

(2006) 06 KAR CK 0075

In the Karnataka High Court

Case No : Writ Petition No. 12823 of 2005 (S-DIS)

Munna Kumar Paswan

APPELLANT

Vs

The Inspector General of Police and Another

RESPONDENT

Date of Decision : 29-06-2006

Acts Referred:

Central Civil Services (Temporary Services) Rules, 1965 — Rule 5 (1)
Central Reserve Police Force Rules, 1955 — Rule 16 (A), 6

Citation : (2006) 06 KAR CK 0075

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Vishnu Bhat, for the Appellant; L.Y. Paremavathi, Central Government Standing Counsel for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The Petitioner had joined the services of the respondents as a Constable in the Central Reserve Police Force (here in after referred to as "CRPF" for brevity), Group Centre, Muzaffarpur, Bihar on 27.5.2003. He was permitted to report to duty after being found Medically fit for service. The Petitioner was transferred to Bangalore along with other recruits in the month of July 2003. He was under the Administrative Control of the second respondent and was posted at the Group Centre, CRPF, Bangalore. In the month of February 2004, the Petitioner had taken ill and he had reported to the Station Medical Officer and was treated. Since the illness of the Petitioner was not capable of diagnosis without further tests, he was referred to the St. John's Hospital, Bangalore in the month of March 2004 for an opinion. The Petitioner was diagnosed as suffering from Tuberculosis. However, the said Hospital had opined that he was fit to resume duty, but was advised to take treatment. The Petitioner was earmarked for basic training at Bangalore as on 20.7.2004. The Petitioner had reported to the authorised Medical attendant for Physical a checkup. When he was examined, it was reported that the Petitioner was advised to continue treatment for Tuberculosis and it was also opined that he was unfit for CRPF

training and the same was mentioned in the case diary of the Petitioner. The second respondent by an order dated 2.8.2004, constituted a Board of Medical Officers to subject the Petitioner to a detailed Medical Examination and to furnish a report, Accordingly, the Medical Board found that the Petitioner was unfit for CRPF training due to chronic Tuberculosis. The second respondent thereafter passed an order of termination of the Petitioner under Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Services) Rules, 1965 read with Rule 16 (A) of the C.R.P.F. Rules, 1955. The Petitioner being aggrieved by this had preferred and appeal and the Appellate Authority after a thorough Examination of the case on hand had rejected the appeal and confirmed the order of termination. It is this, which is under challenge.

2. Shri. Vishnu Bhat, the Counsel for the Petitioner would submit that the Petitioner was found fit for duty though he was suffering from Tuberculosis, by the St. John's Hospital, Bangalore. The Medical Board, however, having found that he was unfit for basic training which involved ten months rigorous training may have opined that the Petitioner was unfit for rigorous training and it is also not denied that the respondents could terminate the services of the Petitioner if the Petitioner was permanently incapacitated in terms of Rule 6 of the C.R.P.F. Rules aforesaid. But since, the Petitioner was suffering from Tuberculosis and having regard to the fact that as on today, the Petitioner is fully recovered from his illness, the Petitioner having been punished with the extreme order of termination on account of illness, is wholly unreasonable. Notwithstanding the fact that the respondents may claim the power of termination of personnel found totally physically incapacitated. The circumstance of the present case is such that the Petitioner has fully recovered from illness and could not be denied continuity of service with the respondents.

3. Per contra, Smt, L.Y. Premavathi, the Counsel for the respondents would contend that given the sequence of events, the Board has rightly found that the Petitioner was suffering from chronic r f \ Tuberculosis and was unfit for basic training of C.R.P.F. This aspect V has been appreciated by the appellate Authority, where in it is found that the Medical Officer of St. John's Hospital may not be aware of the service conditions and the rigorous training which the Petitioner would have to undergo for over ten months and accordingly may have declared fit to resume duty, but certainly not for rigorous training and the Appellate Authority has also expressed that the Board having assessed his suitability for detailment in the basic training, has opined that he is unfit. Hence, the Appellate Authority has held that the termination is in order.

4. On a careful perusal of the Rules and having regard to the circumstances of the present case, in my opinion, the power of termination is in respect of personnel who are physically unfit for continuance of service. The tenor of the Rule indicate that the personnel must be permanently incapacitated from service. The Petitioner was immediately terminated on being found afflicted with chronic Tuberculosis. This is not the same as finding that the Petitioner was permanently

incapacitated. The further circumstance that by efflux of time the Petitioner is cured of the said disease, it would be incumbent on the third respondent to afford a further opportunity to the Petitioner to lend himself for a Medical Examination to ensure that he is fit for service. Interest of justice would demand that the Petitioner be given a further opportunity of lending himself for Medical Examination in order that the respondents are satisfied, as to the fitness of the Petitioner for service.

5. Accordingly, notwithstanding the Rule, which permits the respondents to terminate personnel who are unfit for service on account of being permanently incapacitated, having regard to the fact that he is not permanently incapacitated, the respondents shall consider the case of the Petitioner.

6. Accordingly, the Writ Petition is allowed. Annexures-D and F are quashed. The respondents are directed to permit the Petitioner to undergo Medical Examination to ensure that he is fit to undergo basic training or such other training, as the respondents may desire and after having satisfied themselves in this regard, shall reinstate the Petitioner, in accordance with Rules and procedure.