondents are directed to pass necessary orders and clear the arrears within four weeks.

34. With directions as aforesaid, the present petition and pending application, if any, are accordingly disposed of.