

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.4174 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

'..to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring order of 2nd respondent dt.21.09.1999 along with office order dt.16.09.1999 in conformation with the order of 3rd respondent vide Order dt.16.03.1999 as illegal, arbitrary and contrary to CRPF Rules, violative of Art:14 and 21 of the Constitution of India and Central Civil Service Rules and also against the principle of natural justice and quash the same and consequently direct the respondents to permit petitioner to complete left out period of training in the interest of justice and pass such other order...'

[Reproduced verbatim]

2. I have heard the submissions of *Sri Vijay Ashrit*, learned counsel appearing for the writ petitioner, and of *Ms. K. Mani Deepika*, learned Standing Counsel for Central Government, representing the respondents. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner was selected, in the year 1997, as CRPF Constable during the recruitment rally at group centre CRPF, Rampur, after qualifying in various physical and medical tests conducted by medical officer. On 05.10.1997, he reported at the group centre, CRPF, Lucknow, and final order of appointment as Constable was issued to him. Later, on 09.10.1997, he was posted against vacancy of group centre, CRPF Hyderabad, *vide* order, dated 14.10.1997, issued by the Additional DIGP, GC, Lucknow. He underwent training along with other selected

candidates and reported to RTC II, Avadi, Madras, on 16.10.1997. He successfully completed his rigorous training for eight weeks. In the month of January, 1998, he fell sick and was examined by CRPF doctors. He later recovered fully; and, after a detailed check up, on 07.04.1998, he was declared fit by Dr.A.K.Satpati, Chief Medical Officer of CRPF hospital at Avadi. Fitness certificate given by the doctors was submitted to the office wing, RTC-II. On 12.05.1998, he was sent back to group centre, Lucknow, with instructions to be returned to RTC-II for undergoing training with the next batch. At Lucknow, he continued to perform all assigned works/duties including normal training. On 01.07.1998, he reported at group centre, Hyderabad. He was advised to take treatment at Base Hospital II and, on 16.10.1998, he was referred to Government TB Hospital for check up and treatment; and, he was found medically fit. On 22.10.1998, he was declared medically fit by Dr.P.K.Dash, Chief Medical Officer of Base Hospital II, Hyderabad; and, he continued to perform assigned duties. Despite the said fact, on 20.02.1999, the CRPF authorities sent him to Base Hospital I at New Delhi, for re-medical examination. Dr.G.C. Mohanty, Chief Medical Officer, Base Hospital I, declared the petitioner temporarily unfit for training and advised rest for 17 days with effect from 20.02.1999 to 08.03.1999. The said report is wrong and contradictory to the previous reports. On the wrong report of the said Medical Officer, the 3rd respondent terminated the services of the petitioner vide order No.T.V.7/ 99-Estt.3., dated 16.03.1999, in an arbitrary manner. The said order is illegal and arbitrary and is not based on correct medical reports. The petitioner fully recovered from his ill health and the Doctor has also given fitness certificate stating that he is fit for doing the job and is quite hale and healthy. The petitioner reported to the respondents and

submitted a representation along with medical certificates; but, the respondents did not respond to his requests. He preferred an appeal, dated 20.05.1999, to the 2nd respondent to quash the termination order which is based on wrong report of Dr.G.C.Mohanty, Chief Medical Officer, Base Hospital I, Delhi. The 2nd respondent did not pass any orders. Therefore, a writ petition (WP.No.35509 of 1999) was filed before the High Court of Allahabad praying for a direction to the respondents to dispose of his appeal. The said writ petition was disposed of, on 20.08.1999, directing the respondents to dispose of the appeal filed by the petitioner within two months. Thereafter, orders were passed in the said appeal without giving an opportunity to the petitioner and the appeal was rejected stating that the petitioner is unfit for the job. The said rejection order was also passed basing on the same wrong certificate given by the afore-said Doctor. Aggrieved of the orders of the 2nd respondent, the petitioner filed W.P.No.53790 of 1999, on 21.08.2000, before the High Court of Allahabad praying to quash the order passed by the 2nd respondent and to consequently direct the respondents to permit him to continue his left over training period in CRPF. The said writ petition was dismissed holding that neither the cause of action nor a part of it has arisen within the territorial jurisdiction of that Court. Therefore, the petitioner approached this Court and filed this writ petition.

4. The case of the respondents, as stated in the counter affidavit of Additional Deputy Inspector General of Police, Group Centre, CRPF, Hyderabad, and the submissions made on behalf of the respondents, in brief are as follows:

The petitioner is an ex-recruit and was enlisted in CRPF as Constable GD with effect from 09.10.1997 against the vacancy of Group

