

(2005) 08 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2495 of 2005

Santosh Kumar Yadav

APPELLANT

Vs

Union of India (UOI) and Kanishk Kumar Yadav

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 4, 5, 5(1)
Central Reserve Police Force Rules, 1955 — Rule 10, 11, 12, 16, 7

Citation : (2005) 6 AWC 5188

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Yogesh Agarwal, for the Appellant; P.N. Rai and K.C. Sinha and S.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—It transpires that the respondents issued an advertisement inviting applications for recruitment on the post of Constable in the i Central Reserve Police Force. The petitioner applied and qualified in the written examination but was declared medically unfit by the doctors on 14.2.2004 on the ground that the petitioner was suffering from a gross squint in the right eye and also on account of hypertension. The petitioner applied for a review of his medical examination. The petitioner was sent to Rampur where the doctors re-examined him on 1.6.2004 and declared him to be fit for joining the force, Based on this re-examination, the petitioner was given an :appointment on a temporary basis by an order dated 5.8.2004, It transpires that a compliant was made to the inspector General staling therein that the petitioner was selected inspite of being declared medically unfit On the basis of this complaint, the Inspector General directed fee authorities to hold a medical re-examination of the petitioner. Based on the aforesaid direction, the petitioner was sent to the base Hospital, New Delhi where he was examined by a panel of doctors who certified that the petitioner was suffering from divergent squint in the right bye and was also suffering from hypertension. Based on this report, the appointing authority

issued an order dated -8,1.2005 terminating the services of the petitioner exetdsmsg the powers under the proviso to Sub Rule(I) of Rule 5 of the Central Civil Services .(Temporary Service) Rules, :1965 (hereinafter referred to as the Rules of 1965). Aggrieved. by this order, the petitioner has filed the present writ petition, praying for the quashing of the order of termination and for a writ of mandamus commanding the opposite parties to permit the petitioner to continue as a member of the Central Reserve Police Force.

2. Sri Yogesh Agarwal, the learned counsel for the petitioner submitted that the Impugned order of termination had been issued by a person who had no authority in law. The learned counsel submitted hat as per Rule 7(b) of the Central Reserve Police Force rules 1955, he appointing authority was the Commadant, where the order of termination had been "issued by the Additional Depty Inspector General ,of Police who had no authority to issue the Order of termination. The learned. counsel for the petitioner; farther submitted that assuming without admiting, that the order passed, by the Additional D.I.G. was Valid and that he was duly authorised to issue an order, nonetheless, the order of termination. was issued under the proviso to Sub Rule (i) of Rule 5.bf the Central Civil Services (Temporary Service) Rules, 1965 which was .not applicable to the petitioner inasmuch as, he was appointed and enlisted in .service under the Central Reserve Police Force Act, 1949 read with the Centeal Reserve Police Force Rules, 1955. The learned counsel for the petitioner, therefore, submitted that the Rules of 1965 had wrongly been invoked in the present case The learned counsel for the petitioner further submitted; that even otherwise one month"s notice as contemplated under Rule 5 had not been given and therefore, the order of termination was illegal and .liable to. be quashed to support of his conteition, the learned counsel for the petitioner relied upon a .dectision of the Supreme Court in Prabhudayal Birari Vs. M.P. Rajya Nagrik Aapurti Nigam Ltd., , in which it was held where one month"s notice was "not given the order of termination was invalid, being against the order of appointment The learned counsel for the petitioner further submitted that under Rules 10 -and 11 of the Central Reserve Police Force Rules, 1955, a candidate, who was recruited in the force must conform to certain standards as laid down in Rule 11, namely, that the candidate must have the minimum height, chest, age etc., as prescribed therein and therefore, the .petitioner could only be removed if his enlistment not in accordance with the enlistment standards as prescribed in 11. The learned counsel submitted that the services of the petitioner was terminated on the ground of being medically unfit. This medical ground was not mentioned in Rule 11 and, therefore, the services of the petitioner could not be terminated on a medical ground.

3. On the otherhand, Sri P.N.Rai, the learned counsel appearing for the respondents, submitted that the Additional Deputy Inspector, General was the appointing authority and was competent to issue the order of termination. The learned counsel for the petitioner¹ further submitted that the petitioner was appointed on a temporary basis and: the conditions mentioned in the order of

appointment clearly indicated that the Central Civil Services Temporary Service Rules, 1965 would be applicable to the case of the petitioner. The learned counsel further submitted that the petitioner was re-examined by a panel of three doctors at the base Hospital in New Delhi where it was confirmed that the petitioner was suffering from a divergent squint in the right-eye and that he was also suffering from hypertension. Since the petitioner was found to be medically unfit, the authority rightly invoked the provision of Rule 5 of the Rules of 1965."

