

(2014) 11 UK CK 0031

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 768 of 2012

Vijay Pal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 2(aa), 7, 8
Constitution of India, 1950 — Article 311, 311(2)

Citation : (2015) 108 ALR 887 : (2015) 144 FLR 991 : (2015) LabIC 551

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : H.S. Sharma, Advocates for the Appellant; Anjali Bhargava, Learned Standing Counsel, Advocates for the Respondent

Judgement

Sudhanshu Dhulia, J.—The petitioner before this Court is a Head Constable in Central Industrial Security Force (from hereinafter referred to as the "CISF"). He is aggrieved by the order dated 26.02.2011, passed by the Commandant, CISF Unit BHEL, Haridwar, by which the petitioner has been prematurely retired from service. The Commandant in its order has exercised the powers conferred under Rule 56(j) of the Fundamental Rules, thereby compulsorily retiring the petitioner from service. Against the said order dated 26.02.2011, petitioner preferred an appeal before the Director General, CISF, which has also been rejected vide order dated 2nd February, 2012 as according the appellate authority the order was sent to the Representation Committee but the Committee has also come to the conclusion that there are no extenuating circumstances warranting its interference in the matter. Aggrieved, the petitioner filed the present writ petition. Counter-affidavit has also been filed by the respondents. The matter is now being heard and disposed of finally.

2. The petitioner is admittedly an enrolled member of the CISF. An "enrolled member of the Force" is defined under Section 2(aa) of the Central Industrial Security Force Act, 1968 (from hereinafter referred to as "the CISF Act"). The

petitioner has further taken this Court to Section 7 of the CISF Act. Section 7 of the CISF Act reads as under:--

"7. Superintendence and administration of the Force:--(1) The superintendence of the Force shall vest in the Central Government, and subject thereto and to the provision of this Act and of any rules made thereunder, the command, supervision and administration of the Force shall vest in the Director General.

(2) Subject to the provisions of sub-section (1), the administration of the Force within such local limits as may be prescribed shall be carried on by such other supervisory officers as considered necessary in accordance with the provisions of this Act and of any rules made thereunder and every supervisory officer placed in charge of the protection and security of an industrial Undertaking, joint venture or private industrial undertaking shall, subject to any direction that may be given by the Central Government or the Director General in this behalf, discharge his functions under the general supervision, direction and control of the Managing Director of that Undertaking."

3. The learned counsel for the petitioner has further taken this Court to the penal provision of the CISF Act, namely, Section 8 of the CISF Act. Section 8 of the CISF Act, reads as under:--

"8. Dismissal, removal, etc., of members of the Force:--Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any supervisory officer may--

(i) dismiss, remove, order for compulsory retirement of or reduce in rank, any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, to whom by any act of his own renders himself unfit for the discharge thereof, namely:--

(a) fine to any amount not exceeding seven days pay or reduction in pay scale;

(b) drill, extra guard, fatigue or other duty.

(c) removal from any office of distinction or deprivation of any special emolument.

(d) withholding of increment of pay with or without cumulative effect.

(e) withholding of promotion.

(f) censure."

4. A bare reading of Section 8 of the CISF Act shows that a member of the Force can be dismissed, removed or his orders for compulsory retirement can be passed, but only after following the procedure as provided under Article 311 of the Constitution of India, which would primarily mean that a person can be dismissed, removed or compulsorily retired but only after affording an

opportunity of hearing to the person.

5. The learned counsel for the petitioner has further submitted that the rules have also been framed under the CISF Act which are known as "Central Industrial Security Force Rules, 2001". Under Rule 34(iii) "compulsory retirement" is mentioned as one of the penalties. The learned counsel for the petitioner would, therefore, argue that "compulsory retirement" is actually a punishment and unlike in case of a "civil servant" while compulsorily retiring a person his age, his period of service in the department and his past service record is only to be considered, and an opportunity of hearing may not be a requirement but in his case since compulsory retirement has been mentioned as penalty and that too a "major penalty" one can only be compulsorily retired after due inquiry in the matter.

6. The learned counsel for the Union of India Ms. Anjali Bhargava on the other hand has argued that fundamental Rule 56(j) is applicable in his case as well and there is no requirement for giving him an opportunity of hearing as all that has to be seen is past service record etc. and all this has been examined by the competent authority. The past service record of the petitioner was examined where one major penalty and eighteen minor penalties were awarded, therefore, he is a "deadwood" and is not liable to be retained in CISF. She has further argued that the petitioner was transferred from Sigreni, Tamil Nadu to BHEL Unit at Haridwar on his own request due to his illness and on the ground that he suffered heart attack in the year 2008 and is surviving on medicines. Therefore, the medical condition of the petitioner is such and his efficiency is so poor, he cannot be retained in service.

7. This fact, however, is not reflected either in the termination order or in the order passed by the appellate authority. Both two orders clearly rely upon the Fundamental Rule 56(j) and there is no whisper of medical condition of the petitioner. Therefore, the plea of the respondents that the petitioner is actually prematurely retired due to medical condition cannot be accepted. There is another reason for not accepting this argument of the learned counsel for the Union of India as in the CISF Rules, there is a specific provision for retiring an enrolled member of the Force from the service on ground of medical unfitness. The said provision is given in Rule 91B of the CISF Rules, 2001. Rule 91B of the CISF Rules, 2001 reads as under:--

"(91B). Retirement of enrolled member of the Force on the grounds of medical unfitness.--(1) Where a Commandant is satisfied that any enrolled member of the Force is unable to perform his duties by reason of medical unfitness, he may direct that the said enrolled member to be brought before a Medical Board.

(2) The Medical Board shall be constituted in such manner as may be determined by the Director General.

(3) Where the said enrolled member is found by the Medical Board to be unfit for further service in the Force, the Inspector General, the Deputy Inspector General

or as the case may be, the Commandant, may, if he agrees with the findings of the Medical Board order the retirement of enrolled member.

Provided that before the said enrolled member is so retired the findings of the Medical Board and the decision to retire him shall be communicated to him.

(4) The enrolled member may, within a period of fifteen days from the date of receipt of such communication, make a representation to the officer next superior in rank to the one who ordered the retirement.

(5) The said superior officer shall have the case referred to a Review Medical Board which shall be constituted in such manner as may be determined by the Director General.

(6) The superior officer may, having regard to the findings of the Review Medical Board, pass such order as he may deem fit.

(7) Where a representation has been made to a superior officer under sub-rule (4), an order passed under sub-rule (3) shall, not take effect till it is confirmed by such superior officer.)"

8. A bare reading of the said provision would show that though a person can be retired under the Rules after a declaration is made to that effect by the Medical Board but then under Rule 91B(4) of the CISF Rules, 2001, the enrolled member of the force has a right to make a representation to the authority superior in rank to the one who ordered the retirement, who shall constitute a Review Medical Board in the manner as may be determined by the Director General and after the finding of the Review Medical Board the superior authority can pass such order as he may deem fit. This procedure has not been followed. Therefore, the respondents cannot take the recourse to the medical condition of the petitioner.

9. In view thereof, the writ petition is allowed. The two orders dated 26.02.2011, passed by the Commandant, CISF Unit BHEL, Haridwar and order dated 02.02.2012, passed by the Assistant Inspector General/Estt. being violative of Article 311(2) of the Constitution of India are hereby quashed.

10. A mandamus is hereby issued to the respondents to reinstate the petitioner in service forthwith.

11. Having made the above determination, it is however, provided that the respondents are always at liberty to proceed against the petitioner on medical grounds but under the procedure as provided under Rule 91B of the CISF Rules, 2001. No order as to costs.