

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4868 of 2010

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Arvind Rai S/O Sri Sudershan Rai R/O Vill.- Dehri, P.O.- Hatempur, P.S.-
Dhangai, Distt.- Bhojpur At Ara

.... Petitioner

Versus

1. The Union Of India Through The Ministry Of Home Affairs, Govt. Of India, New Delhi
2. The Director General Csf, Cgo Complex, Lodhi Road, New Delhi
3. The Inspector General Csf, Eastern Zone Headquarter, Patliputra Colony, Patna, Bihar
4. The Inspector General, National Industrial Security Academy Csf, Hakimpet, Haidrabad
5. The Commandant Csf, Dtp (DVC Bokaro)
6. The Commandant RTC Arakkonam, Post- Csf, (Suraksha Campus) Krakkanum Vellore, Tamil Nadu
7. The Director, AIIMS, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jitendra Kr.Roy
Mr. Sushil Kumar Ray
Mr. Sumit Kumar

For the Respondent/s : Mr. Raghib Ahsan(Asst.Sg)
Mr. Shiv Kumar

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

7 06-08-2015 Learned counsel for the petitioner prays for and is allowed to implead All India Institute of Medical Sciences, Patna through its Director as respondent no.7.

Let one copy of the writ petition with entire pleading be handed over to the learned counsel for AIIMS in course of the day.

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:



“ That this is an application for issuance of an appropriate writ(s), order(s) or direction(s) for quashing the order issued vide No. E-37035/RTC (A)/ 30th (B) CT-BT/A. Ray/Tr./08-13587 dated 10.12.2008 and the order issued vide letter no. E-37015/CISF/TS/Legal/A Rai/2009/-328 dated 17th August, 2009, the same has been issued without jurisdiction and not disclosing the grounds as mentioned in Rule-26(4) of CISF Rules, 2001 while passing the termination order exercising the power under Rule 26(4) of the CISF Rules 2001 and further the appeal filed by petitioner was not decided by the authority competent to do so in spite of direction by this Hon’ble Court dated 17.7.2008 in CWJC No. 8223 of 2009 the respondent no.3 and be further give the direction to reject the petitioner on the post of constable in CISF.”

The relevant facts, which are worth noticing for deciding the issue, lie in a very narrow compass. The petitioner was an applicant for the post of Constable in CISF. After undergoing the relevant prescribed selection test and medical test he was finally selected and asked to join under the order of the Commandant, BTPC(DVC), Bokaro dated 26.8.2008 for undergoing training at RTC Arakkonam. The petitioner in view of the aforementioned order dated 26.8.2008 had thereafter been not only appointed but also joined the training programme at Arakkonam and in course of undergoing the training programme his services was sought to be terminated by an order dated 10.12.2008 in exercise of power

under Rule 26(4) of the CISF Rules, 2001. The impugned order reads as follows:

“No. E-37035/RTC(A)/ 30th (B) CT-BT/A.Ray/Trg./08/3587 Dated 10/12/2008

TERMINATION ORDER

Whereas, CISF No. 083200250 **CONSTBALE/UT ARVIND RAY** (Roll No. 0502046721) S/o Shri SUDERSHAN RAY was appointed in CISF w.e.f. 6.9.2008 (FN) vide this RTC S.O. Part-I No. 49/2008 dated 30.10.2008 issued vide letter No. E-37035/RTC(A)/ 30th (B/T-CT(Trg/2008-12396 dated 30.10.2008. He has been on probation for a period of two years from the date of his appointment and still continues to be so far.

2. Whereas by virtue of the provision contained in Rule 26(4) of the CISF Rules, 2001 the Appointing Authority of CISF No. 083200250 **CONSTABLE/UT ARVIND RAY S/O SHRI SUDERSHAN RAY** is empowered to terminate his services during the period of probation, if it is of the opinion that he is not fit for permanent appointment in CISF.

3. Now, therefore, in exercise of powers conferred upon the undersigned by virtue of Rule 26(4) of the CISF Rules, 2001 I hereby issue one month's salary in lieu of one month's notice to CISF No. 083200250 **CONSTABLE/UT ARVIND RAY SON OF SHRI SUDERSHAN RAY** o83200250 for termination of his services. He shall be deemed to be no more in service of CISF with immediate effect.

