

(2011) 07 DEL CK 0181

In the Delhi High Court

Case No : Writ Petition (C) No. 4873 of 1997

Kirori Mal

APPELLANT

Vs

Dir (Gen.) CRPF and Others

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 6

Citation : (2011) 07 DEL CK 0181

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Urvashi Malhotra, for the Appellant; None, for the Respondent

Judgement

Pradeep Nandrajog, J.—The Petitioner was recruited as a Constable with CRPF and was on probation. The recruitment was at a open competitive test held at Phulaguri, District Nagaon (Assam), and since no Medical Officer of CRPF was available, the Police Surgeon of Nagaon, as approved by the Regional IG, CRPF, subjected the Petitioner to a medical examination, and found him fit in all respect.

2. The Petitioner was given preliminary training, pending allocation of a seat for basic training at RTC-I, CRPF, Neemuch and thus he remained at Nagaon till September 1995, when he was sent for basic training at Neemuch.

3. During training, the Medical Officer detecting the Petitioner for defective vision, being 6/12, and thus opined that the Petitioner was not fit to undergo training.

4. Petitioner submitted an appeal, accompanied therewith filed an opinion obtained by him from one Dr. A.K. Barthakur, Ophthalmologist Surgeon of Golaghat, Assam, certifying that the Petitioner's vision was 6/6.

5. The DIG, CRPF noted the contra opinion given by Dr. A.K. Barthakur and directed the Petitioner to be examined by a Medical Board consisting of specialist in field of Ophthalmology. The Petitioner was re-examined and was found to be

having defective vision, right eye being 6/36 and the left eye being 6/18. It was opined that with glasses, the vision could be 6/6.

6. The DIG, CRPF took note of the fact that corrective vision was permissible only for non-combatants and since the Petitioner was employed as a combatant, exercised power under Rule 5 of the Central Civil Services (Temporary Service) Rules 1965, terminated the services of the Petitioner. It be noted at the outset that the power ought to be exercised under Rule 6 and not under Rule 5, for the reason that the termination is on account of medical disability.

7. Learned Counsel for the Petitioner referred to Annexure D, being the medical opinion dated 13.2.1996 which records that the Petitioner is a case of refractive error and was assessed for his refractive status and that without glasses, his vision improved to 6/6 of both eyes. However, with reference to the original certification of Dr. S.K. Chakravorty, learned Counsel concedes that in Annexure D, there is a typing error for the reason that the doctor has not opined that "with glasses", Petitioner's vision could improve.

8. It was urged by learned Counsel for the Petitioner that, as pleaded in para 3 of the Writ Petition, it was during training that the Petitioner hurt his eye. However, learned Counsel could show no material wherefrom it can be gathered that Petitioner, during training, hurt his eye.

9. On the contrary, documents filed by the Petitioner would reveal that the Petitioner had a defect eye vision.

10. To the argument urged that the Petitioner was subjected to medical examination at the time of his being selected, the answer would be, as pleaded in the counter affidavit, that due to non-availability of a CRPF doctor in Nagaon, the Police Surgeon conducted the medical examination. There is every possibility of the Police Surgeon being negligent in conducting the medical examination of the Petitioner.

11. Be that as it may, learned Counsel for the Petitioner has, herself, produced the medical record of the Petitioner, which certainly reveals that the Petitioner had a refractive error and that his eye sight was not perfect. If that be so, there is no merit in the submission that it is a case of colorful exercise of power.

12. A feeble attempt was made to urge that the Petitioner should have been given alternative employment. The answer to the submission is that the Petitioner has neither pleaded, nor brought on record any policy pertaining to "shelter employment".

13. Thus, as regards the claim relatable to prayer (a) and (b) the same is dismissed in so far it is prayed that order terminating services of the Petitioner be set aside and mandamus be issued to the Respondents to reinstate the Petitioner with consequential benefits.

14. We find that the Petitioner has raised a grievance in para 11 of the writ

petition, that since October 1995 till his services were terminated no pay and allowances have been paid to him.

15. As per the counter affidavit filed, pay and allowances have been released with effect from January 1996 till services of the Petitioner were terminated and a sum of Rs. 16,278/- has been sent to the Petitioner vide Bank Draft No. MOLA/83/400292. It has been clarified that deduction on account of mess dues and regimental subscription have been effected.

16. Thus, it is apparent that the Petitioner has to receive salary for the month of October, November and December 1995, in respect whereof it is pleaded that request has been sent to RTC-I, Neemuch for doing the needful.

17. It appears that when the counter affidavit was filed, due to some administrative hiccup, salary for 3 months was not paid to the Petitioner.

18. Neither counsel could throw any light whether during pendency of the writ petition salary has been released for the said 3 months.

19. Accordingly, we direct that if salary for the said 3 months has not been released to the Petitioner, needful would be done within a period of 6 weeks from today.

20. Writ petition stands disposed of declining relief as prayed for, but directing the Respondents to comply with as per para 19 above.

21. No costs.