

(2022) 12 DEL CK 0218

In the Delhi High Court

Case No : Civil Writ Petition No. 17097 Of 2022, Civil Miscellaneous Application
No. 54254 Of 2022

Sanjay Kumar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-12-2022

Acts Referred:

Sashastra Seema Bal Rules, 2009 — Rule 26, 29

Citation : (2022) 12 DEL CK 0218

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Ranjeet Ranjan

Final Decision : Dismissed

Judgement

1. Vide the present petition, the petitioner is seeking quashing of the impugned orders dated 18.09.2015, 09.09.2015 and 31.12.2014; directions to the respondents to consider the appeal filed by the petitioner against the impugned orders dated 18.09.2015, 09.09.2015 and 31.12.2014; restoration of the service of petitioner along with all benefits from the date of his termination till the date of restoration; directions to the respondents to accommodate the petitioner in other department to the post equivalent to the rank of the petitioner along with cost of petition in favour of the petitioner.

2. The present petition has been filed on the ground that the respondents failed to give ample opportunities to the petitioner to file explanation prior to passing order resulting in termination of the petitioner from the strength of 57th Bn SSB Amritpur, Nainital, Uttarakhand vide order dated 31.12.2014. The ground of unsuitability was assigned by the respondents, however, so-called impugned orders do not come within the purview of unsuitability.

3. Respondents have erred while passing the impugned orders as there is no whisper about limitation of chances for BRTC in whole, the Sashastra Seema Bal

Act, 2007 and the Sashastra Seema Bal Rules, 2009. Further, respondents have even failed to consider that relegation from 16th BRTC, Gorakhpur is prior to 30 days, i.e. from 20.02.2014 to 11.03.2014 (19 days only).

4. The submissions made by learned counsel for petitioner before the competent authorities and the averments made in the present petition have been dealt with by the order dated 06.01.2015 which is reproduced as under:

"GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

SASHASTRA SEEMA BAL

OFFICE OF THE COMMANDANT

57TH BATTALION, SSB, AMRITPUR,

DISTT. NAINITAL (UTTRAKHAND)-263126 No.V/ESTT/PF/SK/57TH BN/
SSB/14-261-72 DATED 06.01.2015

Subject: ORDER FOR TERMINATION/STRUCKING OFF FROM SERVICE

Whereas you No.S/120029774 RCT/GD Sanjay Kumar were given offer of appointment for the post of CT/GD vide FHQ, SSB New Delhi Memorandum No.2/31/12/SSB(SSC)/RECTT.CT/GD/PER-II/19549-19551 dated. 16/05/2014 specifying the terms and conditions.

And whereas you, No.S/120029774 RCT/GD Sanjay Kumar were appointed as CT/GD on 14/06/2012 and posted to 57TH Bn SSB Madgaon at Jamnagar.

And whereas you have been detailed to undergo 5th BRTC Course at ATC Jamnagar w.e.f. 16/07/2012 to 18/05/2013 but you failed to qualify BRTC as you absconded from training centre on 02/10/2012 (FN) and declared deserter vide 57th Bn SSB Office Order No.E-I/ABSC/RCT/GD/SK/57TH /SSB/12/-3758-64 dated 01/12/2014.

And whereas you reported at 57th Bn/ATC, SSB Jamnagar on 28/01/2013 after absenting yourself for 118 days w.e.f. 02/10/2012 to 27/01/2013 and allowed to join at 57th Bn SSB Jamnagar vide 57th Bn SSB Jamnagar (Gujrat) letter No.E-I/DISCP-CORRES/57TH/JMN/12536-42 dated 28/01/2013 (Copy enclosed) and you were relegated from Basic training from ATC Jamnagar on account of absenting yourself for more than 30 days from training.

And whereas you were again detailed to undergo BRTC at RTC SSB Gorakhpur as 2nd Chance w.e.f. 23/12/2013 vide 57th Bn SSB Jeolikote letter No.TRG/302/BRTC/57TH BN/SSB/13-10841-46 dated 20/12/2013.

And whereas you proceeded on 10 days E.L. w.e.f. 26/02/2014 to 07/03/2014 on ground of self treatment and failed to join at RTC SSB Gorakhpur on 07/03/2014.

