

(2020) 10 DEL CK 0039

In the Delhi High Court

Case No : Civil Writ Petition No. 7645 Of 2020

Pardeep

APPELLANT

Vs

Director General, Railway Protection Force & Ors

RESPONDENT

Date of Decision : 08-10-2020

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 3, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 67.2

Citation : (2020) 10 DEL CK 0039

Hon'ble Judges : Rajiv Sahai Endlaw, J; Asha Menon, J

Bench : Division Bench

Advocate : Vishwendra Verma, J.K. Singh

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

C.M. Appln. No.25314/2020 (Exemption from filing the certified copy/dim copy/single spaces etc. of the annexures)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

W.P. (C) 7645/2020, C.M. Appln. No.25313/2020 (of the petitioner for stay)

3. The petition impugns the order dated 11th/14th August, 2020 of the respondent No. 4 Inspector General of North-Eastern Railways, discharging the petitioner from service with immediate effect; axiomatically, mandamus for reinstatement of the petitioner is also sought.

4. It is the case of the petitioner, (i) that he had qualified the written examination as well as physical examination and thereafter he was sent on training; (ii) that the petitioner successfully completed the training and appeared in the examination; (iii) during training, there was no complaint of any kind

against the petitioner; (iv) that after initial training, the petitioner was directed to join at Gorakhpur on 5th August, 2020 and joined Railway Protection Force (RPF), Gorakhpur; (v) from 5th August, 2020 to 16th August, 2020, the petitioner performed his duties; (vi) on 16th August, 2020, the petitioner was verbally directed to proceed on 20 days' leave, from 16th August, 2020 to 3rd September, 2020 and to report back on 3rd September, 2020; (vii) on 23rd August, 2020, the petitioner received letter dated 11th/14th August, 2020 impugned in the petition, discharging the petitioner from service as Constable in the respondents RPF; (viii) no opportunity of being heard has been given to the petitioner; (ix) that the letter dated 11th/14th August, 2020 appears to have been back dated; that the said letter is signed on 13th August, 2020; (x) that after receiving the said order of discharge, the petitioner made a representation; (xi) the petitioner was never given any marks for indoor training and as per his best of the knowledge, he passed all the papers and performed well during the training; (xii) it is clear from the duty at Gorakhpur being assigned to the petitioner, that the petitioner had successfully completed his training in accordance with the law; (xiii) the petitioner has never been informed that he ever failed during the training; and, (xiv) that the principles of natural justice have been violated.

5. The impugned order dated 11th/14th August, 2020 addressed to the petitioner at Village P.O. Ahulana, Tehsil - Gohana, District Sonapat, Haryana is inter alia, as under:

"Sub.: Discharge from Service.

Ref.: PCSC/RPF/NWR. Letter No. NWSE-69/2 dated 04.08.2020 and 10.08.2020.

With reference to above, it is to inform that you had been selected as Constable/RPF under employment Notice No.01/2018. Thereafter you were sent for initial Training w.e.f. 18.11.2019 to 21.07.2020 at CISF/RTC/Deoli (Rajasthan) under supervision of PCSC/RPF/N.W. Railway.

After completion of Initial Training, it has been observed that you have not qualified in the Law subject in Final examination. As such you are permitted to appear for a second attempt to clear the examination as per the extant Rule, but you have again found failed even after second attempt in the Law subject.

As such, under the powers conferred in the Rule 67.2 of RPF Rule 1987, you are hereby discharged from service with immediate effect as per the provisions of Para 65 of RPF Rule 1987 (modified) and para 17(ii) of RPF Establishment Manual."

6. To say the least, on a reading of the petition, the challenge made therein could not be understood and the averments in the petition were found to be vague and disjointed. Though the impugned order dated 11th/14th August, 2020 refers to the Employment Notice No.01/2018 pursuant to which the petitioner was stated

to have been selected but the said notice, from which we could have understood the terms and conditions on which the petitioner was employed, also was not filed. The petitioner, as annexures to the petition, besides the impugned order dated 11th / 14th August, 2020, has only filed a copy of the representation dated 4th September, 2020 claimed to have been made by him and from which representation also nothing more could be understood.

