

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 21764 of 2009 (M)

PETITIONER:

**BINUKUMAR
S/O. BALACHANDRAN PILLAI, BASKARAVILASAM, PAZHANGALAM
NEDUMPANA VILLAGE, KOLLAM, DISTRICT
KERALA.**

**BY ADVS.SMT.SADHANA KUMARI ESWARI
SRI.V.JAYAPRADEEP**

RESPONDENT(S):

- 1. THE UNION OF INDIA
HOME SECRETARY TO THE GOVT. SOUTH BLOCK
CENTRAL SECRETARIAT, NEW DELHI - 1100 001.**
- 2. THE DIRECTOR GENERAL, CENTRAL RESERVE
POLICE FORCE, DIRECTORATE GENERAL, BLOCK NO.1.
C.G.O. COMPLEX, LODHI ROAD, NEW DELHI -110003.**
- 3. THE DIG, CRPF PALLIPPURAM,
THIRUVANANTHAPURAM.**
- 4. INSPECTOR GENERAL OF POLICE,
CRPF, CENTRAL SECTOR, GOMTI NAGAR
LUCKNOW, U.P. PIN . 226 010.**

**R1- R4 BY ADV. SRI.P.R.LESLIE STEPHEN
R1-4 BY ADV. SHRI T.G.KALADHARAN, CGC
BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R1 - R4 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA
BY SRI.T.PM.IBRAHIM KHAN,ASST.SOLICITOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APENDIX

PETITIONERS EXHIBITS:

EX.P1: COPY OF THE CALL LETTER FOR WRITTEN TEST

EXT.P2: COPY OF THE LETTER FOR RECRUITMENT & MEDICAL TEST ISSUED BY THE
3RD RESPONDENT.

EXT.P3: COPY OF THE APPOINTMENT ORDER DATED 9.7.2007 FROM BSF

EXT.P4: COPY OF THE DISCHARGE CARD DATED 2.2.2008

EXT.P5: COPY OF THE DISCHARGE SLIP DATED 29.3.2008

EXT.P6: COPY OF THE SLIP FROM THE CIVIL HOSPITAL JALANDHAR DATED 7.5.2008.

EXT.P7: COPY OF THE BILL FROM THE CIVIL HOSPITAL JALANDHAR DATED 7.5.2008.

EXT.P8: COPY OF THE COMMUNICATION DATED 14.7.2008.

EXT.P9: COPY OF THE DISCHARGE CARD FROM THE MEDICAL COLLEGE
THIRUVANATHAPURAM

EXT.P10: COPY OF THE DISCHARGE SLIP & FITNESS CERTIFICATE FROM THE CRPF
HOSPITAL PALLIPURAM DATED 28.1.2009.

EXT.P11: COPY OF THE MEDICAL & FITNESS CERTIFICATE DATED 3.3.2009.

EXT.P12: COPY OF THE DISCHARGE SLIP & FITNESS CERTIFICATE FROM THE CRPF
HOSPITAL PALLIPURAM DATED 4.3.2009.

EXT.P13: COPY OF THE DISCHARGE SLIP FROM CENTRAL RESERVE POLICE FORCE
HOSPITAL BANTALAB.

EXT.P14: COPY OF THE MEDICAL CERTIFICATE OF FITNESS AND RETURN DUTY
CERTIFICATE DATED 27.3.2009 FROM CRPF HOSPITAL BANTALAB, JANNU.

EXT.15: COPY OF THE TERMINATION ORDER DATED 22.4.2009.

EXT.P16: COPIES OF THE REPRESENTATIONS TO THE VARIOUS AUTHORITIES.

EXT.P17: COPY OF THE LEGAL NOTICE TO THE 2ND RESPONDENT.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

C.K.ABDUL REHIM, J.

