

(2014) 11 RAJ CK 0057
In the Rajasthan High Court
Case No : Civil Writ Petition No. 996/2003

Om Prakash Meena

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2014) 11 RAJ CK 0057

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : T.P. Sharma, Senior Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.?The petitioner aggrieved of termination of his services vide office order dated 20.5.2002, has preferred the instant writ application, praying for the following relief(s):--

"i) by issuance of suitable writ, direction or order the Hon"ble Court may kindly be pleased to quash and set aside the impugned termination order dated 20th May, 2002 passed by the respondent as well as the order dated 21.11.2002 and further be pleased to direct the respondents to reinstate the petitioner on the post of Constable (GD) with all consequential benefits.

ii) Any other order or direction which your lordships may deem just and proper in the facts and circumstances of the case be also passed in favour of the petitioner.

iii) The writ petition may kindly be allowed throughout with costs."

2. Briefly, the skeletal material facts necessary for appreciation of the controversy raised herein needs to be first noticed. The petitioner was initially appointed as Constable (GD) vide order dated 27.3.2001. During the course of training, the petitioner suffered with swelling of and pain in both the knee joints. After a medical check-up, he was referred to Jawahar Lal Nehru Hospital (City Hospital of Ajmer) for treatment on 19th April, 2001 wherein the petitioner

remained under treatment from 8.6.2001. On 28.2.2002, the petitioner was examined by the Medical Officer, Station Hospital GC-I, CRPF, Ajmer, as he could only run of 2.20 kilometers in 12 minutes instead of required 2.80 kilometers. The Medical Officer suggested review after 12 weeks. However, vide communication 22.4.2002, the Medical Officer of Group Centre-II, Ajmer, opined the petitioner to be unfit for training in CRPF for knee pain and swelling of on account of RHEUMATIC ARTHRITIS. The petitioner was also found not fit for strenuous activities.

3. It is pleaded case of the petitioner that subsequent to the opinion of the Medical Officer, Group Centre-II, Ajmer, the petitioner applied for medical examination to the Medical Board at Jawahar Lal Nehru Hospital (City Hospital of Ajmer) whereupon he was adjudicated as medically fit vide report dated 29.4.2002, which was submitted to the Additional Deputy Inspector, Group-II, CRPF, Ajmer. However, his services were terminated vide impugned order dated 20.5.2002, by the Additional Deputy Inspector General, Group-II, CRPF, Ajmer, in exercise of powers under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

4. On 25.10.2005, this Court made an order in the presence of the counsel for the petitioner as well as respondents to the effect that the petitioner may be examined by a separate Medical Board of the respondents and opinion be furnished by the Board with regard to the fitness of the petitioner for the post in question since such Board of the respondents was already working. The petitioner was directed to appear before the Medical Board at Group-II, CRPF, Ajmer on 16.11.2005 between 11.00 to 12.00 hours and the Board was called upon to submit its report through their counsel within two weeks thereafter.

5. The report dated 18.11.2005 of the Medical Board has been placed on record in compliance of the order dated 25.10.2005 passed by this Court wherein the Board of Officers opined the petitioner as unfit to meet the job requirement.

6. In response to the notice of the writ application, the respondents have filed their counter affidavit admitting the fact that the petitioner was offered appointment on the post of Constable (GD) and reported to join the duties on 11.3.2001 and was sent to Group Centre-I, CRPF, Ajmer, for basic training on 30.3.2001. The petitioner was admitted to the Station Hospital, Group Centre-I, CRPF, Ajmer, on 5.7.2001 for complain of pain on account of K/C Ph. Arthritis and complain of pain B/L lower limb. It is further pleaded by the respondents that the petitioner was not referred to Jawahar Lal Nehru Hospital (City Hospital of Ajmer). In fact, while the petitioner fell ill on 8.6.2001 to 14.9.2002, was rather on medical rest. On the basis of the medical report dated 22.4.2002, it is pointed out that the petitioner suffered the pain on account of old medical ailment history, which is reflected from the documents available on record. Further, the petitioner is a case of RHEUMATIC ARTHRITIS and was not fit for strenuous activities and therefore, the action of the respondents in terminating his services cannot be faulted.

7. It is pleaded case of the petitioner that he was first examined by the Medical Office of the respondents and thereafter, was referred to Jawahar Lal Nehru Hospital (City Hospital of Ajmer) for further treatment on 19.4.2001 and remained under treatment with effect from 8.6.2001 to 14.9.2001. It is further pleaded that on 28.2.2002, the petitioner was examined by Dr. S. Singh, Medical Officer, Station Hospital, Group Centre-I, CRPF, Ajmer, as the petitioner could complete only run of 2.20 kilometer in 12 minutes instead of the required 2.80 kilometer. The doctor suggested review of the petitioner after 12 weeks.

