

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.14304 of 2014**

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Taufique Ahmad Son of Md. Abbas Ahmad R/O Mohalla - Zafarpura, Town  
Mohamapur, P.S. Mohamdabad, District - Gazipur (U.P.)

.... .... Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Home Affairs, (Shashtra Sheema Bal), Government of India, New Delhi.
2. The Deputy Inspector General, Sector Head Quarter, Ranidanga, P.O. Matigara, District - Darjeeling (West Bengal).
3. The Commandant of 36th Battalion, Seema Surkhsha Bal, Thakurganj, P.O. Thakurganj, District - Kishanganj (Bihar).

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sarbdeo Singh, Adv.  
Mr. Md. Helal Ahmad, Adv.  
For the Respondent/s : Mr. Anjani Kumar Sharan, ASG  
Mr. Manoj Kumar Singh, C.G.C.

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 04-04-2018**

The present writ petition has been filed for quashing the order dated 2.4.2014 passed by the respondent Deputy Inspector General SHQ SSB, Rani Danga whereby and whereunder the appeal was heard in compliance of the order of this Court dated 3.2.2014 passed in CWJC No. 22757 of 2012 and has been rejected as well as the order of termination dated 9.7.2012 has been upheld.

2. The short facts of the case are that the petitioner was appointed as a constable (G.D.) in Sashastra Seema Bal by order dated 15.6.2011 thereafter the petitioner joined the said post on 19.7.2011. The petitioner was then posted at Debendranagar, Assam and



thereafter w.e.f. 16.8.2011, the petitioner participated in the said training, known as BRTC, but unfortunately fell ill on 13.9.2011 and remained under treatment. Subsequently, on 10.10.2011 the petitioner made a request for leave on account of his mother's illness. Subsequently, on 28.10.2011 the petitioner again sought leave to attend his ailing mother and he was granted leave from 31.10.2011 to 7.11.2011. According to the petitioner, he was relieved by the Assistant Commandant, Thakurganj by an order dated 6.1.2012 for undergoing training which was to commence to Gorakhpur w.e.f. 9.1.2012. While the petitioner was undergoing training, he received information that his mother was serious and as such the petitioner remained sick w.e.f. 25.1.2012 to 28.2.2012.

3. It is further case of the petitioner that thereafter the petitioner was relegated to the next junior batch on the ground of his absence from training on account of illness. The Deputy Commandant vide order dated 15.6.2012 served a show cause notice on the petitioner to submit a reply within one week. However, he did not submit his reply and finally the order of termination was passed on 9.7.2012. The petitioner had filed a writ petition bearing CWJC No. 22757 of 2012, challenging the aforesaid order of termination dated 9.7.2012 and this Court by an order dated 3.2.2014, while refraining from interfering with the original order of termination dated 9.7.2012



had remanded the matter back to the appellate authority for reconsidering the appeal of the petitioner herein. The appellate authority had then reconsidered the case of the petitioner, in the light of the aforesaid order dated 3.2.2014 passed by this Court and had rejected the appeal.

4. The learned counsel for the petitioner has submitted that a bare perusal of the appellate order dated 2.1.2014 would show that the appellate authority has not considered the grounds raised by the petitioner in the appeal, hence the said order is perverse and fit to be set aside.

5. Per contra, the learned Assistant Solicitor General has appeared for the respondents and in view of the averments made in the counter affidavit submits that the actual facts of the case are that after the petitioner was appointed as constable, he was required to undergo Basic Recruit Training Course. However, the petitioner refused to undergo training for the said course on one pretext or the other. Firstly, the petitioner had submitted an application on 10.10.2011 stating that he does not want to undergo training since his mother was ill and he would be responsible for the consequences. Thereafter, the petitioner had applied for 10 days casual leave on the ground of illness of his mother. However, 5 days casual leave was sanctioned w.e.f. 31.10.2011 to 7.11.2011. After the petitioner resumed duty, he



was again detained to undergo the training at the Recruit Training Centre, Gorakhpur, as such he was relieved for the said purpose by an order dated 6.1.2012. It appears that the petitioner did not want to undergo training inasmuch as he was relieved at training centre, Gorakhpur by an order dated 29.02.2012 in which it was mentioned that the petitioner has remained away from training activity for more than 30 days on medical ground and had not participated in any of the training activities. Thereafter, the petitioner again applied for 15 days casual leave on the ground of domestic problem and the leave was granted to him from w.e.f. 3.4.2012 to 24.4.2012.

6. It is submitted by the learned Assistant Solicitor General that according to the notification of the Government of India, Ministry of Home Affairs dated 25.11.2009, there is no provision to offer more than 2 chances to qualify the Basic recruit Training Course and in case the incumbent misses to complete his training within the said period, the service of such incumbent is liable to be terminated. It is further submitted that in pursuance of the aforesaid conduct of the petitioner herein, a show cause was issued to the petitioner vide memorandum dated 15.6.2012, however, the petitioner did not submit any reply to the same resulting in passing of the termination order dated 9.7.2012, which itself explanatory. The said order dated 9.7.2012 was challenged in appeal, however, the appeal was also



dismissed by an order dated 19.9.2012. The said order dated 19.9.2012 was challenged in CWJC No. 22757 of 2012 and this Court by an order dated 3.2.2014 held in paragraph-7 as follows:

“There is no dispute over the fact that the petitioner could not complete the course even in two chances as required as per terms of appointment. The consequence to failure on the part of the petitioner to complete the course in two attempts was mentioned there in the appointment letter itself and according to which his service was liable to be terminated. I do not find any illegality, therefore, in the order of the disciplinary authority as such.”

