

(2020) 04 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : SWP No. 3265 Of 2014

Sham Lal	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 22-04-2020

Acts Referred:

Central Civil Services (Temporary Services) Rules, 1965 — Rule 5(1)(a), 5(1)(b)
Central Reserve Police Rules, 1955 — Rule 16
Constitution Of India, 1950 — Article 226

Citation : (2020) 04 J&K CK 0004

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Roop Lal, Sumit Bhatia

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has, inter alia, prayed for the following reliefs:

"i. Writ of Certiorari quashing order dated 19.03.2013 passed by respondent No.3 without holding an enquiry and affording the petitioner an opportunity of being heard.

ii. Writ of Certiorari quashing order dated 24.07.2014 passed by respondent No.2 rejecting the appeal of the petitioner in violation of the principles of natural justice and without giving him an opportunity of being heard.

iii. Writ of mandamus commanding upon the respondents to allow the petitioner to resume his duties/training at CRPF Training Centre in Kerala

iv. Writ of Mandamus commanding upon the respondents to allow the petitioner to join his training/services in Kerala and also grant all consequential benefits.

v. Writ of Mandamus commanding upon the respondents to constitute a Medical

Board for examination of the petitioner for his medical fitness in the Central Reserved Police Force."

2. Facts in brief leading to the filing of this writ petition are: the petitioner was enrolled in CRPF as constable in August 2012 and joined his training at Training Centre in Kerala on 25.09.2012. During his training, the petitioner fell ill and was sent back to Group Centre Bantalab, Jammu on medical ground. He proceeded on three days earned leave w.e.f 27.11.2012 to 29.11.2012 and during this period, the petitioner got him examined in the Government Medical College Hospital Jammu, where the Doctors advised him six weeks complete rest. The petitioner again fell ill and remained under the treatment in GMC Jammu till 2nd of August 2013. He, after his recovery, filed an application before the respondents along with medical certificates for allowing him to join the duties. However, the respondents passed an order dated 19.03.2013 terminating the petitioner from the service. It is submitted that the order of termination was passed by respondent No.3 without affording the petitioner an opportunity of being heard and subsequently the appeal of the petitioner was also rejected by respondent No.2 upholding the order of respondent No.3. It is further submitted that the petitioner, being a member of CRPF, is governed under the rules and regulations of the said Organization, whereas the orders impugned have been passed under the Central Civil Services (Temporary Services) Rules 1965 (for short, 'CCS (Temporary Services) Rules, 1965').

3. The orders impugned have been challenged, inter alia, on the ground that the order of termination of services of the petitioner passed by respondent No.3 and subsequently rejection of appeal by respondent No.2 upholding the order of respondent No.3 has been passed without affording the petitioner an opportunity of being heard, as such, are not sustainable.

4. The respondents have filed their objections in which they have stated that the petitioner was granted three days leave for his treatment w.e.f 27.11.2012 to 29.11.2012 after which he was supposed to report for duty on 29.11.2012 but he did not report back for duty on due date and overstayed leave w.e.f 30.11.2012. It is submitted that the petitioner instead of joining on 29.11.2012 submitted applications dated 29.11.2012 and 12.12.2012 stating that due to severe pain in the lower limbs, he had reported at Government Medical College Hospital, Jammu. It is further submitted that the petitioner was a newly appointed and was not having sufficient leave in his leave account and being only an OPD patient was repeatedly advised by the competent authority to report at Composite Hospital, CRPF, Jammu for taking treatment, but, despite issuance of several notices and affording him sufficient opportunities in writing by the Group Centre, CRPF Ban Talab, Jammu he neither reported at Composite Hospital for treatment nor reported for duty in Group Centre and took treatment in OPD, Govt. Medical Hospital, Jammu at his own, whereas being an OPD patient, he could have reported at Composite Hospital in compliance to various notices issued by the competent authority. It is submitted that the petitioner has failed

to maintain good discipline of the Force by disobeying and by not comply with the directions of the competent authority and by overstaying leave at the initial stage of his service career. The petitioner being a temporary Government servant, came to be terminated vide order dated 19.03.2013 in terms of clause (b) of Rule 5(1) of CCS (Temporary Services) Rules, 1965 without conducting any departmental enquiry and, therefore, the orders impugned are perfectly legal and sustainable in law.

5. Heard learned counsel for the parties and perused the record.

6. Admittedly, the petitioner upon his selection and appointment was enrolled in CRPF on 21.08.2012 and was sent to undergo basic training at RTC, CRPF, Peringome, Kerala. While he was undergoing his training, he submitted his application for discharge from service due to personal reasons, that is, his own and his mother's illness. Accordingly, the petitioner was despatched to Group Centre, CRPF, Bantalab, Jammu by Training Centre for accepting his request for discharge from the service. The petitioner, thus, reported back at Group Centre, CRPF, Bantalab on 24.11.2012 and instead of pursuing his discharge, he requested for grant of three days earned leave w.e.f. 27.11.2012 to 29.11.2012 for his treatment. The leave was sanctioned by the competent authority for the aforesaid days. The petitioner who was supposed to report for duties on 30.11.2012, however, absented and instead submitted an application on 29.11.2012 for extension of leave on the ground that due to severe pain in his lower limbs he had been taking treatment as OPD patient from Govt. Medical College Hospital, Jammu. Subsequently, application was also sent by him on 29.11.2012 seeking further extension of leave. After examination of medical record of the petitioner and finding that the petitioner was only OPD patient in Govt. Medical College Hospital, Jammu, the respondent, competent authority, issued several letters to the petitioner calling him to report to Composite Hospital, CRPF, Jammu for taking treatment. The petitioner avoided all the notices and instead of reporting to Composite Hospital, CRPF, Bantalab, Jammu remained unauthorisedly absent from duties and, thus, overstayed his leave. Taking serious note of the indiscipline shown by the petitioner disobeying the command of the superiors, the services of the petitioner were terminated vide order impugned dated 19.03.2013 by invoking clause (b) of sub-rule 1 of Rule 5 of CCS (Temporary Services) Rules, 1965 without conducting any inquiry. The petitioner preferred an appeal before the appellate authority also, which too was dismissed being devoid of any merit by the appellate authority. It is the order of termination of the petitioner as also order passed by the appellate authority, which are assailed by the petitioner in this petition.

