
(2003) 01 DEL CK 0097
In the Delhi High Court
Case No : Civil Writ Petition: 558/78

Sher Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Citation : (2003) 1 ILR Delhi 40

Hon'ble Judges : V.K. Jain, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : H.K. Chaturvedi, for the Appellant; Suresh Kaith, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—Petitioner was appointed as Dy. S.P. (Company Commander/ Quarter Master) in C.R.P.F. on temporary basis on 19.8.72. During the pendency of the writ petition, the petitioner died and the legal heirs of the deceased petitioner have been brought on record. Counsel for the petitioner has contended that in terms of appointment of the petitioner after he had put in two years of service and no order prolonging the period of probation having been passed by the respondent, the petitioner would be deemed to have been regularised in the service. Alternatively, it was contended by the counsel for the petitioner that even if the service of the petitioner was terminated pursuant to sub Rule (5) of Rule 108, one month's notice in terms of the said rule before terminating the service of the petitioner was required to be given to the petitioner. Lastly, it was contended by the counsel for the petitioner that mental illness of the petitioner was occasioned during the course of his employment and therefore termination simplicitor of the petitioner was wholly unjustified and illegal. The petitioner ought to have been given some other jobs commensurate to his health. Counsel for the petitioner has invited our attention to some certificates issued by the hospital, wherein, it was mentioned that the petitioner was fit to join duty. However, the said certificate is of a later date. He has further contended that this case is squarely covered by the judgment of Division Bench of this Court in Delhi

Transport Corporation Vs. Shad Ram, LPA. 650/2002, decided on September 12, 2002.

2. Counsel for the respondent has justified the order passed by the respondent on the ground that mental condition of the petitioner was such that he could not be retained in the Force in any capacity.

3. We have heard the arguments at length.

4. Let us first deal with the arguments of counsel for the petitioner that the petitioner having not been granted further probation after two years was deemed to have been regularised in the Force. Rule 108 of the CRPF rules is as under:

(2) On the completion of the period of probation, the candidates shall, if considered fit for permanent appointment, be confirmed in their appointment subject to the availability of substantive vacancies in permanent posts.

(3) The Government may extend the period of two years specified in Sub-Rule (1)

(4) If on the expiration of the period of probation referred to in sub-rule (1) or of any extension thereof under sub-rule (3), as the case may be, the Government is of the opinion that a candidate is not fit for permanent appointment, or if at any time during such period of probation or extension, it is satisfied that he will not be fit for permanent appointment on the expiration of such period of probation or extension, it may discharge him or pass such orders as it thinks fit.

(5) 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.

5. From the plain language of aforesaid sub Rules (2), (3), (4) and (5) of Rule 108, it is manifestly clear that the period after the prescribed period of probation shall be treated as engagement from month to month. Therefore, the argument of counsel for the petitioner that decision of Division Bench of this Court will come into play would not hold good in view of specific rule having been framed which deals with cases where period of probation is not extended after expiry of two years.

6. In our opinion respondent was fully justified in not extending the period of probation in view of state of health of the petitioner. In the counter affidavit some of the instances have been mentioned that the petitioner was seen moving about in the lines during nights, he was found lying on the road and he even tried to jump into a well. It has been stated in the said counter affidavit that petitioner became physically uncontrollable and he tried to make trunk call to the Prime Minister. The petitioner was admitted in Ranchi Mental Hospital and after discharge from the hospital the petitioner did not perform his duties properly. Other cases of his behaviour which were noticed was that some time early in the morning he was found roaming in the camp in his under-wear while it was

raining. He also went to the subordinate officer mess and took a bath in the open. All these things led to the conclusion that he was not a normal person who could be fit to be retained in the executive cadre of the respondent. Even otherwise one month salary in lieu of one month notice was sent to the petitioner although belatedly on 18.4.77. We see no force in the arguments of counsel for the petitioner with regard to applicability of the decision of Division Bench in DTC's case (Supra), as the Division Bench of this Court was entertaining the proceedings in view of provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, and the said Act at the time when the service of the petitioner was terminated had not come into force. Even otherwise, there is nothing on record to show that the mental incapacity of the petitioner was acquired on account of his working with the respondent organisation. The respondent to our mind gave ample opportunity to the petitioner and got him treated in various hospitals at different places and ultimately when they found that the petitioner was not fit to perform his duty, they had no other alternative except to terminate his services.

7. We find no infirmity with the impugned order. The writ petition stands dismissed. No order as to costs.