

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.08.2018
Pronounced on : 17.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5277 of 2008
and
M.P.No.1 of 2009

R.Venkatesan

... petitioner

Vs.

1.The Inspector General of Police,
Northen Sector,
Central reserve Police Force,
R.K.Puram, Sector I, Block-8,
New Delhi.

2.The Commandant,
167 Battalion,
Central Reserve Police Force,
Mantripukhri, Imphal.

... Respondents

This Writ Petition filed has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondents pertaining to the impugned order No.P.VIII-1/EC-II/167 dated 16.12.2005 passed by the 2nd respondent, confirmed by the 1st respondent in the order No.D.V-1 (22)/2006-N-S-ESTT.5 dated 23.03.2007 and to quash the same and consequently to direct the respondent to reinstate the petitioner in service with back wages, continuity of service and other attendant benefits.

For petitioner : Mr.R.Sunil Kumar
For Respondents: No appearance

O R D E R

This writ petition has been filed by the petitioner seeking to quash order dated 16.12.2005 bearing reference No.P.VIII-I/EC-II 167 issued by the 2nd respondent and order dated 20.03.2007 bearing No.D.V-1(22)/2006-N-S-ESTT.5 issued by the 1st respondent confirming the 2nd respondent's aforesaid order and to

consequently direct the respondents to reinstate the petitioner in service with back wages, continuity of service and other attendant benefits.

2. The facts of the case are as follows:

- i. The petitioner was selected as a constable/GD (Group-C) with the Central Reserve Police Force (CRPF) in time scale of pay of Rs.3050-75-3950-80-4590 vide appointment offer dated 1.9.2004.
- ii. The petitioner was directed to appear before the Additional DIG, Group Centre, CRPF, Avadi on 25.9.2004 with the required details/certificates.
- iii. The petitioner was required to produce the x-ray P.A. view of his chest at his own cost at the time of training and appointment was subject to his medical fitness in all respects which was to be determined by the Medical Officer of the Department/force on his reporting to these Group Centre.
- iv. The Petitioner was subjected to preliminary medical test.
- v. The appointment offer states that the petitioner was to undergo basic training in any of the training institutions of the CRPF.
- vi. The appointment offer states that if for any reason the petitioner was unable to complete the training successfully, his services will be terminated.
- vii. As per the aforesaid appointment offer the petitioner was selected on temporary basis was to be on probation for a period of two year during which time the service can be terminated without assigning any reason.
- viii. The appointment offer states that the services were liable to be terminated at any time during probation with one month's notice by the appointing Authority without assigning any reason in terms of the provisions in CRPF (Rules 1955).
- ix. Though the appointment was on a temporary basis, it likely to continue indefinitely.
- x. The appointment was subject to the terms and conditions mentioned in the appointment offer.
- xi. The said offer states that the if terms of offer were acceptable the petitioner, he was to report on 25.9.2004 with the details.

xii. The petitioner was sent for training from 01.10.2004 to 07.03.2005 at Sinderi, Bihar

xiii. After reporting for training the petitioner suffered fracture on his left hand just above the wrist (Alna) and was admitted in CRPF Sinderi Hospital and thereafter, referred to Patliputra Medical Hospital Dhanbad and thereafter, he was given treatment and discharged on 16.05.2005.

xiv. At the time of discharge, the Medical Officer had certified that the petitioner was fit to resume duty/training.

xv. It appears that the petitioner continued his training till 16.08.2005 and thereafter he was suffering from fever and was admitted in the hospital and discharged on 23.08.2005.

xvi. The petitioner was advised to obtain a fitness certificate to resume duty.

xvii. At that time, he was advised to avoid P.E.T. Training and strenuous work for the next 10 days.

xviii. Again, the petitioner was admitted in the hospital for infective hepatitis and he was granted casual leave between 23.10.2005 and 03.11.2005.

xix. Thereafter, the petitioner was ordered to undergo medical examination on 19.10.2005 where the that the Petitioner was declared unfit on account of Squint in his left eyes (Exotropica).

xx. After joining the training the Petitioner as unable to complete his training and his services was terminated by the 2nd respondent vide impugned letter dated 16.12.2005.

