

(2022) 09 DEL CK 0193

In the Delhi High Court

Case No : Civil Writ Petition No. 13957 Of 2022, Civil Miscellaneous Application No. 42708, 42709 Of 2022

Rajeev Yadav

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 27-09-2022

Acts Referred:

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

Citation : (2022) 09 DEL CK 0193

Hon'ble Judges : Suresh Kumar Kait, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Ankur Chhibber, H.S. Tiwari, Anshuman Mehrotra, Nikunj Arora, Balendu Shekhar, Srianash Prakash, Raj Kumar Maurya, Krishna Chaityna, Abhishek Khanna

Final Decision : Dismissed

Judgement

1. The present petition has been preferred by the petitioner seeking issuance of a writ of certiorari for quashing of order dated 05.09.2022 and notice dated 13.09.2022, terminating his services on expiry of completion of one month from the date on which the notice is served upon him, i.e. 15.09.2022.

2. According to petitioner, he was recruited on the post of Sepoy in the Indian Army on 02.04.2005 and during the course of his training, he had suffered stress fracture in his tibia. In the year 2016, petitioner had joined the services of CISF on the post of Assistant Sub Inspector. Again, in the year 2018, the petitioner had applied for the post of Assistant Commandant in CAPF under the Ex Servicemen Category. Petitioner claims to have cleared the written examination, however, in his medical examination he was declared medically unfit due to "left tibia on history and documentation". Aggrieved against his rejection in medical examination, petitioner claims to have preferred an appeal and based upon his medical reports and the review medical report dated 10.05.2019, he was called for interview on 24.07.2019 and was declared medically fit. Thereafter, in the

final result declared on 02.08.2019, petitioner was declared as selected for the post in question.

3. The petitioner had averred that he was issued appointment letter on 23.09.2020 for joining on the post of Assistant Commandant under Ex Servicemen quota and in terms thereof, petitioner had tendered his acceptance on 01.10.2020 and reported for training on 12.10.2020. Petitioner further claims that while undergoing his training and playing football in the sports period, he injured his left knee and he reported to the medical hospital in the training institute on 16.11.2020. Thereafter upon referral, petitioner went to Artemis Hospital, Gurgaon on 17.11.2020 and Sports Injury Centre at Safdarjung Hospital on 01.12.2020 for medical tests and treatment.

4. It is further pleaded by the petitioner that a Court of Inquiry was conducted in February, 2021, wherein it was declared that "no one was responsible for injury of the petitioner and it was aggravated to the service". The petitioner also claims to have fulfilled his official obligations, training and medical tests till 30.04.2022. However, petitioner's services were terminated vide order dated 12.07.2022 by the respondent.

5. During the course of hearing, learned counsel submits that petitioner had made representations dated 05.08.2022 and 13.08.2022 to the Director General of CRPF, however, their fate is not known. Learned counsel next submits that petitioner had got himself examined at the Sports Injury Centre in Safdarjung Hospital on 13.08.2022, where he was declared fit. It is submitted on behalf of the petitioner that as per medical certificates dated 08.02.2022; 16.04.2022; 20.04.2022 and 13.08.2022, petitioner was declared medically fit, however, his services have been terminated despite there being no physical unfitness. So, petitioner had preferred a writ petition [W.P.(C) No. 11953/2022] seeking quashing of impugned order dated 12.07.2022 and the said petition was disposed of vide order dated 18.08.2022 directing the respondents to decide petitioner's representation. Thereafter, vide order dated 05.09.2022, the respondents rejected petitioner's representation in an arbitrary and fallacious manner.

6. Upon hearing learned counsel for the petitioner and on perusal of material placed before us, we find that the relevant para of impugned order dated 05.09.2022, rejecting petitioner's representation dated 13.08.2022, reads as under:-

"As per the directions of the Hon'ble High Court of Delhi, the representation dated 13/08/2022, the main plea of the petitioner to consider the medical reports and certificates that show his physical fitness." As per the medical certificate dated 08/02/2022 he was declared fit to join duty and not declared fit to undergo rigorous basic training. Further, as mentioned in the representation dtd 13/08/2022 by said trainee officer, medical fitness certificate dated 16/08/2022 issued by Sports Injury Centre, Safdarjung, New Delhi could not be

provided by him either to the Academy or to this Dte. However, as per Annexure 17 of the Writ, said trainee officer has enclosed medical certificate dated 13/08/2022 issued by Sports Injury Centre, Safdarjung Hospital. Based on the fitness certificate dated 13/08/2022, opinion of CMO (SG), GC, CRPF, Hospital, Gurugram was again obtained on 01/09/2022 about the medical condition of said trainee officer. The medical officer opined that, X-Ray report dated 12/12/2020 shows tibial spiking in both knee joints. MRI Reports dated 23/04/2022 of both knee joints shows evidence of osteoarthritis of both knee joints. He visited several times in OPD of Sports injury centre Safdarjung Hospital New Delhi for treatment and treated with medication. Intra articular injections of visco supplements were also given on 01/01/2021 at SIC-SJH New Delhi. Then knee ojjloder support was also given but still patient is having the disease. In latest OPD slip of SIC – SJH New Delhi dated 13/08/2022 also shows that he is having the disease and was advised medication and continues physiotherapy. From the above it is evident that he is having osteoarthritis of both knee joints. The disease is degenerative and progressive in nature and it may aggravate due to rigorous and strenuous physical training activities rendering him unfit for undergoing rigorous physical training activities of basic training. Hence the plea of the officer is not justified and acceptable. As regard request for constitution of another medical board, it is observed that recently ie on 19/04/2022 a review medical board was constituted comprising ADG, CRPF Academy, Director (Medical) CRPF, Grtho Specialists and GDMo. Therefore, constituting fresh medical board as requested by the petitioner now, is not justified and considerable. As the petitioner was declared unfit to be retained in CRPF on medical unfitness, he was issued termination notice under Rule 6 of Central Civil Services (Temporary Service) Rules, 1965 which stipulates that “the services of a temporary Government Servant may be terminated at any time without notice on his being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent”. Hence, question of providing the documents on which decision of his termination has been taken, does not arise.”

7. A perusal of the above order dated 05.09.2022 shows that based upon the opinion of CMO (SG), CRPF Hospital, Gurugram, it has been opined that petitioner is having osteoarthritis of both knee joints and the disease is degenerative and progressive in nature and it may aggravate due to rigorous and strenuous physical training activities, which decision is based upon the opinion of Review Medical Board held on 19.04.2022.

8. In the said order, reliance is placed upon Rule 6 of Central Civil Services (Temporary Service) Rules, 1965, for terminating petitioner’s service which stipulates that the services of a temporary Government Servant may be terminated at any time without notice on his being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent.

9. It is not disputed that petitioner was an under trainee officer. During the course of hearing, learned counsel has not been able to satisfy this Court that petitioner's medical condition is not alarming. Learned counsel for petitioner was also not able to put forth any provision of law to establish that respondent wrongly relied upon Rule 6 of Central Civil Services (Temporary Service) Rules, 1965 terminating petitioner's service.

10. In view of the aforesaid, we do not find any merit in petitioner's case at this stage. However, at the request of petitioner, respondents are directed to provide copy of Medical Board Record dated 19.04.2022 and 01.09.2022 within two weeks. On receipt of the same, if any grievance still persists, the petitioner may challenge the same before the appropriate forum.

11. With aforesaid observations, the present petition and pending applications are accordingly dismissed.