4. Heard Sri Yogesh A. Garwal, the learned counsel for "the petitioner and Sri P.N. Rai, the learned counsel appearing for the respondents. On the direction of the Court, the record of the case was summoned which has been produced by the learned counsel for the respondents. The record has been perused by the learned counsel for the petitioner as well as by the Court.

5. The appointment letter issued in the name of the petitioner indicates that it was issued under the signature of the Additional D.I.G. C.R.P.F., Allahabad. The order of termination" has been issued by the Additional D.I.G. Consequently, the appointing authority, namely, the Additional D.I.G. has also passed the order of termination.. In my view, the order of termination has been passed by a competent authority and I do not find any error in it. The submission of the learned counsel for the petitioner is, therefore, devoid of any merit

6. A perusal of the appointment letter dated 5.8.2004 indicates that the petitioner was appointed on a temporary basis. Clause 5 of the appointment letter stipulated that the petitioner could be sent to any place for re-medical examination and, if found medically unfit, his services would be terminated. Clause 14 of the appointment letter indicates that the petitioner would be kept on probation for a period of two years and Clause 13 of the appointment letter stipulates that the services could be terminated, without assigning any reason under the Central Civil Services (Temporary Services) Rules, 1965.

7. Further Rule 16 of the Rules of 1955 contemplates that all the members of the force would be enrolled for a period of three years and during this period of engagement they could be discharged at any time by giving one month's notice by the appointing authority. This Rule further provides that at the end of three years, those members who had not been given the substantive status would be considered for quasi permanency under the provisions of 4 Central Civil Services (Temporary Service) Rules, 1965;.

8. Thus, from a reading of Clause 13 of the terms and conditions of the appointment letter, read with Rule 16 of the Rules of 1955, it is clear that a person appointed on a temporary basis could be discharged at any time without assigning any reason by giving one month's notice by invoking the provisions of Central Civil Services (Temporary Service) Rules, 1965. Consequently, the contention of the learned counsel for the petitioner that the Rules of 1965 are not applicable, is patently erroneous and misconceived. The appointing authority had rightly invoked the provisions of Rule 5 of the Central Civil Service (Temporary

Service) Rules, 1965.

9. The submission of the learned counsel for the petitioner that months notice was not given and, therefore, the order, of was wholly illegal and was liable to be quashed, is also From a perusal of the order of termination, it is clear that the petitioner was directed to claim one month's pay in lieu of one month's notice. The language used in the order of termination is verbatim as that used in Rule 5 of the Rules of 1965. Consequently) the submission of the learned counsel for the petitioner that one month's notice was not given is wholly erroneous. The petitioner was directed to claim one month's pay in lieu of notice which is sufficient requirements as per Rule 5 of the Rules of 1965. The judgment cited by the learned counsel is therefore, not applicable to the present facts and circumstances of the case.

10. The contention of the learned counsel" for the petitioner that the services of the petitioner could not be, terminated on the ground of being medically unfit, inasmuch as, the grounds are not found under 10 or 11 of the Rules of 1955 is totally misconceived. Rule 12 of the Rules of 1955 clearly indicates that no candidate could be enrolled unless he obtains a health certificate in the prescribed form. Further, clause 5 of the terms and conditions. of the appointment letter clearly indicates: that the petitioner's services could be terminated if he was found medically unfit. In the present case, the petitioner was examined by a panel of three doctors at the base Hospital, New Delhi and the doctors, after examining him, certified that he was suffering from divergent squint in the right eye and that he was also suffering from hypertension. I have also examined the original record and upon the perusal of the medical report, I find that the petitioner was examined on two days and on both the days his blood pressure was on the higher side. His earlier medical reports also indicated a high blood pressure and, therefore, the doctors rightly came to the conclusion that he was suffering from hypertension.. Consequently, the contention of the learned, "counsel for ;the petitioner that the petitioner cannot be discharged on the ground of being medically unfit is patently erroneous and devoid of any merit.

11. The findings given by the doctors have not been challenged by the petitioner. The petitioner has, however,) alleged malafides, alleging that his services had been terminated on account of a false complaint made by another person. The respondents admit that the petitioner was re-examined on a certain complaint being made against him and that he was examined by a panel of three doctors in Delhi. Since the petitioner has not challenged the findings; given by the doctors, the Court is not inclined to accept the theory of malafides as alleged by the petitioner in his petition.

12. In view of the aforesaid, I do not; find any merit in the writ petition. The writ petition fails and is dismissed. However, in the circumstances of the case there shall be no order as to cost.