

In the High Court of Punjab and Haryana at Chandigarh

**Civil Writ Petition No. 6236 of 2014
Date of Decision: 12.1.2016.**

Jitender Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Aditya Yadav, Advocate for
Mr. S.N.Yadav, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for the respondents.

SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India challenging the order dated 26.2.2014 (Annexure P-11).

Learned counsel for the petitioner has submitted that petitioner was issued notice dated 18.7.2013 (Annexure P-2) on the basis of the opinion of the medical board and he was asked to submit his reply within a period of one month. However, before the said period could expire, the order Annexure P-4 dated 16.8.2013 was passed whereby petitioner was discharged from service. Petitioner had approached the Civil Surgeon for his medical check up vide application dated 12.8.2013 (Annexure P-3). Petitioner was advised to consult the Medical Board, PGIMS, Rohtak. Thereafter, petitioner approached PGIMS, Rohtak and vide Annexure P-6 (Colly) dated 3.10.2013, it was opined by the Board that there was

nothing suggestive of alcohol dependence in the petitioner. Thereafter petitioner preferred an appeal against the order of his discharge and the same was dismissed being time barred vide Annexure P-8 dated 17.11.2013. Aggrieved against the said order, petitioner preferred a review application and the same was rejected vide order dated 26.2.2014 (Annexure P-11).

Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted that the appeal filed by the petitioner was rightly dismissed being time barred.

In the present case, petitioner was working as a Constable with respondent No. 2. Notice dated 18.7.2013 (Annexure P-2) was issued to the petitioner and the same reads as under:-

“No. 008030013 CT/GD Jitender Kumar, GRN Coy, ITBP Academy has been declared completely and permanently incapacitate for any kind service of in Indo-Tibetan Border Police in consequence of Alcohol dependence Syndrom (ADS) by a medical board According, to the rule in force he should be invalidated from the service.

2. No. 008030013 CT/GD Jitender Kumar is hereby given opportunity to make appeal etc, if he wishes against the judgment of medical Board within 30 days of the issue of notice under rule 26(3) of ITBP Rule 1994 in writing.

3. No. 008030013 CT/GD Jitender Kumar is further informed that:-

(a) subject to the provisions of supplementary rule 233(1)(b) and (2), [cf. of Rule 20 of CCS Leave

Rules, 1972] as the case may be, and any order regarding grant of leave to person suffering from specified disease like tuberculosis, his retirement will have effect on expiry of period of one month from the date of communication unless he so desire to retire from an earlier date;

- (b) He may submit as he so desires, within the period of one month, a request to be examined Medical Review Board supported by prima facie evidence that good grounds exist for doing so; and*
- (c) If he prefers a request for examination by a Medical review Board, he shall be liable to pay fees prescribed under paragraph 7 of CCS (Medical Examination) Rules, 1957.”*

Before the petitioner could respond to the said notice within the stipulated period of 30 days, order dated 16.8.2013 (Annexure P-4) was passed whereby petitioner was discharged from service.

Annexure P-3 is the application dated 12.8.2013 submitted by the petitioner before Civil Surgeon, Narnaul for his medical examination. A perusal of Annexure P-3 reveals that the petitioner was advised to consult PGIMS, Rohtak for the necessary check-up.

Annexure P-6 (Colly) is the report of the Medical Board, PGIMS, Rohtak dated 3.10.2013. The operative part of the same reads as under:-

“During his stay in ward he was observed and assessed.

He did not manifest any active psychopathology or any

features suggestive of alcohol withdrawal. The board is of the opinion that there is nothing suggestive of alcohol dependence in Mr. Jitender at present. ”

Vide Annexure P-8 dated 7.11.2013, appeal filed by the petitioner against the order of his discharge was dismissed on the ground that it had been filed after the expiry of period of 30 days. Review application filed by the petitioner against the said order was dismissed vide Annexure P-11 dated 26.2.2014. Although, petitioner had filed the appeal against the order of his discharge after the expiry of the period of 30 days but in the facts of the present case, it is evident that there is violation of principles of natural justice. Petitioner was given 30 days time to respond to the notice Annexure P-2 but the discharge order was passed before the expiry of the said period. Petitioner had approached the Civil Surgeon, Narnaul within the stipulated period on 12.8.2013 but he was advised to approach PGIMS, Rohtak. Due to *inter se* correspondence between Civil Surgeon, Narnaul and PGIMS, Rohtak, there was delay in medical examination of the petitioner. As per the Medical Board, PGIMS, Rohtak, there was nothing suggestive of alcohol dependence in the petitioner. In the facts and circumstances of the present case, it would be just and expedient to set aside the orders dated 16.8.2013 (Annexure P-4), letters dated 7.11.2013 (Annexure P-8), 3.1.2014 (Annexure P-9) and order dated 26.2.2014 (Annexure P-11) and direct the respondents to pass a fresh order, in accordance with law.

Accordingly, this petition is allowed. Order dated 16.8.2013 (Annexure P-4), letters dated 7.11.2013 (Annexure P-8), 3.1.2014 (Annexure P-9) and order dated 26.2.2014 (Annexure

P-11) are set aside. Respondent No. 5 is directed to pass a fresh order, in accordance with law.

**(SABINA)
JUDGE**

January 12, 2016
Gurpreet