

(2000) 05 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 39130 of 1993

S.M. Subramani

APPELLANT

Vs

Government of India and another

RESPONDENT

Date of Decision : 07-05-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2001) 1 KarLJ 474

Hon'ble Judges : A.V. Srinivasa Reddy, J

Bench : Single Bench

Advocate : Smt. Swetha Anand for Sri T. Narayanaswamy, for the Appellant; Sri N. Devadas, Central Government Standing Counsel, for the Respondent

Judgement

1. The petitioner, an ASI in Border Security Force, has filed this writ petition being aggrieved by the order of invalidment passed by the respondents as per Annexure-A declaring him medically unfit and retiring him from the services of the Border Security Force.

2. The brief facts of the case are:

The petitioner was selected as Constable by the 2nd respondent during 1968. After training at Yelahanka the petitioner was given posting as Constable, B.S.F. and he worked in various places. In the year 1986 the petitioner was promoted to the post of ASI and posted to Punjab. On 13-3-1986 while he was on duty he developed convulsions thrice and the condition was diagnosed as epilepsy. Subsequently, he was sent for examination by the Medical Board and the Board declared him unfit to hold the said post in the services of B.S.F. and the petitioner was medically invalidated and boarded out from the service of B.S.F. Hence, the present writ petition by the aggrieved petitioner challenging the impugned order.

3. I have heard Smt. Swetha Anand for the petitioner and Sri Devadas, learned Central Government Standing Counsel for the respondents.

4. There is no controversy regarding facts and the facts as stated by the petitioner are not controverted by the respondents. While the fact that the petitioner was afflicted by epilepsy is not disputed by the petitioner. It is his stand that he was completely cured and did not suffer from any disability, as on the date when the Medical Board examined him to assess the extent of his disability, which would disentitle him from serving in the Armed Force of B.S.F. It is his contention, the report of the Medical Board assessing his disability at 40% itself being not correct as by then he was completely cured, the order of invalidment passed by the respondent on the basis of the report of the Medical Board is improper and cannot be sustained in law.

5. On the other hand the respondents have taken up a stand that the impugned order was passed after complying with the principles of natural justice and it was based on the declaration of the Medical Board which is an independent body of experts and the said finding of the Board cannot be subject to an enquiry in a writ petition under Article 226 of the Constitution to ascertain its correctness or otherwise.

6. The petitioner places heavy reliance on the opinion of the Psychiatrist, PBM Hospital, Bikaner to whom he was referred by the respondents for his opinion. The Psychiatrist of PBM Hospital, Bikaner opined that the petitioner was fully fit to resume his duties as he had not had any convulsions during the past two years though the medicines were discontinued. This aspect of the matter is also not disputed by the respondents. Though the medical opinion expressed by the Specialist and the declaration by the Medical Board are conversely contradictory, this Court cannot embark upon an enquiry into which of these reports could be relied upon as this Court is not qualified to decide on that issue.

7. But, what remains to be seen is whether the action of respondent 2 in passing an order of invalidment against the petitioner can be supported in law. No doubt, B.S.F. is an Armed Force and the medical fitness of every member of such a force has to be of a very high standard as they are expected to perform the exacting and onerous task of ensuring the inviolability of the borders of our Nation. What should happen when a member of such an Armed Force gets afflicted with an unfortunate disease which results in a drastic reduction in his medical fitness. Can he be shunted out unceremoniously or should his right to livelihood as an integral facet of right to life be protected. That precisely is the question now arises for my consideration.

8. Such a question came up for consideration before Supreme Court in Narendra Kumar Chandra Vs. State of Haryana and others, . The Apex Court on consideration of the various factors laid down the law as under:

"Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be

suitable to discharge the duties.. .".

The fact that the petitioner herein is a member of the Armed Force should make no difference to this position in law. The invalidation of the petitioner being solely on the ground of his becoming medically unfit, the protection of the right to livelihood as enshrined in Article 21 of the Constitution necessitated on the part of the respondent 2 to undertake the exercise of finding suitable posts existing within the force and to fit the petitioner in any one of the posts where he would not be called upon to perform combat duty. I have no doubt there are several posts in which the petitioner could have been accommodated. The case of the respondents that the petitioner is rendered unfit to perform the duty for which he was drafted in the force, even if upheld, should not result in ouster of the petitioner from the force solely on the ground of his having become invalidated to perform that particular duty. Where a person becomes incapable of discharging a particular type of duty but is quite capable of performing a duty of a general nature, the principles of natural justice enjoin that such a person who discharged his duties satisfactorily for several years should be accommodated in due deference to his satisfactory service in such duty which he could satisfactorily perform. In a country like ours where the survival of a family is invariably linked to the earning capacity of the head of a family, depriving the family of the only source of livelihood would amount to denial of the right to life not only to the petitioner but the family as a whole and, therefore, violative of Article 21 of the Constitution. That such ousters from service are usually accompanied by certain sums paid as damages or as pension alone should not be the guiding factor to decide the correctness or otherwise of such ouster. The fact remains that such payments would not sufficiently compensate for the earnings that the bread earner was actually getting in the form of salary. Ouster may be the easy option but not the right option. The alternative approach of providing a suitable job within the establishment would serve the ends of justice. Care should also be taken to protect the last salary drawn by the concerned person. Automatic ouster in such cases would amount to gross injustice and such actions are indefensible and can be justified only in cases where providing an alternative job would lead to disastrous results which, in my opinion, is not the case herein. The impugned order of retirement passed, therefore, is in violation of Article 21 of the Constitution and against the principles of natural justice calling for interference by this Court under Article 226 of the Constitution.

9. In the result, for the reasons stated above, the writ petition is allowed and the impugned order at Annexure-A is quashed.

10. The respondent 2 is directed to accommodate the petitioner in any suitable post in the Force where he would not be called upon to render combat duty. This direction shall be carried out by the respondent 2 within six months from the date of receipt of this order.

No order as to costs.