

(2010) 07 DEL CK 0223

In the Delhi High Court

Case No : Writ Petition (C) No. 12282 of 2009

Rahul Kumar Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

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

Citation : (2010) 07 DEL CK 0223

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : R.R. Kumar and Mr. Bharat Sangal, for the Appellant; Ankur Chhiber and Mr. Mohan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—By way of the present writ petition, the petitioner assails the order dated 16th December, 2008 passed by respondent No. 3 terminating his service and directing that his name be struck off from the rules of Central Reserve Police Force. The petitioner also assails the order dated 3rd July, 2009 passed by respondent No. 2 rejecting the appeal of the petitioner assailing the order of termination.

2. The challenge by the petitioner is premised primarily on the ground that the same is without any justification and basis and was passed in gross violation of the principles" of natural justice. It is contended that the order of termination has been passed during the currency of the extended training period of the petitioner even though the petitioner had not been declared as having been failed.

3. We have heard learned counsel for the respondents and also examined the records which have been produced before us. The respondents have pointed out that vide order dated 1st March, 2007, the petitioner was appointed to the CRPF to the post of recruit/driver (RT/DVR) and he joined duty at Gwalior. He was sent

from his posting to Bilaspur on 15th May, 2007 for training where he was posted with the Second Wing Batch No. 118. The petitioner commenced his eleven week basic training on 15th November, 2007. The petitioner unfortunately failed in the PT mid-term test which was held on 1st February, 2008 in the training resulting in his relegation from Batch No. 118 to Batch No. 119 (3rd wing) by an order dated 22nd February, 2008. During the training period with Batch No. 119, which commenced on 26th February, 2008, the petitioner remained admitted to the hospital w.e.f. 15th April, 2008 to 9th June, 2008 (being a total of 56 days) due to a hydrocele. This necessitated his relegation to Batch No. 120 (Zero Week) on medical grounds vide office order dated 14th June, 2008. When the petitioner joined Batch No. 120 on 23rd June, 2008, he was unable to successfully complete the PT mid-term test on 20th October, 2008. The petitioner was declared failed even in the re-test which was conducted by the respondents. In these circumstances, he was again relegated from Batch No. 120 to zero week on 15th November, 2008 as he failed in the arms drill test. It has been pointed out that despite he has been given extra chances, the petitioner failed in the periodical test as well.

4. Reliance has been placed on the training manual of the respondent wherein it has been prescribed that upon failure in the periodical test, a recruit would be relegated to junior squads but ordinarily not more than twice during the entire period of the course. In case, the recruit is relegated for the third time, the Principal of the training institute is required to examine him and assess as to whether there was any possibility of the recruit becoming an efficient member of the force or otherwise. If the Principal arrives at a conclusion that the candidate is not likely to achieve the requisite standard, he is liable to be finally warned in writing of giving special coaching to come up to the required standards, failing which the necessary action to terminate his service under the existing rules on the subject is required to be taken.

5. The petitioner was given extra coaching and the requisite time to come up to the requisite level. However, he failed to meet the prescribed standards manifesting his lack of interest in the training and lack of desire to continue with the basic training. In these circumstances, as required by the applicable rules, the respondents had constituted a Board by order dated 12th December, 2008 under the Chairmanship of DIG(P) who was the Principal of the Recruit Training Centre, Peringome to examine and take the efficiency test of the petitioner. The Board also consisted of Shri P. Nagarajan, Commandant, CRPF as well as Shri Praveen Kumar, Deputy Commandant, CRPF. This Board examined the petitioner in terms of para 2.15(ix) of the Training Manual and arrived at a conclusion that the petitioner was not fit to be continued in the force on account of his poor physical standard and efficiency and recommended that the petitioner be terminated from service. The record of the proceedings of the Board has been placed before us.

6. We find that it is an admitted position that the petitioner had not been

confirmed in service and was still undergoing training when the impugned order was passed. The respondents have exercised the power under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 read with Rule 16(a) of the CRPF Rules and have passed an order dated 16th December, 2008 terminating the service of the petitioner forthwith with the direction that he would be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one month at the same rates at which he was drawing the salary immediately before the termination of his service as he was not found likely to be an efficient member of the force under these provisions.

7. Rule 16(a) of the Central Reserve Police Force Rules, 1955 entitles the respondents to consider a member of the force for permanency and also empowers the respondents to discharge such personnel who are temporary on one month's notice. So far as the temporary employees are concerned, the respondents are entitled to exercise powers under the provisions of the CCS (Temporary Service) Rules, 1965. Rule 5 of the CCS (Temporary Service) Rules provides that the service of a temporary government servant shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant. Under the proviso to this Rule, the respondents are enabled to terminate the service of a temporary employee forthwith whereupon the government servant is entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one month at the same rates at which he was drawing the salary immediately before the termination of his service.

8. We may notice that after the termination of his service, the petitioner had made a representation dated 10th January, 2009 to the Inspector General of Police (Training) which was forwarded to the Inspector General of Police (Special Sector). The petitioner also assailed the order dated 16th December, 2008 by way of writ petition being WP(C) No. 7628/2009 filed in this Court. In these proceedings, the writ petition was disposed of by an order dated 20th March, 2009 directing the respondents to ensure that the representation of the petitioner was considered in accordance with law and the order passed thereon be communicated to the petitioner within a period of two months. In compliance of this order, the respondents have passed a detailed order dated 3rd July, 2009 rejecting the representation of the petitioner. This order also details the forgoing facts giving an adequate opportunity to the petitioner to complete his training. The order also notices that whenever the services of a temporary employee are terminated, then in the order passed no allegation or reason for termination is stated as in the instant case.

9. In this background, the contention of the petitioner that the respondents have proceeded to terminate the services without any justification is clearly misconceived. The respondents have exercised power which is vested in them under the applicable Rules. There is no dispute to the authority and jurisdiction of the respondent to exercise the powers under the aforementioned Rules. The

action taken by the respondents has been initiated under the aforenoticed circumstances placed before us and which reflects exercise of care and caution by the respondents. No legal infirmity to the action which has been taken by the respondents has been pointed out.

10. For all these reasons, we find no merit in this writ petition which is hereby dismissed.