

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

-:-
C.W.P No. 966 of 2017 (O&M)
Date of decision : February 09, 2017

Sumit Verma

... Petitioner

versus

Union of India & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Simranjeet Singh, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J (Oral)

Heaving heard learned counsel for the petitioner on 02.02.2017, during the course of preliminary hearing of the petition, learned counsel had been asked to produce the text of Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 1965, (hereinafter-the Rules, 1965) for which purpose the case was adjourned.

Rule 5(1) of the Rules produced read as under:-

“ 5. Termination of temporary service:- (1)(a) The services of a temporary Government Servant shall be liable to termination at any time by a notice in writing given either by the Government Servant to the appointing authority or by the appointing authority to the Government Servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government Servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be for the period by which such notice falls short of one month.

Note:- The following procedure shall be adopted by the appointing authority while serving notice on such Government Servant under clause (a)---

- (i) The notice shall be delivered or tendered to the Government Servant in person.*
- (ii) Where personal service is not practicable, the notice shall be served on such Government Servant by registered post acknowledgment due at the address of the Government Servant available with the Appointing Authority.*
- (iii) If the notice sent by registered post is returned unserved it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government Servant on the date it was published in the official Gazette.*

The Rule requires the termination order to be passed in writing, but it does not cast a duty on the authority to record reasons in the order of termination. The grievance of the petitioner is that he was not informed the reasons as to why his services were being terminated during the period of probation. Learned counsel then submits that there was medical history attached to the petitioner, which material has been produced in the petition by way of documents placed as annexures.

Anyway, it is argued in the alternative that it is not Rule 5 but Rule 6 of the Rules which applies to the case. Rule 6 of Rules, 1965 deals with termination of temporary service on account of physical unfitness and reads as follows:-

“6. Termination of temporary service on account of physical unfitness----*Notwithstanding anything contained in Rule 5, the service of a temporary Government Servant[***] may be terminated at any time without notice on his being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent.”*

It is the contention of the learned counsel for the petitioner that in case the petitioner was terminated on account of being physically unfit, it had

to be declared so i.e. declared in writing and the decision communicated to the petitioner. No doubt, CRPF would have to declare the petitioner physically unfit for continuance in service before the Force resorted to Rule 6, but it is another thing that such declaration has or has not to be communicated to the employee in any detail since Rule 6 empowers the competent authority to terminate the services of an employee without notice on being declared unfit. If notice is not required then the reasons for medical or physical unfitness can always be gathered later on from the authorities after termination either by an application directly made to the CRPF to inform reasons of physical unfitness and in case the office refuses to divulge information then employee can always invoke the provisions of the Right to Information Act, 2005, but this search will not affect the termination. The argument based on Rule 6, is therefore rather presumptuous since the contingency has not transpired and the case would have to fall under Rule 5 and, therefore, I see no reason why any interference would be warranted in this case in proceedings under writ jurisdiction. It is not for the Court to judge suitability of a constable to continue to serve in a paramilitary force so long as his services have not been terminated with prima facie proven allegations of bias or mala fides imputed against any of the officers in the CRPF who took the impugned decision causing cessation of service before confirmation.

In view of the above rule position, no interference is warranted in this case of termination simpliciter. The petition is accordingly dismissed.

February 09, 2017
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned – Yes
Whether reportable – No