7. From the perusal of the original record produced by the respondents before me, it clearly transpires that the services of the petitioner have not been terminated on medical grounds, but, the petitioner was discharged/terminated for overstaying leave during the period of his temporary service. The petitioner does not dispute the issuance of communications to him by the respondents

calling upon him to report to Composite Hospital, CRPF, Bantalab, Jammu, but, submitted that due to his illness, he could not comply with the aforesaid directions. The petitioner was enrolled in CRPF on 21.08.2012 and was to remain in temporary service for a period of three years. It was only at the end of this period of three years, he was to be considered for quasi-permanency under the provisions of CCS (Temporary Services) Rules, 1965. This is so provided in Rule 16 of the Central Reserve Police Rules, 1955 (hereinafter referred to as 'the CRPF Rules of 1955'). Rule 16 of the Rules of 1955 further provides that the services of temporary member of the force are liable to be discharged on one month's notice. It is in terms of Rule 16 of the CRPF Rules of 1955 read with Rule 5 (1) (a) of the CCS (Temporary Services) Rules, 1965, the services of the petitioner were terminated forthwith by paying a sum equivalent to sum of his pay plus allowances for the period of notice. The plea of learned counsel for the petitioner that the services of the petitioner were not governed by the CCS (Temporary Services) Rules, 1965 is devoid of merit, for Rule 16 of the CRPF Rule, 1955 clearly provides that a member enrolled in the force shall be treated as temporary member for a period of three years after which he shall be considered for quasi-permanency under the provisions of CCS (Temporary Service), Rules, 1965. Rule 16 of CRPF Rules, 1955 itself provides that those who are temporary shall be liable to discharge on one month's notice in accordance with CCS (Temporary Service), Rules, 1965. This exactly has been done by the respondents while terminating the services of the petitioner.

8. It may be relevant to note that during the pendency of this petition, this Court vide its order dated 30.04.2015 had directed the respondents to constitute a Medical Board for examination of the petitioner so as to ascertain whether he was medically fit to serve in the Central Reserve Police Force. From the records produced by the respondents, it transpires that in compliance to the interim order passed by this Court, petitioner was examined by the Board of Medical Officers and was declared unfit for Central Reserve Police Force services.

9. In the given facts and circumstances, where the petitioner was given ample opportunities to report back for duties and seek treatment from the Composite Hospital, CRPF, Bantalab, Jammu, the petitioner cannot be heard to complain that the impugned order was passed in violation of principles of natural justice. In terms of the Rule 16 of the CRPF Rules, 1955 read with Rule 5 (1)(a) of CCS (Temporary Service), Rules, 1965, the petitioner was in temporary service of the respondents and his services were liable to be discharged/terminated by one month's notice or pay in lieu thereof. The petitioner had not become permanent member of the force, which would require a regular departmental inquiry and show cause notice etc. before inflicting any major penalty on the petitioner. The petitioner was sanctioned only three days earned leave, but, he overstayed his leave without permission of the competent authority. It is true that the petitioner made application seeking extension of leave, but, he was intimated that given the ailment he was suffering from and the fact that he was undergoing treatment only as OPD patient in Govt. Medical Hospital, Jammu, he was advised to report

back for duties and get himself treated at the Composite Hospital, CRPF, Bantalab, Jammu. He not only overstayed his leave, but, continuously disobeyed the directions of the respondents. The petitioner, while he was in temporary service of the respondents, exhibited conduct, which was highly unbecoming of member of the disciplined force like CRPF. From the very beginning, the petitioner had no intention to serve CRPF and was clearly unable to withstand the rigors of training. In the beginning of his career itself, he submitted an application for discharge from service, citing his own health and illness of his mother. The respondents conceding to the request of the petitioner sent him to Group Centre CRPF Bantalab, Jammu for accepting his request for discharge. This is how the petitioner succeeded in avoiding the training, but, when he reported in Group Centre, CRPF, Bantalab Jammu, he immediately applied for three days earned leave w.e.f. 27.11.2012, which he overstayed till his services were terminated on 19.03.2013. The petitioner did not pay heed to the repeated communications of the respondents to report at Composite Hospital, CRPF, Bantalab, Jammu so that he could be treated while being in service of the respondents.

10. From the aforesaid narration of events, it becomes abundantly clear that the petitioner from the very beginning had no intention to serve in Central Reserve Police Force and continuously exhibited conduct unbecoming of a disciplined soldier. Being temporary member of the service, his services were discharged by the respondents by invoking Rule 5 (1)(a) of the CCS (Temporary Service), Rules, 1965. The petitioner was given one month's salary in lieu of notice. I find nothing wrong with the order impugned. The appeal preferred by the petitioner was devoid of any merit and, therefore, rightly rejected by the appellate authority.

11. For the foregoing reasons, this Court is not inclined to entertain this petition and the same is, accordingly, dismissed along with connected CM(s).