7. It is apparent from paragraph-7 of the aforesaid order dated 3.2.2014 that this Court did not find any illegality in the order of termination passed by the respondents and, therefore, original order of termination dated 9.7.2012 has attained its finality since the said observation of the learned Single Judge has not been either set aside or challenged in Appeal. Nonetheless, this Court by its earlier order dated 3.2.2014 had only remanded the matter back to the appellate authority to re-consider the appeal of the petitioner herein with an observation that in case the appellate authority finds any specific ground for reconsideration of punishment, the same be done. Thereafter, the appellate authority had reconsidered the appeal and by an order dated 2.4.2014 had rejected the appeal upon full consideration of the case of the petitioner herein, which is expounded



in paragraph-2,3, and 4 of the said order dated 8.4.2014, which is reproduced herein below:

“ 2. Whereas, petitioner i.e. No. 110430267 RCT (GD) Taufique Ahmad was enrolled in SSB on 29.7.2011 (FN) and detained to undergo 16<sup>th</sup> BRTC at 47 Bn SSB Devendranagar which commenced w.e.f. 16.08.2011 vide order No. 9503-11 dated 12.08.2011. He fell ill on 13.09.2011 and remained under treatment as intimated vide Fax No. 6212 dated 03.04.12 of 47<sup>th</sup> Bn Debenranagar. On 10.10.11 No. 110430267 RCT (GD) Taufique Ahmad, vide application dated 10.10.11 stated his unwillingness to undergo the said BRTC on account of his mother's illness at his home. He was also declared that it was his own personal decision and neither any one is responsible for it nor he has requested for the same under any compulsion. Accordingly, as per his request for his unwillingness to undergo the said BRTC, 47<sup>th</sup> Bn Debendranagar vide letter dated 15.10.11, relegated him from the said training and returned him back to Bn Hq on 15.10.11 (AN).

3. Whereas, No. 110430267 RCT (GD) Taufique Ahmad was given 2<sup>nd</sup> chance and was detailed to undergo 12<sup>th</sup> BRTC at 44<sup>th</sup> Bn SSB Gorakhpur vide order No. 146-49 dated 06.01.2012 which started w.e.f. 16.01.12. The applicant had attended training for 8 days w.e.f. 16.1.12 to 23.1.12 and then went sick report on 24.1.12 and thereafter remained on sick rest w.e.f. 25.1.12 to 28.2.12 for 35 days. During the above cited period applicant had submitted his unwillingness to undergo the training. He had also been interviewed personally by DIG, SHQ Gorakhpur and the DIG found that he was not mentally and physically ready to undergo the basic training as intimated by RTC/44<sup>th</sup> Bn vide fax fax msg. No. 908 dated 02.04.2012 and therefore he was relegated from



12<sup>th</sup> batch BRTC on 28.02.12 for remaining away from training activities for more than 30 days on medical ground as intimated by 44<sup>th</sup> Bn Gorakhpur vide order No. 3934-41 dated 29.02.12.

4. Whereas, as per the Govt. of India (Ministry of Home Affairs) notification of RR for the Group “C” post (Constable (GD) G.S.R. 844(E) dated 25.11.2009 (note of column-8 of annexure) reads as under- (Candidates on direct appointment will qualify the Basic Recruit Training Course within a period of two years from the date of appointment. Not more than two chances will be given to qualifying Basic Recruit Training Course failing which services are liable to be terminated:. This condition has also been given in memorandum of appointment No. 2/31/10/SSB/Rectt. CT (GD)/ Per4s-II/18153-54 dated 15.6.2011 vide para No. 2(vii). The applicant was given 1<sup>st</sup> chance to complete the BRTC at 47<sup>th</sup> Bn SSB Debendranagar and 2<sup>nd</sup> chance at 44<sup>th</sup> Bn SSB Gorakhpur, but he did not complete the BRTC in both the chances.”

8. I have heard the learned counsel for the parties and perused the materials on record. I find that the first obstacle for the petitioner is the non-quashing of the order of termination by this Court in its earlier order dated 3.2.2014 passed in CWJC No. 22757 of 2012. In view of the fact that this Court had not interfered with the order of termination inflicted by the disciplinary authority, this Court is of the opinion that the petitioner is precluded from raising any issue on the merits of the case. Now, coming to the order passed by the appellate authority, it is apparent from the appellate order that all



the facts and circumstances pertaining to the petitioner herein relating to his absence from duty has been duly considered by the appellate authority. In fact from the averments made in the writ petition and the counter affidavit, it is clear that the petitioner had defaulted not only on one occasion, but on several occasions to participate in the training, resulting in him not completing his training within stipulated period of two years. I further find from the record that though the petitioner had taken the plea of death of his mother as a ground for not completing the training, but the death of the mother of the petitioner had occurred on 25.1.2012 whereafter also the petitioner deliberately absconded from the training and subsequently took leave time and again, hence, it is apparent that the petitioner was not interested in pursuing his job where discipline is of prime importance, thus no mercy can be shown to the petitioner.

9. For the reasons mentioned herein above, there is no merit in this case. This writ petition is dismissed.

**(Mohit Kumar Shah, J)**

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