xxi. The petitioner was directed to surrender all the materials including uniform and was dropped in the Simalguri railway station, Assam.

xxii. The termination of service was stated to be as per the Central Civil Services (Temporary Service) Rules.

xxiii. The petitioner therefore filed an appeal before the 1st respondent.

xxiv. The Petitioner thereafter filed W.P.No.50218 of 2006 for a mandamus to dispose the appeal filed by him before the 1st respondent.

xxv. During the pendency of the writ petition the 1st respondent affirmed the order of the 2nd respondent vide order dated 20.03.2007 bearing reference terminating the petitioner from service vide second mentioned impugned order.

xxvi. Under these circumstances, W.P.No.50218 of 2006 was dismissed on 25.04.2007 as infructuous giving liberty to the petitioner to challenge the order of the 1st respondent affirming the order of the 2nd respondent.

xxvii. It is pursuant to the 2nd mentioned order dated 20.03.2007 the 1st respondent, the petitioner has filed the present writ petition.

xxviii. In the 2nd mentioned impugned order of the 1st respondent, it is stated that the petitioner was examined by the Board of Medical Officers constituted on 24.05.2005 pursuant to which the petitioner was sent to the Base Hospital-I CRPF, New Delhi where he appeared for re-medical examination on 03.09.2005.

xxix. There the petitioner was declared to unfit for having Squint eyes pursuant to which the petitioner's service was terminated on 16.01.2006.

3. The case of the petitioner is that if he was medically fit at the time of appointment on account of squint eye, he cannot become unfit as it was not something which he developed subsequent to his joining the service. The other reasons given by the 1st respondent to reject the appeal is that the petitioner has not completed his basic training and therefore, in exercise of power under Rule 5(1) of CCS (TS) Rules 1965, the service of the petitioner has been rightly terminated to which the petitioner states that it was arbitrary.

4. In paragraph No.7 of the 2nd mentioned impugned letter of the 1st respondent, it has been observed as under:

As per norms of the force, each jawans should be free from all physical disability as it adversely affects the efficiency of the Jawan as well as the force. This basic requirement cannot be overruled. The defects/squint in eye of the appellant was examined by two different medical boards and found the appellant unfit for the force. Due to the reason only, he wasterminated from services.

5. The 2nd respondent has filed the two common counter on behalf of the respondents reproducing the same contents. The respondents have reiterated the content of the impugned order passed by the respondents.

6. The 2nd respondent has further stated that while visiting 167 BN camp, the DIG, CRPF observed that 10 Constables/Recruits including the petitioner were having "Squint Eyes" and 94 Constable/Recruits were having "Knock Knees" and therefore, directed Re-medical examination.

7. Out of 104 recruits, 103 (one having deceased) were sent for re-medical Board, 87 were declared as fit and 13 were unfit and 03 were found to be temporarily unfit. The petitioner was one among the 13 who were declared unfit due to squint eyes.

8. Heard the learned counsel for the petitioner. There is no representation on behalf of the respondent.

9. The petitioner was appointed as temporary constable in CRPF and underwent training for a period of four months and thereafter fractured his hand during which time and was on medical leave and later he along with other trainee were sent for re-examination.

10. It is only after re-examination his service was terminated after giving the petitioner one month notice with effect from 16.01.2006 vide termination order dated 16.12.2005 in terms of the Rules.

11. The order of appointment which was circulated clearly states that the petitioner was provisionally selected for appointment as a constable /G.O.(Group-C) in CRPF and that the post was offered on temporary basis and thereafter likely to be continued indefinite.

12. The letter of the appointment also states that the service could be terminated with one month notice during initial period of service within two years without assigning any reasons in accordance with the provisions of CRPF Rules 1955.

13. The 1st mentioned impugned termination order of the 2nd respondent has not given any reasons for terminating the service. It merely states that it was in accordance of Sub Rule

(1) of Rule 5 of the Central Civil Services (Temporary Service) Rule 1965.