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W.P.(C).No.21764 OF 2009

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Dated this the 8th day of April, 2015

JUDGMENT

The petitioner was appointed as Constable in the Central Reserve Police Force (CRPF), after due selection process, on 27.5.2007. He joined service at CRPF Pallippuram, from where he was deputed to undergo training at Jalandhar (Punjab). His basic training started with effect from 3.9.2007. But on 15.1.2008 he met with an accident in the course of training and suffered fracture on his left femur. The petitioner was under continued medical treatment for a period more than 15 months, till March 2009. In between he had undergone treatment as inpatient, in the hospital on several occasions and continued under medical leave. It is evident that, despite several surgical operations undergone by the petitioner, there occurred mal-union of the fracture, which had resulted in shortening of his left lower limb by 3.5 cms. Ext.P13 discharge slip issued from the 'CRPF Composite Hospital' Bantalab (Jammu) indicated that he was declared as not fit for any

training/any active combatant duty. Medical advice was to the effect that necessary action need to be taken by the unit concerned for evaluation of the petitioner. Subsequently Ext.P15 order of termination from service was issued by the 'Unit Commandant' terminating service of the petitioner, on declaring that he will be entitled to claim pay and allowances for notice period, at the rates at which he was drawing them immediately before termination of service. It is challenging Ext.P15, this writ petition is filed.

2. The petitioner placed reliance on Ext.P14 'Medical Certificates of Fitness' issued from the 'CRPF Composite Hospital' Buntalab (Jammu). It is pointed out that the certificate is to the effect that the petitioner is fit to resume duties to Government services. But it is noticed that 'he is not fit for active combatant duty'. It is contended that the termination was not sustainable based on the reason that the petitioner was found as not fit for active combatant duty. It is also contended that the impugned order of termination is bad and unsustainable due to the fact that it violates Section 16 of the Central Reserve Police Force Act, 1949. It is contended that there is no provision to make payment of one

months pay and allowances in lieu of the mandatory notice contemplated therein. Further contention raised is to the effect that the petitioner need not to be terminated from the service because of the very light nature of disability reported. On the other hand, the petitioner could have been appointed in any suitable duty which does not require active combatability.

3. In the counter affidavit filed by the respondents it is contended that the termination was ordered under Rule 6 of the Central Service (Temporary Service) Rules 1965 read with Rule 16A of CRPF Rules 1955, wherein it is provided that temporary services can be terminated at any time without notice if the servant is declared as physically unfit for continuing. It is stated that the petitioner has not completed his prescribed basic training and he can be treated only as a temporary Government servant.

4. It is pointed out that, aggrieved by Ext.P15 the petitioner had preferred an appeal before the 4th respondent as evident from Ext.P16. He had approached this court when the said appeal as well as a further representation filed before 1st respondent were not considered. Going by Section 28 of the CRPF Rules 1955, an appeal is provided against any decision

taken by the Unit Officer, under Serial Nos. 1 to 7 of the table contained in Rule 27. Dismissal or removal from force is one among the items included in the above said table. Therefore it is evident that 4th respondent is bound to consider Ext.P16 appeal. Nothing is mentioned in the counter affidavit with respect to receipt or pendency of the appeal in question. Hence this court is of the considered opinion that interest of justice can be achieved by directing the 4th respondent to consider Ext.P16 appeal and to pass an appropriate order taking note of the contentions raised by the petitioner as narrated above, as well as taking note of his request for consideration on a sympathetic basis for accommodating him in any other suitable post.

5. Under the above mentioned circumstances, this writ petition is disposed of by directing the 4th respondent to consider Ext.P16 appeal and to take an appropriate decision, after affording an opportunity of personal hearing to the petitioner, taking note of the observations contained herein above. A decision as directed above shall be taken at the earliest possible, at any rate within a period of 2 months from the date of receipt of a copy of this judgment.

6. The petitioner is also seeking direction for payment of arrears of salary due to him. Demand in this regard shall be considered by the competent authority and steps shall be taken to disburse the eligible amounts, if any due to him, without any further delay.

Sd/-

C.K.ABDUL REHIM, JUDGE

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