
(2008) 12 CAL CK 0094

In the Calcutta High Court

Case No : A.S.T. No. 2602 of 2008 and W.P. No. 467 (W) of 2009

Sankar Chowdhury

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2008) 12 CAL CK 0094

Hon'ble Judges : Sailendra Prasad Talukdar, J

Bench : Single Bench

Advocate : Amal Baran Chatterjee and Hare Krishna Halder, for the Appellant; Anup K. Biswas, for the Respondent

Judgement

Sailendra Prasad Talukdar, J.—Grievance of the petitioner relates to alleged illegality committed by the respondent authority by terminating his service as reflected from the order of termination dated October 15th, 2008. The said order reads as follows:-

In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I. Shri R. P. Pandey, Addl. DIGP, hereby terminate forthwith the services of No. 035100677 RT/GD Sankar Chowdhury and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month.

2. Heard the learned Counsel for the petitioner who submits that the present case reflects conscious and consistent indifference, if not, hostility on the part of the respondent authority.

3. The petitioner has approached this Court by filing an application under Article 226 of the Constitution being W.P. No. 21711(W) of 2008 (A.S.T. No. 1401 of 2008). The said application was disposed of with a direction upon the respondent

authority to consider the representation which was directed to be submitted within a specified time frame. The present case has a very strange background. The petitioner joined as a Constable in CRPF as far back as in 2003. To his utter misfortune, after undergoing training for some time he fell sick. It is not in dispute that the concerned authority took all possible steps for his proper treatment. The, petitioner unfortunately had to finally undergo Kidney Transplantation.

4. The authority concerned thereafter thought of accommodating the petitioner by posting him as Peon/Daftry. There was a strong recommendation in his favour. But unfortunately, since the authority concerned found him unfit so as to enable him to resume duties issued the said order of termination. It appears that the authority being the IG, CRPF, ES, Kolkata in compliance of the Court's earlier order passed in W.P. No. 21711(W) of 2008 considered the representation of the writ petitioner. As it is found from the said office order that the petitioner received all kinds of treatment for such Renal Failure with Hypertension and Anemia. He was advised Renal Biopsy. After his discharge from the hospital he took leave and went to his native village when he again started treatment from private hospital by a Nephrologists. He was finally diagnosed as Renal Failure and underwent dialysis 3 to 4 times a week total numbering 25 dialysis. He was advised to undergo "Kidney Transplantation". He reported on 6th March, 2004 and the medical officer declared him unfit for training. He was sent back to GC Hospital, Durgapur in March, 2004. He was referred to Hyderabad for medical treatment and remained there from 24.04.2004 to 20.01.2005. Thereafter, he underwent Renal Transplantation. On discharge he proceeded on medical rest for 45 days w.e.f. 21.01.2005. He appeared before the Departmental Rehabilitation Board on 19.10.2006, and the said board gave the remarks that he may continue periodical checkup/treatment at BH-II, CRPF, Hyderabad. The next DRB was conducted on 28.06.2008 in Kolkata. After considering his health condition, nature of duties in CRPF and instructions as contained in Departmental Standing Order No. 7/1999, he was found unfit from the very beginning.

5. The authority concerned in the said office report referred to the fact that despite all medical facilities being rendered to the petitioner, his health condition did not improve so as to enable him to perform combat duties in CRPF. He was categorized under medical category. The authority concerned took into consideration the fact that the department spent huge money for medical treatment of the petitioner apart from paying his salary as well as allowances since last five years. In the office order it is mentioned that the petitioner continues to be medically unfit. The said office order also mentions that the posts of Peon/CT (Daftry) are also combatised posts.

6. The authority took the stand that the petitioner is not in a position to complete basic training which is mandatory requirement in the combatant job in CRPF. Thus, the authority concerned issued the order dated October 2nd, 2008, which was followed up by issuance of the order of termination dated October 15th,

2008.

7. Mr. Chatterjee as learned Counsel for the petitioner first referred to the consistent hostile attitude on the part of the authority in not considering the problem of the petitioner in its proper perspective. Mr. Chatterjee is quite justified in mentioning that the peculiar background of the case perhaps deserves dealing with the matter with more compassion. It is true that the petitioner was given all medical facilities but he could not be held responsible for all that has happened to him. He is not the architect of his own misfortune. Such an ailing person ordinarily deserves to be accommodated except when it is impermissible under the Rules.

8. It appears that the petitioner has been treated under the Central Civil Services (Temporary Service) Rules. Mr. Chatterjee, in this context, invites attention of this Court to the fact that the petitioner is already in service for a period of five years. He further referred to the fact that his service was terminable with one month notice or in lieu of the said notice, with payment with one month salary. But complexion has undergone change since the petitioner has been admittedly in service for a period of five years. The said rules do not appear to have any applicability to the fact of the writ petition, but the authority concerned ultimately issued the order of termination referring to the said rules.

9. The learned Counsel for the respondents has invited attention of the Court Rule 108 of the Central Reserve Police Force Rules, 1955. The sub-rule (5) of Rule 1.08 indicates that where no action is taken by Government under sub-rule (2) or (3) or (4), the period after the prescribed period of probation shall be treated as an engagement from month to month terminable on either side on the expiration of one calendar month's notice in writing. Though such a provision has been referred to, in course of submission, the authority concerned did not act referring to the said Rule 108 of the CRPF Rules.

10. Mr. Chatterjee has produced a copy of the medical certificate of fitness issued by the IGP (Medical)/Medical Supdt., Composite Hospital, CRPF, Hyderabad dated 24.06.08 and such certificate indicates that the petitioner has recovered from his illness and he is fit to resume duties in Govt. or fit to resume his duties. Leave is hereby granted to annex such medical certificate with an affidavit.

11. This significant aspect does not seem to have to be taken into consideration by the concerned authority which issued the order of termination. Mr. Chatterjee further justified in referring to Article 311 of the Constitution which clearly mandates that even a temporary Government servant cannot be just thrown out of an employment without following the disciplinary or enquiry process. Admittedly no inquiry was initiated against the petitioner as there was no charge against him except the fact that he was sick and consequently absent for a rather long period.

12. Be that as it may, the present case demands more compassion on the part of the authority. The order of termination dated October 15th, 2008 suffers from

inherent infirmity and it cannot be sustained. The said order accordingly stands quashed.

13. The respondent authority, if so chooses may initiate appropriate proceeding/enquiry against the writ petitioner who, however, must now be permitted to resume his duties.

14. The present writ petition stands disposed of with the aforesaid direction. There will be no order as to costs.

15. Needless to add, if the writ petitioner submits any representation regarding the alleged non-payment of salary and allowances etc., the authority concerned must consider the same forthwith and take appropriate action by way of disbursement of the said amount.

16. Since the learned Counsel for both parties are present, they are at liberty to communicate this order and the respondents are to act upon such communication.

Urgent Xerox certified copy of this order, if applied for, shall be given to the parties.