7. Be that as it may, the counsel for the respondents Railways appears on advance notice and the counsel for the petitioner and counsel for the respondents have been heard.

8. On our enquiring from the counsel for the petitioner with respect to Employment Notice No.01/2018 and of which the counsel for the petitioner also did not have a copy, the counsel for the respondents Railways informed us that the entire procedure is contained in the Railway Protection Force Rules, 1987 and we may proceed on the basis thereof.

9. The counsels have drawn our attention to Chapter V titled "Recruitment, Training and Career Planning" of the Rules aforesaid and we have perused the various Rules thereunder.

10. Rule 45 titled "Recruitment" inter alia provides that direct recruitment to the "Force" (which as per Rule 3 refers to the RPF) shall be made at the level of Constables, Sub-Inspectors and Assistant Commandants and all other posts shall be filled in by promotion or through Limited Departmental Competition, from amongst the eligible enrolled members of the Force or by taking personnel on deputation, in accordance with the Rules.

11. Rules 46 to 48 provide for "ineligibility", "establishment standards" and "age and educational qualifications". Thereafter Rule 49 titled "procedure of recruitment" inter alia provides that selection for direct recruitment to the post of Constable shall be made by a Departmental Committee. Rules 50 to 52 provide for other aspects of recruitment. Thereafter Rule 53 provides that every person shall at the time of his joining their initial training course, execute an agreement in the prescribed form (the petitioner has not produced before this court the agreement signed by him, wherefrom also the terms and conditions may have been known). Rule 53 also provides for issuance of appointment letter/certificate of appointment, in the prescribed form, on appointment as member of the Force. Rules 54 to 58 are not relevant for the present purposes.

12. Thereafter, Rules 59 to 67 are clubbed under the head "Training", with (i) Rule 59 providing that every person on entering service as direct recruit in any rank shall undergo initial training course; (ii) Rule 61 providing the syllabus for basic training, comprising of outdoor training and indoor training; since the impugned order dated 11th / 14th August, 2020 reasons that the petitioner had not qualified in the subject of law, we may mention that indoor training prescribed in Rule 61 inter alia, includes "Law with special emphasis on criminal law, Indian Railways Act, 1989, Railway Protection Force Act, 1957, Railway

Protection Force Rules, Directives and Railway Property (Unlawful Possession) Act, 1966"; (iii) Rule 63 providing that during the period of training the recruits shall be paid stipend or pay and allowances as may be specified from time to time; (iv) Rule 65 providing for examination on conclusion of course at any training institution of the Force and further providing the pass marks which a candidate is required to obtain, as 50% in each subject and 60% marks in aggregate and yet further providing that any candidate who fails the examination shall be allowed second attempt to appear for that subject or course, in such manner as may be specified but without any stipend or any other remuneration and yet yet further providing that on failure in the second attempt, the candidate shall be discharged from service, without notice; (v) Rule 66 providing that a member deputed for training, so long as possible, shall be posted back to the place where he was; and, (vi) Rule 67 providing that the direct recruit selected for appointment as enrolled member, till such time is not formally appointed to the Force, is liable to be discharged at any stage, for reasons to be recorded in writing.

13. It thus emerges that the petitioner, directly recruited in the respondents RPF as a Constable, was required to undergo training and on conclusion of training, required to pass examination and liable to be discharged and not appointed, if failed in the said examination in two attempts.

14. We may mention that the Rules aforesaid provide for third attempt also but only for candidates belonging to Scheduled Caste or Scheduled Tribe category; the petitioner does not fall in that category.

15. Having not found any error, pleaded in the petition, in the impugned action of the respondents, we have enquired so from the counsel for the petitioner.

16. The counsel for the petitioner first contends that the petitioner was not given a second attempt to pass in the subject of Law and thus, the Rules have been violated.

17. It was pointed out to the counsel for the petitioner that the petitioner, in the representation made on 4th September, 2020, had nowhere written so.