Centre, CRPF, Hyderabad, *vide* order, dated 14.10.1997, of the Additional DIGP, Group Centre, Lucknow. The petitioner was sent to Recruitment Training Centre-II, CRPF, Avadi, Chennai, on 14.10.1997. While he was undergoing basic training, it was detected that he was suffering from T.B. Hence, he was asked to return to Group Centre, CRPF, Lucknow, on 06.05.1998, after initial treatment. He was again examined in Group Centre Hospital, CRPF, Lucknow, and the medical officer had declared him temporarily unfit as symptom of TB still existed. Since the petitioner was enlisted against vacancy of group centre, Hyderabad, he was sent to group centre, Hyderabad, on 03.07.1998. In order to give him a fair opportunity, he was again subjected to medical examination at Base Hospital-II, CRPF, Hyderabad, and the medical officer observed that the petitioner is suffering from Pulmonary Tuberculosis. He remained under treatment for four months and was discharged from the Base Hospital with remarks that 'he is symptomatic now, but, he is suitable to continue in service'. The petitioner was again sent to Base Hospital II to clarify whether there are any reasonable prospects of the petitioner becoming fit for combatant duties in CRPF in near future. Since there was no chest specialist available in Base Hospital II, CRPF, Hyderabad, at that point of time, he was referred to Base Hospital I, CRPF, New Delhi, where Dr.P.K. Kar, Chief Medical Officer, Chest & TB Specialist, *vide* his detailed report, dated 05.03.1999, declared the petitioner 'unfit for the recruitee training'. He also opined that the petitioner has done only two months of recruit training and was still having ten months of training to undergo; the disease may relapse during the training period. On the strength of the said medical opinion and advice that the petitioner is not fit for basic training, the services of the petitioner were terminated by order,

dated 16.03.1999, as per the provision of Rule 6 of Central Civil Service (Temporary Service) Rules, 1965. His appeal was rejected by the appellate authority after detailed examination. The Allahabad High Court dismissed his writ petition on the point of jurisdiction. The said order of the appellate authority is a well reasoned speaking order. The action of appointing authority and the order of the appellate authority are correct and are within the powers vested in them. There is no illegality or arbitrariness in the termination orders. The writ petition may be dismissed.

5. I have given earnest consideration to the submissions of both sides made in line with the pleadings.

6. Admittedly, the petitioner was sent to recruit training to RTC II, Avadi, Madras, on 14.10.1997. While he was undergoing basic training, it was detected that he was suffering from TB. He was given initial treatment and was returned to Group Centre, CRPF, Lucknow, on 06.05.1998. The petitioner was again examined in Group Centre Hospital, Lucknow, and the medical officer who treated him had declared him 'temporarily unfit as symptom of TB still existed'. The petitioner places implicit reliance on medical certificate of fitness to return to duty, dated 19.06.1999, issued by the medical officer. A perusal of the said certificate shows that the petitioner recovered from his illness and is fit to resume duties in Government service and that the petitioner was treated fully for Pulmonary Tuberculosis and is cured completely by then. The fact that remains is that the petitioner, who was detected to be suffering from TB was returned to Group Centre, Lucknow, on 06.05.1998, after treatment at RTC II, Avadi, and medical rest. He was examined in Group Centre Hospital, Lucknow, and was

declared temporarily unfit as symptom of TB still existed. He was again examined at Base Hospital II, CRPF, Hyderabad, and it was observed that he was suffering from Pulmonary Tuberculosis. He remained under treatment for four months and was discharged from the Base Hospital II with remarks that 'he is a symptomatic now, but, he is suitable to continue in service'. However, the petitioner was again sent to Base Hospital II to clarify whether there are any reasonable prospects of the petitioner becoming fit for combatant duties in CRPF in near future. In the said circumstances, as there was no chest specialist available in Base Hospital II, Hyderabad, the petitioner was referred to Base Hospital I, CRPF, New Delhi, where he was medically examined and declared unfit for recruit training. The Chief Medical Officer, Base Hospital I, has also opined that the petitioner has done only two months of recruit training and he has to still undergo ten months training and that the disease may relapse during training period. Thus, the petitioner was found not even fit for basic training and accordingly his services were terminated. The petitioner's contention is that after he was examined and found medically fit by Dr.A.K.Satpati, Chief Medical Officer, CRPF Hospital, Avadi of Chennai, he was again un-necessarily sent to Group Centre hospital, CRPF, Lucknow, where he has performed the assigned duties including normal training and that he reported at Group Centre, CRPF, Hyderabad, on 01.07.1998, and was medically examined by Base Hospital II and was declared fit as per the report of Dr. P.K. Dash, Chief Medical Officer, Base Hospital II, Hyderabad, and that thereafter also he performed assigned duties and that further he was again sent to Base Hospital I, on 20.02.1999, where he was declared unfit, which is wrong, and that since the medical certificate is itself wrong, the termination order issued on the basis of such report is also illegal and is liable to be

set aside. Thus, the petitioner's case is that as a specialised medical officer has found him medically fit and free from any symptoms of TB or any other disease, he is entitled to be reinstated after setting aside the termination orders and continue to undergo remaining period of training. However, as he could complete a period of two months training only till he was terminated from service and as the specialist Doctor at Base Hospital I, New Delhi, has certified that he is unfit for recruit training and that he could not fully recover despite extending proper medical aid in the CRPF hospitals, his services were terminated is borne out by record. As rightly contended by the learned standing counsel for the respondents, considering the nature of combatant duties the petitioner would be required to do after completion of training and since total physical fitness and perfect health are required for discharging said duties, the respondents rightly did not consider the petitioner's request for reinstatement.