8. Services of the petitioner have been terminated vide impugned order dated 20.5.2009 in view of the opinion of the Medical Officer of Group Centre-I, Ajmer, as he was not found fit for training in CRPF on account of rheumatics pain. An appeal against the impugned order dated 20.5.2002 has also been dismissed by the appellate authority vide order dated 21.11.2002. The petitioner has also pleaded that in view of the opinion of the Medical Officer expressed on 28.2.2002, he was re-examined just after 58 days instead of 84 days and was declared unfit and therefore, the impugned orders terminating his services are illegal, and bad in the eye of law. According to the petitioner, the medical examination report of Jawahar Lal Nehru Hospital (City Hospital of Ajmer) in no uncertain terms declared him fit. Therefore, the impugned action of the respondents in terminating his services is illegal, arbitrary and is vitiated for malafides. Moreover, the impugned action in terminating his services has been taken without affording any opportunity of hearing and thus, the action is also violative of the principles of natural justice.

9. Neither the petitioner nor the counsel for the petitioner has appeared to pursue the matter.

10. I have heard the learned counsel for the Union of India-respondents and with his assistance, perused the materials available on record.

11. According to the learned counsel for the respondents, though Jawahar Lal Nehru Hospital (City Hospital of Ajmer), found the petitioner normal but no opinion has been expressed with regard to the fitness of the petitioner for the basic training wherein every candidate, recruited as Constable, has to complete the basic training of nine months in any of the Training Centre.

12. From the materials available on record, it is not in dispute that the petitioner could complete only run of 2.20 kilometer in 12 minutes instead of required 2.80 kilometer, on account of knee pain.

13. On the basis of the medical examination, the petitioner was remarked as an old case of RHEUMATIC ARTHRITIS, and therefore, was not found fit for the job requirement.

14. It is not in dispute that the petitioner was appointed as Constable (GD) on 27.3.2001 in the pay scale of Rs. 3050-4590, purely on temporary basis. There was a specific stipulation, in the offer of appointment, to the effect that the

services of the petitioner could be terminated at any time without detailing out any reason. It is also not in dispute that the petitioner could not complete the training on account of pain in both the knees and was detected, after medical examination, to be a case of RHEUMATIC ARTHRITIS.

15. The services of the petitioner were terminated in exercise of powers under Rule 5(1). It is also reflected from the impugned office order dated 20.5.2002 that an amount of Rs. 5,207/- (Rupees : Five Thousand Two Hundred and Seven), was paid, on account of one month pay and allowances in lieu of notice. The order of termination of services of the petitioner was subjected to an appeal before the appellate authority, unsuccessfully.

16. The old history and documents available on record indicated the petitioner to be a case of RHEUMATIC ARTHRITIS and the petitioner was found unfit for strenuous exercise and for job involving strenuous task. The review medical examination of the petitioner conducted in compliance of the order passed by this Court reads thus:--

"The board having been assembled in pursuant to order proceeded to carry out the review medical examination of Ex. Rt. Om Prakash Meena. The board examined the candidate clinically for all the systems and conducted detailed examination. The finding of the medical board are as under:--

1. On the basis of clinical examination of Ex. Rt. Om Prakash Meena, it was found that he is having pan systolic murmur over mitral area. There is no relation to posture and it is not radiating to the back. The murmur is due to some underlying heart disease. Therefore physical efficiency test was not performed as it may lead to aggravation of heart ailment under present conditions.

2. The candidate is also having diminished distance vision in Rt. Eye (6/18) which is his better eye. The vision of L/E is 6/6.

3. Since the candidate has to undergo strenuous physical activity during basic training, the board is of the opinion that the candidate is unfit for same. With above infirmities, he may not be able to perform operational duties as it involves more of physical strength and strenuous work.

4. Therefore the board of officers is of the opinion that the candidate is unfit to meet the job requirement.

5. Detail examination enclosed as appendix "A".

17. A bare perusal of the medical history and documents available on record, and the opinion expressed by the Medical Board leaves no room for any doubt to conclude that there is no illegality in the action of the respondents in terminating the services of the petitioner since he was found unfit to meet the job requirement.

18. For the reasons and discussions herein above in the facts of the case at hand, the writ petition is devoid of any substance and deserves to be dismissed.

19. Ordered accordingly.

20. However, in the facts and circumstances of the case, there shall be no order as to costs.