14. The learned counsel drew my attention to circular dated 16.5.1991 issued by the Directorate General, CRPF (Ministry of Home affairs) wherein the driver's appointed who were later found suffering from colour blindness were found disqualified for entry into CRPF in respect of the Executive, Technical and Trade Cadets including M. T. were eligible for being rehabilitated as hospital staff, ministerial staff, followers etc.

15. All drivers up to the rank of HC (DVR) who were reported to be having colour blindness were directed to be transferred to G D line as communicated by the Directorate vide letter dated 4/10/1990. The clarification/circular allowed those GD personnel who were having colour blindness to continue in service till they super-annuated.

16. The counsel therefore urged accommodation of the petitioner at this point of time with back wages as non-ministerial staff of CRPF.

17. The learned counsel also drew my attention to another letter issued by the Ministry of Home affairs dated 17.5.2002 wherein it was clarified colour blindness ignored at the time of recruitment cannot be held against them and all such personnel were to be given promotion despite they being in medical category SHAPE 2 (Permanent) on their turn, if they are otherwise fit for promotion.

18. The learned counsel also drew my attention to yet another circular dated 30.10.2008 wherein it has been clarified that when a person was appointed to the Central paramilitary forces prior to 17.5. 2002 with colour blindness, the concerned force will try to adjust such person in non-technical Security Force where colour blindness may not be a disqualification.

19. The said circular also stated that if such accommodation is not possible, such person may be removed from services after giving them the opportunity to defend the case.

20. Finally, the learned counsel also drew my attention to yet another letter dated 9.4.2010 of the Directorate General, CRPF allowing promotion for those personnel who were found to have colour blindness.

21. In the light of the above letters/ circulars of the Home Ministry, the learned counsel for the petitioner prayed for a direction for appointment of the petitioner into any of the ministerial post of CRPF as he was otherwise found fit by the appointing authority when he reported for training pursuant to the appointment offer dated 1.09.2004.

22. These circulars are of no significance to the present case as they pertain to a different category of disqualification which have come to the light of the appointing authority after recruitment and considerable service rendered by such personnel.

23. These relaxations extended by the Home Ministry cannot modify by the court under Article 226 of the Constitution of India to the present case.

24. Further, such relaxations are a matter of policy and deal with specific situations subsequent to the absorption of the personnel into the service at the time of consideration of their promotion.

25. The petitioner has not produced any other circular or clarification or order of the CRPF absorbing person like the petitioner who have been absorbed into the service right after the appointment and during the period of probation on account of disability.

26. On the other hand, the Supreme Court in SBI versus Palak Modi (2013) 3 SCC 607, after considering a series of judgments held that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an enquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate the services, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of such an action, the ultimate decision taken by the competent authority can be nullified on the ground that it had violated the rules of natural justice.

27. The Hon'ble Supreme Court in Ajit Singh & Others vs. State of Punjab and Another (1983) 2 SCC 217 has observed as under:-

"7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus penitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to. The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer. Arm force and police force required high level of fitness and therefore, the petitioner cannot have right to continue

his service if he is otherwise medically unfit. It has not been alleged that the service was terminated arbitrarily.

28. In the present case, admittedly termination of services during the probationary period was as per the letter of offer of appointment dated 1.9.2004 of the appointing authority issued to the petitioner. The petitioner has no right to be appointed or absorbed as permanent employee of the respondents.

29. The termination is as per the terms of the appointment offer dated 01.09.2004 and provisions of the applicable rules cited in the appointment offer. Therefore, impugned order of the 1st and 2nd respondent cannot be quashed. Further, in absence of direct precedent, the Court is unable to come to the rescue of the petitioner for absorption in the non-technical post of respondents CRPF.

30. In view of the above observation, the writ petition is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

kkd/ia
To

1.The Inspector General of Police,
Northen Sector,
Central reserve Police Force,
R.K.Puram, Sector I, Block-8,
New Delhi.

2.The Commandant,
167 Battalion,
Central Reserve Police Force,
Mantripukhri, Imphal.

+1 CC to Mr.R. Sunil Kumar, Advocate sr 64750.
+1 CC to Mr.D. Simon, Advocate sr 64656.

W.P.No. 5277 of 2008

GJII(CO)
SP(03/10/2018)