And whereas two re-joining notices were issued by RTC SSB Gorakhpur to you to

join Basic training vide RTC Gorakhpur Memo No.EB/III/A-REPORT/RTC/SSB/GKP/13/4147-53 dated 10/03/2014 and EB/III/A-REPORT/RTC/SSB/GKP/13/4642-44 dated 18/03/2014.

And whereas despite Re-joining notices you remained absent from Basic training and you were relegated from Basic training due to absenting yourself for more than 30 days from training vide RTC SSB Gorakhpur office order No.V/TRG/74/(VOL-II)(16TH BRTC)/RTC/SSB/GKP/14-6513-19 dated 19/04/2014.

And whereas your probation period for 02 years was not confirmed by Comdt. 57th Bn SSB on recommendation of board for probation of board for probation confirmation and further extended your probation for one year w.e.f. 14/06/2014 to 14/06/2015 vide order No.57th Bn/SSB/CFC/Pro/402/14-9877(A) dated 08/09/2014.

And whereas as per the terms and conditions of offer of appointment dated 16/05/2014 issued to you it has been mentioned at Para 2(vii) that you have to complete ?Basic Recruit Training Course? successfully being conducted by SSB for which you will be given two chances only. If you fail to qualify the above course even in second chance, your service shall be liable to be terminated.

And whereas you have failed to complete your basic training course successfully in two chances, your services are liable to be terminated as you have been found unsuitable to be retained in the Force on account of non completion of basic training course even after two chances.

And whereas, you were called upon vide this office memorandum No.V/Estt/PF/SK/57th Bn/SSB/14/15594-96 dated 20/10/2014 to show cause as to why should you not be terminated from the service under Rule-26 SSB Rule-2009 on ground of unsuitability.

And whereas in, your reply to the said show cause notice you have requested to appear before I.G. Frontier, Ranikhet for personal hearing.

And whereas, you appeared before I.G. Frontier SSB Ranikhet on 25/11/2014 for personal reasons and requested to I.G. Frontier SSB Ranikhet for consideration of 3rd chance to undergo Basic training.

And whereas, I.G. Frontier SSB Ranikhet has forwarded the case to Force Hqr. SSB New Delhi vide letter No.VIII-TRG/FTRR/14(26)/17379 dated 25/11/2014 for further directions in the matter.

And whereas, Force Hqr. SSB New Delhi vide fax message No.2/31/SSB/Rectt CT(GD)/Per-II/2014 (4)/31319 dated 19/12/2014 has intimated that as per offer of appointment for the post of Constable (GD) it is clearly mentioned that for successfully completion of Basic recruitment training course the candidate will be given two chance only. Hence there is no provision for given 3rd chance for Basic training to the candidates and directed to Commandant 57th Bn SSB Amritpur to take action as per SSB Act 2007 and SSB Rule 2009.

Now therefore after due examination of the issue the undersigned has satisfied himself that you have been found unsuitable to be retained in the Force and orders your services be terminated on the ground of unsuitability under Rule-26 of SSB Rule-2009 by way of discharge from service. Accordingly, strike you out from the strength from 57th Bn SSB Amritpur w.e.f. 31/12/2014(FN).

As per provision contained in Rule 29 of SSB Rule 2009, you can put an appeal to next Higher authority against the order of termination of your service within 30 days from the date of receipt of this order.

This is in suppression of this office No.V/ESTT/PF/SK/57TH BN/SSB/14/18013-24 dated 31/12/2014.”

5. As admitted, against the said order of termination w.e.f. 31.12.2014, petitioner filed revision which was dismissed vide orders dated 09.09.2015 and 18.09.2015, respectively. Thereafter, petitioner had approached the High Court of Judicature at Patna where the respondents vide civil writ jurisdiction Case No.20360/2016 had raised the objections as to the jurisdiction and consequently, petitioner had withdrawn his petition on 17.09.2019. Thereafter, present petition has been filed by the petitioner in the year 2022. Petitioner had approached the High Court of Judicature at Patna after one year of passing of the said impugned orders and thereafter, approached this Court in 2019, i.e. three years after withdrawing petition from the High Court of Judicature at Patna.

6. On perusal of the impugned orders, it is established that the petitioner has not even completed his probation period, and his services were terminated during his probation period.

7. In view of above, finding no merit in the present petition, the same is dismissed.

8. Pending application also stands disposed of.