18. The counsel for the petitioner states that the petitioner is a layman and thus may not have written the same. However on being asked to show the said plea in the petition, the counsel is unable to and after reading the petition during the hearing, as if for the first time, refers to certain paragraphs but which do not contain any such pleading. It is thus quite obvious that the vagueness with which the petition was filed, continues at the time of the hearing as well.

19. We have enquired from the counsel for the respondents Railways appearing on advance notice, whether any instructions in this respect have been received.

20. The counsel for the respondents informs that the petitioner took the first attempt in the subject paper of Law, on 3rd July, 2020 but obtained only 33 out of 100 marks. It is further informed that the petitioner availed of the second

attempt, on 29th July, 2020 but in which attempt he could secure only 12 out of 100 marks.

21. The counsel for the petitioner then states that the petitioner was never informed of the said marks and had never been informed that he had failed.

22. Neither do we find any provision in the Rules for any such intimation nor did the petitioner at any point of time raise any plea or objection in this regard. In fact the petitioner, vide the impugned order dated 11th / 14th August, 2020 of his discharge, has also been informed of his having failed to clear the written examination in the subject of Law, on conclusion of the training, even after the second attempt.

23. The counsel for the petitioner has next contended that the second attempt is permitted to be availed under the Rules aforesaid, without any stipend, but the petitioner has been paid his entire stipend and there was no deduction.

24. As would be evident from the dates given by the counsel for the respondents, the petitioner availed of both attempts within the month of July, 2020 and thus the said argument also does not carry the case of the petitioner any further. Moreover it is not pleaded in the petition also that the stipend for the month of July, 2020 was paid. The counsel for the respondents also on enquiry states that since it was not so pleaded in the petition, he could not obtain instruction on this aspect.

25. The only other argument of counsel for the petitioner is that the petitioner, on conclusion of his training was asked to proceed to his posting at Gorakhpur and which also signifies successful completion of training by the petitioner. However upon being asked to show any posting order, the counsel for the petitioner states that the petitioner was verbally told to proceed to Gorakhpur, and again, the argument, of the petitioner being a layman is taken.

26. The Rules aforesaid envisage issuance of appointment letter/certificate of appointment on successful conclusion of training. The petitioner has not pleaded having been issued any appointment letter/certificate of appointment. No copy of the appointment letter, if any issued also is annexed to the petition. Even during the hearing it is not the case that any appointment letter was issued.

27. It is further stated by the counsel for the petitioner that it can be verified from the records that the petitioner served at Gorakhpur from 5th August, 2020 to 16th August, 2020. It is also informed that on 16th August, 2020, the petitioner was verbally told to proceed on leave and went back to his Village where he received the impugned order.

28. The counsel for the respondents explains that it is well-nigh possible that awaiting the result, the petitioner may have been asked to proceed to Gorakhpur without any appointment letter having been issued.

29. We tend to believe the same, in the absence of any appointment letter.

Merely because the petitioner may have been asked to proceed to Gorakhpur, awaiting declaration of his result, would not vest any right in the petitioner, to be recruited, if the petitioner in accordance with Rules aforesaid is not eligible for recruitment.

30. We thus do not find any merit in the petition. There is no violation of the Rules above referred to, in the discharge notice issued to the petitioner.

31. We may mention, that though the counsel for the respondents, besides the Rules aforesaid, has also referred to the RPF Establishment Manual, also referred to in the impugned order and the counsel for the petitioner in his petition has quoted portions thereof but the need to refer thereto is not felt.

32. The last contention of the counsel for the petitioner is that the petitioner, in the petition itself has referred to the judgment in Hansraj vs. Union of India 2012 SCC OnLine Del 3216 (DB).

33. Though no copy of the aforesaid judgment is immediately available but from the passages of the said judgments quoted in the petition itself, it is evident that, that was a case of the second attempt having not been given to the petitioner therein and which fact was accepted by the respondents Railways also. The same cannot thus have any application to the present facts.

34. The petition is entirely misconceived and it appears that intentionally confusing pleas and averments were made in the petition so as to, by creating confusion, have notice thereof issued and press for interim stay of the impugned order of discharge of the petitioner. However owing to the counsel for the respondents Railways, though appearing on advance notice but having obtained instructions, the need therefor has not arisen.

35. Dismissed.