Sd/-

Commandant
CISF, RTC, Arakkonam

The petitioner carried his appeal against the
aforementioned order and the same was rejected by an order dated
17th August, 2009 and in the appellate order the following findings
were recorded:

“Letter No. E-37015/CISF/TS/LEGAL/A.Rai/2009-32S

Dated 17 Aug.09

ORDER

EX-CT/UT Arvind Ray CISF No. 0832200250 was issued
with the Termination Order vide letter no. E-
37035/RTC(A)/ 30th (B) CT-BT/A Ray/ Trg/08/35487
dated 10.12.2008 by the Commandant CISF RTC
Arakkonam. Being aggrieved with the decision, vide order
Part I No.49/2008 dated 30.10.2008 Ex-CT/UT Arvind
Ray has preferred an Appeal to the IG, CISF, EZ HQRs,
Patliputra Colony Patna dated 16.2.2009 received vide
RTC Arakkonam letter No. E-37023/CISF/13th
Batch/BT/A.Ray/Trg/2008/4727 dated 17.7.2009.

02. I have gone through the records of the case file
regarding Ex-CT Arvind Ray sent by DIG RTC
Arakkonam and the appeal petition of the Ex-Const
Arvind Ray. The contention of petitioner is that it was
only because of insistence of SI Jaya Kumar that he was
terminated from services as he did not accede to the illegal
demand of SI Jaya Kumar for Rs.50,000/-. He had not
substantiated his claim in any way, therefore, it does not
hold any ground. A perusal of records, clearly indicates



that he was found to be unfit for permanent employment in CISF and therefore, under Rule 25(2)/26 of CISF Rules his services were terminated by giving him one month pay/ notice by Commandant RTC Arakkonam, who is the appointing authority (and not by Dy. Commandant as claimed by appellant).

03. Since there are no procedural or legal infirmities in the order issued by the Commandant RTC Arakkonam, I see no reason to interfere with the order and the petitioner's appeal is therefore considered and rejected being devoid of merit.

Sd/

(ANURAG SHARMA, PS)

INSPECTOR GENERAL/ TS"

The petitioner then moved this Court by filing this writ application on 19.3.2010. In the counter affidavit the order was sought to be justified on the ground that the petitioner in course of training was found medically unfit. Let it be noted that neither of the two orders, termination order or appellate order, talks of the petitioner medically unfit. Thus, some reason was sought to be given in the counter affidavit which was not incorporated in the impugned order or even in the appellate order. Such additional reasons can be accepted in the light of the law settled by the Apex Court in the case of Mohinder Singh Gill & anor. vs. Chief Election Commissioner, New Delhi & ors., reported in AIR 1978

SC 851, itself and therefore, it was quite easy for this Court to quash both the orders and direct for reinstatement of service of the petitioner.

This Court, however, will refuse to do so because of the submissions made by the learned counsel for the respondents that the petitioner actually suffers from a deformity which will disable him to discharge the duty of the post of Constable and to that extent he relies on a medical fitness report prepared by the Government General Hospital, Chennai dated 10.10.2008 which records that the petitioner is suffering from Sprengel's Shoulder in both the sides and thus, unfit to be a Constable under training. Learned counsel also in support of the submission relies on the medical Dictionary explaining Sprengel's deformity, wherein it has been explained that Sprengel's deformity or Sprengel's shoulder when used as of now would mean 'congenitally deformed shoulder where one scapula is smaller and higher than the other'. It is this deformity, according to the learned counsel for the Union of India, which shall come in the functioning of the petitioner as a Constable in CISF.

It was quite easy for this Court to even brush aside this one line report of the Regional Medical Board of the Government General Hospital, Chennai, which is not at all supported by any



other document barring that it contains signature of the Senior Civil Surgeon, Government General Hospital and Ortho Surgeon in the rank of Senior Civil Surgeon, Government Hospital and one member in the rank of Senior Civil Surgeon. It is here that this Court on earlier occasion having found that the selection of the petitioner was made on the basis of another medical Board report at Patna had passed a detailed interim order on 11.5.2015, relevant portion whereof reads as follows:

“ This Court is not satisfied with the manner in which the services of the petitioner, a Constable appointed initially at Bokaro on the basis of Medical Board held in the office of I.G., CISF, Patna was sought to be dispensed with during his training at Arakkonam in the State of Tamil Nadu on the ground that he was medically unfit.