6. Learned counsel for the petitioner relied upon a decision in Union of India and others v. M.S.Rao¹. In this cited case, the short question which arose for consideration was as to – 'Whether an order in terms of Rule 38 of the Central Civil Services (Pension) Rules, 1972, holding the respondent therein as permanently incapacitated for performing the service is valid in law or not?'. The facts of the cited case are as under: 'The respondent was appointed as a constable in CRPF in the year 1983; after he has put in considerable service, he was promoted to lance naik; thereafter, he was temporarily declared unfit, on 09.01.1996, and was under treatment; as a recommendation for his invalidation from the post was made, he was given guard command duty till 17.01.1997; the departmental rehabilitation board recommended for his retention for

¹ 2001 (4) ALD 22 (DB)

one year as he was being sent to hospital for regular check up; the Chief Medical Officer reported that the respondent was fit for active duty by continuing on anti-hypertensive drugs; he was again referred to Medical Invalidation Board and the said Board opined that he may be continued in service with regular treatment; yet again he was referred to Osmania General Hospital and the doctors opined that he is fit for duties; the same was accepted by the Chief Medical Officer of Base Hospital-II; however, a Medical Board was constituted, on 18.01.1999; and, the Board held that the respondent therein was permanently incapacitated for being continued further in service in the forces whereupon invalidation notice was issued; subsequently, he was examined at NIMS, Hyderabad, and a Board of medical experts opined that the respondent is fit to carry on his duties; yet again the Medical Board was constituted and the said medical Board again found him unfit for duty for he was suffering from hyper tension; the respondent however again was sent to Gandhi hospital and thereafter the impugned invalidation order was issued.' In the said circumstances, purely having regard to the facts of that case, a Division Bench of this Court dismissed the writ appeal holding in favour of the respondent and confirming the order in the writ petition. In the case on hand, the petitioner only relies upon a certificate prior to his termination, that is, certificate, dated 22.10.1998, issued by Dr.P.K. Dash, Chief Medical Officer, Base Hospital II, Hyderabad. As could be seen from the true copy of Medical Opinion in R/ O/ No.971401979 RT (GD) MOHD ASIF, dated 30.12.1998, issued by Dr. A.K. Mehta, CMO, BH.II, CRPF, Hyderabad, the following facts emerge: 'The petitioner was enlisted on 09.10.1997 by GC, CRPF, Lucknow. While undergoing basic training at RTC II, CRPF, he was declared temporarily unfit and was returned by the Principal to GC,

CRPF, Lucknow. He was subjected to medical examination and was found to be suffering from Lung Tuberculosis. He was sent to GC, CRPF, Hyderabad for further treatment. After examining the petitioner in the month of October, 1998, Dr.P.K.Dash, Physician, BH.II, CRPF, Hyderabad referred the case of the petitioner to A.P. chest Hospital, Hyderabad, for expert opinion and advice. Based on the report he declared him fit, on 20.10.1998. However, the petitioner again reported to Base Hospital II, CRPF, on 22.12.1998, for thorough medical examination and specific recommendation whether he is fit for combatant duties in CRPF in near future or otherwise. He was again subjected to radiological and blood examination in December, 1998; though his blood parameters are within normal limits, the Radiologist, Base Hospital II, CRPF, has opined that there is infiltration in left apex and a distinct rounded consolidation is seen in the apical segment of RUC about 2 Cms in dimension. Based on the said findings it was noted that it was evident that the petitioner suffered from TB for a long time and there is focus in both right and left apical segments. Therefore, it was opined by Dr.A.K.Mehta, Chief Medical Officer, Base Hospital II, CRPF, Hyderabad, that though the petitioner recovered from ailments presently it is difficult to say whether he shall be in a position to undergo rigorous basic training or not. He further opined that the disease may relapse during training period.' The fact of the matter is that Dr.P.K.Kar, Chief Medical Officer, Base Hospital I, CRPF, New Delhi, *vide* his report, dated 05.03.1999, declared the petitioner as unfit for the recruitment training and further opined that the petitioner has done only two months recruitment training and he has to still undergo ten months training and that the disease may relapse during training period. Therefore, the 3rd respondent gave the termination orders, on 16.03.1999. The appellate

authority dismissed the petitioner's appeal by order, dated 16.09.1999, and the same was communicated to the petitioner within a short time thereafter. The petitioner's writ petition in W.P.No.53790 of 1999 was dismissed by the Allahabad High Court on 07.02.2007. This writ petition was filed on 01.03.2007. The petitioner is now aged about 42 years. The post for which the petitioner aspired requires perfect physical and medical fitness of required standard for discharging duties efficiently and effectively, is undisputed. Based on medical and other records, expertise and experience, the superior officers concerned terminated the services of the petitioner having found him unfit for the force. In the facts and circumstances this Court holds that it is not a fit case to substitute the subjective opinion of this Court in the place of one arrived at by the officers concerned.

7. On the above analysis, this Court finds that there is no merit in the writ petition and the same is liable to be dismissed.

8. The Writ Petition is, accordingly, dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

Date: 13.04.2017
Vjl

M. SEETHARAMA MURTI, J