
(2019) 07 DEL CK 0250

In the Delhi High Court

Case No : Civil Writ Petition No. 7182 Of 2019

Vishal Ahmad

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5

Citation : (2019) 07 DEL CK 0250

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : Ankur Chhibber, Yogesh Kuamr Mathur, Harkesh, Subhash Gosai, Amit Kr. Dogra, Tushar Malik

Final Decision : Dismissed

Judgement

Vipin Sanghi, J

W.P.(C.) No.7182/2019

1. The petitioner has preferred the present writ petition to assail the orders dated 31.01.2019 and 18.4.2019 issued by the respondents. He also seeks a direction to the respondents to consider the petitioner's case, like others, who had been cleared despite having failed in one paper in the examination conducted by the respondents.

2. The petitioner was appointed to the post of ASI/technical in the CRPF on 22.3.2017. After the petitioner cleared the initial written examination and training, he was sent for further training at Ranchi on 24.5.2017 where he underwent a rigorous training course for a period of 33 weeks BRT Course

Sl. No. 41 w.e.f 1.1.2018 to 18.8.2018 at CTC(T & IT), CRPF, Ranchi (Jharkhand). In the examination held at the end of the course, he was

declared "fail" in Radio Theory Part-I and II. As per instructions, he was permitted to be retained at CTC (T & IT), CRPF, Ranchi for further three months training and for providing extra Special Classes/Coaching to re-appear in the final test in the failed subjects. Accordingly, he re-appeared in the final re-test of failed subjects held at CTC (T & IT) CRPF, Ranchi w.e.f 31.12.2018 to 1.1.2019 after completing three months coaching classes. Unfortunately for the petitioner, he again failed in Radio Theory Part II examination. Accordingly, his services were terminated in accordance with para 2.15 (A), (vi) of Chapter-II of Training Manual. The petitioner preferred an appeal against his termination which too was rejected by the second impugned order dated 18.4.2019.

3. The submission of Mr. Chhibber, counsel for the petitioner is that in the initial examination, as many as 68 persons had failed in one paper and, despite their failing in one paper, they were cleared. However, 14 candidates, including the petitioner, who had failed in two papers, were given further coaching and were required to re-appear in the re-examination. As aforesaid, the petitioner cleared one of the papers in the re-examination. Ld. counsel submits that the petitioner was, therefore, at par with the 68 persons who had failed in one paper and were still cleared.

4. The further submission of Ld. counsel for the petitioner is that the petitioner should have been discharged, and not terminated, in terms of the

Establishment Manual of the CRPF. In this regard our attention has been drawn to Clause (vi) of the said Manual which reads as follows:-

"(vi) Basic Radio Technician (C)/Basic Radio Mechanic course

The course is meant for the directly appointed ASIs(Tech). Failures during final test of the course will be retained at the CTC(T) upto a further period

of 3 months for training and all facilities provided. Candidates should be retested by a prescribed board of officers, those fail again for the second time

will be discharged and case is to be submitted to the Directorate Communication by the Principal, CTC(T) after satisfying himself that the candidates

is not likely to make up the grade."

5. Lastly, he has argued that since one month's salary was not paid to the petitioner, his termination under Rule 5 Central Civil Service (Temporary

Service) Rule is bad. He submits that the payment of one month's salary is a pre-requisite to such termination.

6. We have heard the submissions of counsel for the petitioner and perused the record and do not find any merit in the submissions. Firstly, the petitioner cannot claim parity with the 68 other persons who had failed in one paper in the first instance. This is because, the petitioner had failed in two papers in said examination, and he was, alongwith the others, sent for further coaching in special classes for a period of three months and re-tested. Despite the special efforts put in by the respondents, the petitioner again failed in one of the two papers. Therefore, in our view there is no parity between the case of the petitioner and those of the 68 candidates who-in the first round, failed in one paper.

7. The petitioner was a probationer and during the period of his probation, on account of his poor performance, the respondents were entitled to terminate his services by resorting to Rule 5 of the Central Civil Service (Temporary Service) Rule 1965. The submission of counsel for the petitioner is that this termination (not discharge as prescribed in the Manual) would be a bar to his future employment in government service. We do not agree with this submission of the counsel, since the order dated 9.1.2019 is non-stigmatic.

8. We do not find any merit in the last submission as well. Firstly we observe that office order was issued on 9.1.2019 and the termination was made effective from 31.1.2019. Even otherwise, we find that office order dated 9.1.2019 states that the petitioner would be entitled to draw pay for the month February 2019, in view of the one month's notice period. Merely because the said amount may not have been actually paid or released to the petitioner, or may not have been accepted by the petitioner, the notice of termination is not vitiated. That right of the petitioner is still preserved.

Learned counsel for the respondents states that the said amount shall be released to the petitioner within one month.

9. Dismissed.