The petitioner's appointment having been made at Bokaro this Court would direct the Director General of CISF to himself file a supplementary counter affidavit on these two issues:

(i) If the petitioner was appointed at Bokaro and was only sent for training at Arakkonam could the authorities conducting the training at Arakkonam remove him from the service on the ground of medical fitness or had to refer the matter to Bokaro unit of CISF where the petitioner was appointed and from where he was sent on training?

(ii) Whether the medical fitness report on which the petitioner was appointed and was sought to be doubted in view of subsequent Medical Board at Arakkonam in the

State of Tamil Nadu, could have led the petitioner alone being punished from service or even the members of the Medical Board in the office of the I.G., CISF, Patna also would become equally liable for giving a false medical report and consequently also to be also punished?

Let such a counter affidavit duly sworn by the Director General of CISF himself addressing to the all issues raised by the petitioner as well as aforesaid two queries of this Court be filed by him.

Additionally, this Court would also direct the I.G., CISF, Patna to produce the medical fitness certificate of the petitioner alongwith the names and details of the doctors who had prepared such medical fitness report of the petitioner on the basis of which the petitioner was appointed in CISF.”

Pursuant to the aforementioned order a supplementary counter affidavit has been filed which would go to show that the petitioner at the time of his appointment in the year 2008 was subjected to his medical fitness test before the Medical Board constituted by the Civil Surgeon, Patna consisting of three specialist. In view of the order of the Civil Surgeon constituting such a Board dated 29.7.2008 the petitioner was examined by the Medical Board on 16.8.2008 and the Medical Board after undergoing all the possible test prescribed in different columns of the Medical Examination Report for CISF personnel had declared the petitioner fit. As a matter of fact it was this medical report of



three doctors submitted on 24.8.2008 before the CISF authorities which had led to appointment of the petitioner on 26.8.2008 with a direction to join the training. Thus, if the petitioner was found to be subsequently medically unfit on account of physically incurable deformity of Sprengel's shoulder it was all the more necessary to at least give an opportunity of personal hearing to the petitioner bringing him with the report of the medical board and asking him to show cause as to why services should not be terminated instead of passing an innocuous order without giving any trace of actual reason for termination of his service.

The submission of the learned Assistant Solicitor General that there was a power available to the Government to take recourse to such innocuous order will never be a fair exercise of power because if a person is being shown the door by way of terminating his service on the ground that he is medically unfit after earlier declaring to be medically fit, it will be all more necessary for the authorities to at least comply the principles of natural justice. That having been not done this Court will have no difficulty in holding that the impugned order of termination of service cannot be sustained either on fact or in law.

A question, however, again remains that should this Court direct for reinstatement in service. There are conflicting reports,



one by the Medical Board, Patna and another by the Medical Board, Chennai. One had declared the petitioner to be fit and another had declared the petitioner to be unfit. This Court, therefore, in the interest of justice would direct the petitioner now to appear before the Director of All India Institute of Medical Sciences, Patna on 20th August, 2015 and the Director shall constitute a Medical Board of three persons consisting of himself, Head of the Department of Orthopedics and Head of the Department of Medicine for medical examination of the petitioner on the norms on which selection of Constable in CISF is made. Such norms shall be made available to the Director by IG, CISF, Patna on or before 20th August, 2015. The said Medical Board thereafter having completed full medical check up of the petitioner shall record as to whether the petitioner is fit to be employed as a Constable in CISF.

If outcome of the report of the Medical Board of All India Institute of Medical Sciences, Patna is in favour of the petitioner, the petitioner shall be taken back in service but if it goes against the petitioner that shall be the end of the matter because the petitioner cannot claim to be employed in a discipline force if he is having inherent deformity.

This Court hopes and believes that the Medical Board

shall submit its report to CISF within a week of the medical examination of the petitioner and the consequential order either reinstating the petitioner or reiterating his earlier order of removal shall be passed within a period of one month from the date of receipt of the medical report from AIIMS, Patna.

With the aforementioned observation and direction, this application is disposed of.

Let a copy of this order be given not only to Mr. Sanjay Kumar, ASG as well as to Mr. Sudhir Kumar Singh, learned counsel for All India Institute of Medical Sciences.

(Mihir Kumar Jha, J)

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